

The MERIT program

Operational manual

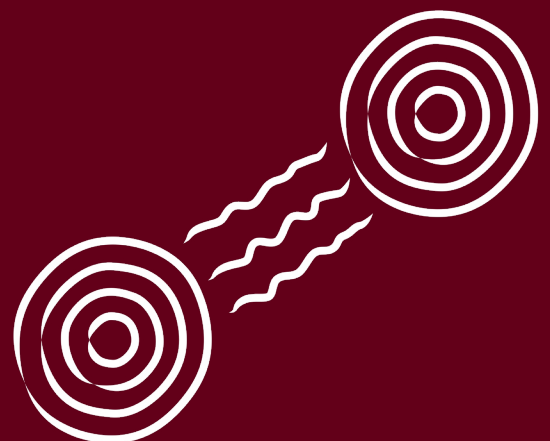
July 2025



Acknowledgement of Country

The Department of Communities and Justice acknowledges the Traditional Custodians of the lands where we work and live. We celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of NSW.

We pay our respects to Elders past and present and acknowledge the Aboriginal and Torres Strait Islander people that contributed to the development of this document.



More information

The MERIT program

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Centre for Alcohol and Other Drugs, Ministry of Health
Chief Magistrate's Executive Office
NSW Police Force
Aboriginal Legal Service (ACT/NSW)
Legal Aid NSW

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Report Structure

The MERIT operational manual outlines standard operating policies and procedures for the MERIT program. MERIT clinicians and other stakeholders can utilise this document to consider roles and responsibilities, communication protocols, and reporting specifications.

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Introduction

1

1.1 Overview of MERIT

The MERIT program is a New South Wales (NSW) court-based diversion program for adults facing charges in the Local Court who have issues related to their alcohol and other drug (AOD) use. MERIT provides access to a range of AOD treatment services for 12 weeks while court matters are adjourned. Participation in the program is voluntary and does not require a plea of guilty to be eligible.

MERIT is an interagency partnership between the NSW Department of Communities and Justice, the Chief Magistrate's Office, NSW Health and NSW Police. MERIT receives strategic and operational support from Legal Aid NSW and the Aboriginal Legal Service (NSW/ACT).

MERIT aims to reduce the harms associated with AOD use, improve the health and wellbeing, and reduce offending for adults who use AOD and are in contact with the criminal justice system. A select number of NSW Local Courts accept MERIT referrals when alcohol is the principal drug of concern.

The MERIT program has operated since 2000 and is regulated by Part D of the Local Court Practice Note Crim 1 issued by the Chief Magistrate.¹

As of March 2025, MERIT is available in 75 NSW Local Courts. A list of MERIT courts can be found on the MERIT Local Court website.²

Defendants are referred to the program prior to their first appearance or as soon as possible thereafter, to enable them to make the greatest use of the time available once proceedings have commenced. However, defendants can be referred for MERIT assessment at any stage prior to conclusion of proceedings. The intended outcomes for participants and the community include:

- decreased offending behaviour
- decreased AOD use
- improved health and wellbeing of MERIT participants
- increased community protection
- the possibility of an improved sentence result.

1.2 Name of program

In November 2024, the Attorney General announced³ that magistrates will be called judges, by amending the Local Court Act 2007. This decision was based on a recognition of the increasing seriousness, volume and complexity of Local Court work and that it better reflects the work of judicial officers in this jurisdiction. As of 1 May 2025, the necessary amending legislation was yet to be introduced into the NSW Parliament.

The name MERIT, since its inception, was an acronym that stood for Magistrates Early Referral Into Treatment. In view of the change from 'magistrate' to 'judge,' the program will retain the longstanding title 'MERIT' without spelling out the acronym. In order to future-proof this edition of the operational manual, we refer to the Local Court decision-makers as 'judicial officers.'

¹ Local Court New South Wales, Practice Notes: https://localcourt.nsw.gov.au/documents/practice-notes/CURRENT_181220_PN_Crim_1.pdf

² The MERIT program: <https://dcj.nsw.gov.au/legal-and-justice/diversion-and-therapeutic-programs/the-magistrates-early-referral-into-treatment-merit-program/coverage-statewide.html>

³ <https://dcj.nsw.gov.au/news-and-media/media-releases/2024/magistrates-to-be-called-judges-under-historic-change-to-local-c.html>

1.3 Agency roles and responsibilities

The MERIT program operates through the cooperative efforts of the following NSW Government agencies and non-government organisations:

NSW Health

Centre for Alcohol and Other Drugs, Ministry of Health

The Centre for Alcohol and Other Drugs' key responsibilities are to:

- Lead the implementation of the MERIT program in NSW Health Local Health Districts (LHDs) and contracted non-government organisations (NGOs)
- Convene the MERIT Program Advisory Committee (MPAC)
- Fund and oversee priority access to AOD residential rehabilitation and withdrawal management services for MERIT participants
- Monitor AOD treatment service delivery activity and participant health outcomes
- Develop and implement MERIT health program evaluation and improvements
- Maintain and update MERIT content on the NSW Health website
- Contribute to funding and business case development for program development and expansion
- Serve as data custodians for the MERIT Information Management Database (MIMS). This involves the collection, collation and reporting of MERIT activity and outcome data.

Local Health Districts and Local MERIT teams

NSW LHD and NGO MERIT teams attached to each participating court deliver AOD treatment and support services. The MERIT teams' key responsibilities are to:

- Assess the suitability of defendants for MERIT
- Develop 12-week treatment plans in partnership with MERIT participants
- Deliver AOD case management and/or counselling for MERIT participants
- Connect MERIT participants with other AOD treatment and support services including withdrawal management and residential rehabilitation
- Monitor participant progress against the treatment plan and amend service delivery as needed
- Provide written reports to the court about participant progress in the MERIT program
- Coordinate participants' exit from the MERIT program and provide referral and transfer of care to other health and social services as needed
- Liaise with other MERIT agencies to facilitate service delivery (i.e., Local Courts, NSW Police and solicitors)
- Provide representatives to participate in the NSW Health MPAC
- Enter participant and program data into MIMS.

MERIT teams support effective operation and promotion of the MERIT program by:

- networking with local referring agencies and individuals about eligibility, suitability and referral requirements
- having a visible presence in MERIT courts in person and/or through promotion of contact details
- attending Court User Forums.

More detailed clinical information for each stage of the assessment and treatment process is outlined in the NSW Health *MERIT Model of Care*.⁴

⁴ MERIT Model of Care: <https://www.health.nsw.gov.au/aod/programs/Publications/merit-model-of-care.pdf>

Department of Communities and Justice (DCJ)

Diversion team

The Diversion team within the Women, Family and Community Safety directorate, Strategy, Policy and Commission division, DCJ is responsible for the MERIT program interagency coordination and strategic policy leadership. The team's key responsibilities are to:

- Convene and chair the MERIT Steering Committee and the MERIT Partnership Group
- Monitor and support CAOD's lead of MERIT program delivery and expansion, and provide advice on program improvements
- Coordinate, develop and maintain interagency program documents such as the MERIT operational manual and MERIT Annual Reports
- Facilitate communication and collaboration between all partner agencies, including ensuring that training and resources are delivered as needed from appropriate sources
- Coordinate public-facing communications, including DCJ website content about MERIT and support CAOD on local promotion of the program in expansion sites
- Support ongoing research into and evaluation of the MERIT program
- Lead policy development, responses to evaluations and government inquiries, interagency funding and business case development.

Court Services

Courts Services directorate within the NSW Courts Tribunals and Service Delivery (CTSD) division, DCJ, provide administrative support and services to the staff, judiciary and executive for the Local Court (where MERIT operates), as well as for the District Court, Children's Court, Coronial jurisdictions, Drug Court and the Dust Diseases Tribunal.

Local Court of NSW

Chief Magistrate's Executive Office

The Chief Magistrate's Executive Office is responsible for drafting the Local Court Practice Note which guides the practice, procedure, and operation of the MERIT program. Local Courts are responsible for referring eligible defendants to the MERIT team for further assessment, monitoring participant progress, and finalising legal matters. Where there are changes in operational procedures, the Chief Magistrate's Office will inform the Local Court judicial officers across the state in addition to providing crucial program-related information.

Local Court judicial officers

Local Court judicial officers lead the operations of MERIT at individual court locations. The judicial officer's key responsibilities are to:

- Make referrals into the MERIT program for eligible participants
- Determine eligibility and refer eligible defendants to the MERIT team for a suitability assessment
- Accept suitable defendants into MERIT
- Monitor participant progress when undertaking MERIT
- Respond to breaches of bail
- Determine if a participant should be removed from the program if they have disengaged with the program conditions.

Legal Aid NSW and Aboriginal Legal Service (NSW/ACT)

The Aboriginal Legal Service (NSW/ACT) (ALS) and Legal Aid NSW support referrals into MERIT by identifying and referring defendants for MERIT eligibility and suitability assessment. This includes defendants who are in custody and those in the community.

Solicitors identify potentially eligible defendants when taking instructions from their clients about their charges and their background, including whether there are any AOD issues.

Where current issues with AOD are identified, solicitors will discuss the MERIT program with their client so that they can make an informed decision about whether to consent to assessment and participation in the program.

NSW Police Force

The NSW Police Force identify and refer defendants for MERIT eligibility and suitability assessment at the time of arrest or before the initial court appearance.

1.4 MERIT Governance

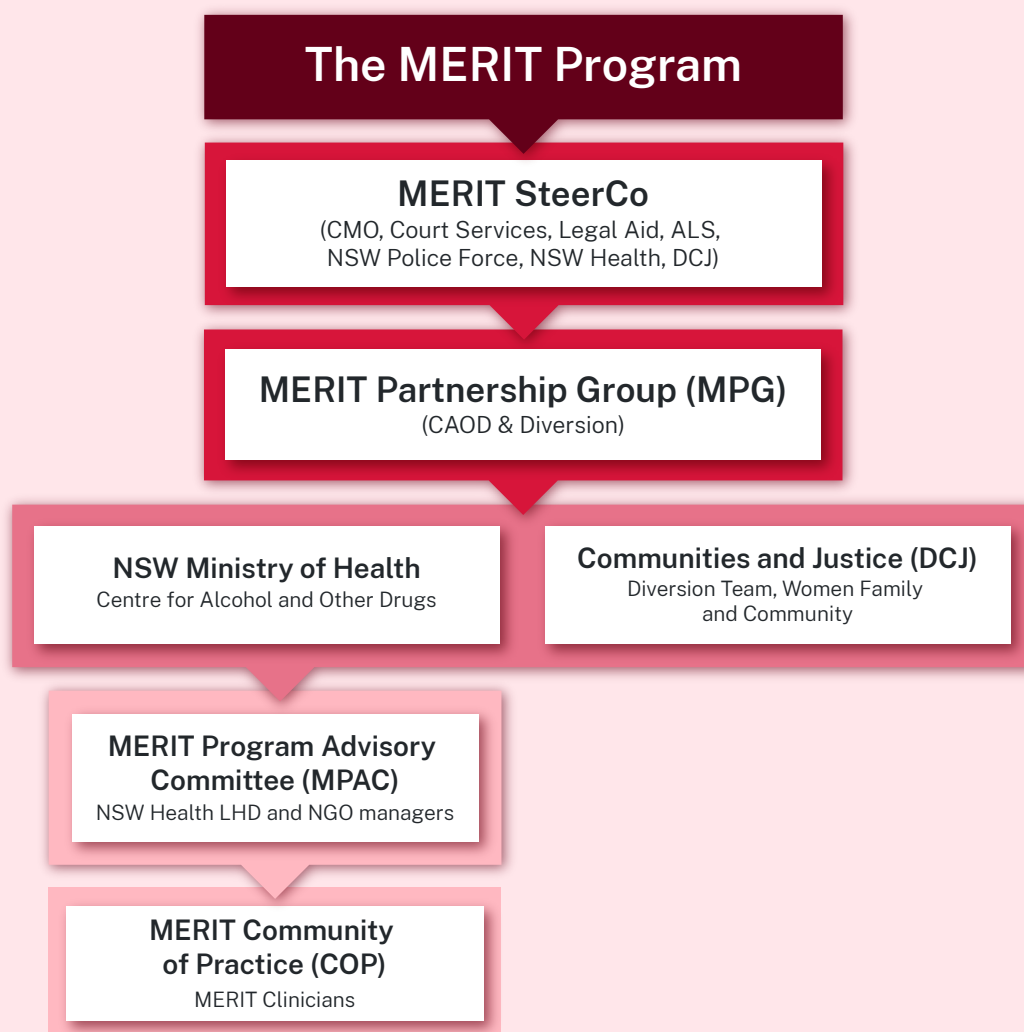
There are two levels of governance for the MERIT program.

- **The MERIT Steering Committee (SteerCo)** is a Senior Executive group comprised of key representatives from all partnering agencies. The Diversion team in DCJ provide secretariat support for the SteerCo. The group meet bi-annually to provide strategic leadership and advice on the program's ongoing delivery, planned expansion and evaluation.
- **The MERIT Partnership Group (MPG)**, comprising Diversion and Centre for Alcohol and Other Drugs (CAOD) meets monthly to oversee the operational management of the MERIT program. The NSW Police Force, Chief Magistrate's Office, Court Services, CTSD, Legal Aid Commission and the Aboriginal Legal Service are an important source of information and advice and are invited to MPG meetings as needed. Diversion leads consultations with these agencies as required throughout the year. The group also addresses process improvement, data sharing, monitoring and reporting, and evaluation oversight.

There are also two groups that are operational and advisory to NSW Health in the delivery of the MERIT program:

- **The NSW Health MERIT Program Advisory Committee (MPAC)** has representation from the local MERIT teams (both within the LHDs and NGOs delivering MERIT). It is co-chaired by a MERIT clinician and the Ministry of Health. It is also attended by a LHD AOD Director. The MPAC meets quarterly and is organised by the Ministry of Health.
- **The NSW Health MERIT Community of Practice (COP)** is a multidisciplinary forum for all clinicians delivering the MERIT program in NSW. The purpose of the meeting is to share clinical practice challenges and improvements. It is chaired by a MERIT clinician with any issues raised that may impact clinical care escalated to MPAC. The MERIT COP meets quarterly and is co-organised by CAOD and the COP chair.

Figure 1 — MERIT Governance structure



MERIT program stages

2

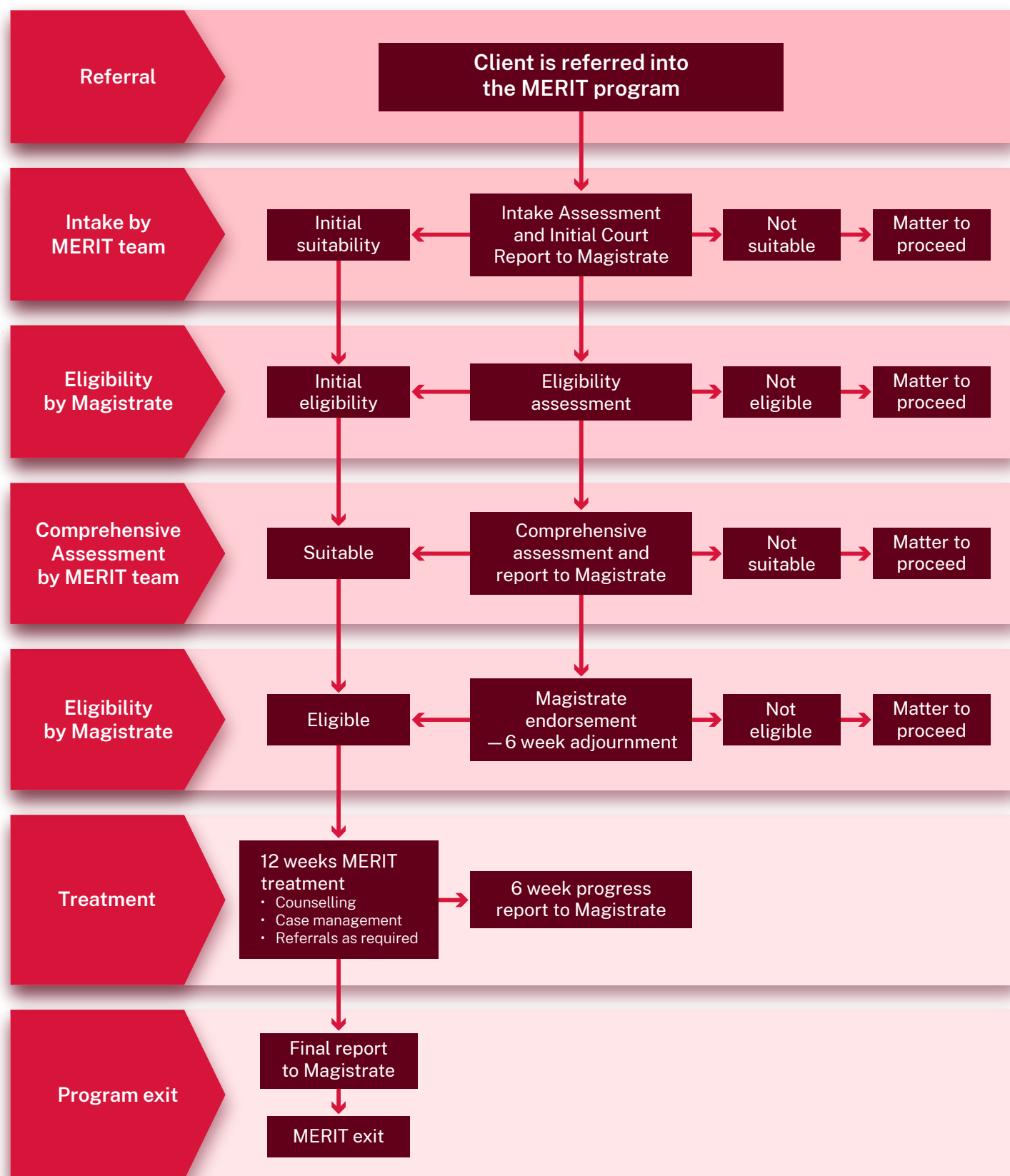
MERIT is a voluntary 12-week AOD treatment program targeted at Local Court defendants who are charged with AOD-related offences and/or who have identified AOD use issues. If assessed as suitable and eligible, the judicial officer adjourns the defendant's matter to enable participation in AOD treatment.

AOD case management and/or counselling are core treatment components of the program provided by MERIT teams. Other AOD treatment and social services are facilitated for participants as needed, including withdrawal management, residential rehabilitation, and opioid agonist treatment. MERIT teams author a *Progress Report*⁵ at 6 weeks and a *Final Report*⁶ at 12 weeks outlining the participant's treatment progress. These reports are provided to the judicial officer and may inform sentencing.

⁵ Template 4, Appendix 12.1.

⁶ Template 5, Appendix 12.1.

Figure 2 – MERIT program stages



Referral into the MERIT program

3

A referral into the MERIT program can be made through self-referral, judicial officers, NSW Police, legal representatives, friends and family, or service providers.

Referral at the earliest possible opportunity, after arrest, is desirable, however a referral that is made and accepted prior to the finalisation of court matters still meets the definition of early intervention.

A previous referral into MERIT does not exclude a defendant from further referral, as it is recognised that people with ongoing AOD use issues may require more than one episode of AOD treatment. However, a defendant can only be referred once to the MERIT program under the same charge or 'H' number.⁷

3.1 NSW Police Force referrals

To make a referral for a MERIT assessment at the time of arrest, NSW Police officers should:

1. Establish if the potential participant has an AOD use issue. This can be determined by:
 - The person's presentation
 - Self-disclosure by the person
 - The nature of the offence
 - Prior offending history of the person
 - What is known about the person and/or their associates.
2. Seek informed consent of the potential participant to refer them for a MERIT assessment.
3. Provide the potential participant with the MERIT brochure to read and explain the MERIT program to the potential participant, including information on how their details will be shared by the local MERIT team if they consent to the referral. Police will release information about the potential participant's current offences to the MERIT team.

As per Police operational protocols, the potential participant is required to sign the COPS MERIT Referral Form to show consent. If the potential participant does not consent to the referral, they must be informed that Police will note this decision on the Police Facts Sheet.

While Police may act on a reasonable assumption that the defendant has an AOD use issue, the MERIT team will assess the defendant's suitability for MERIT.

MERIT Referral Form

If consent is provided by the defendant while at the Police Station, the NSW Police Officer should:

1. Process the details of the defendant in COPS.
2. Generate the MERIT Referral Form in the Police Facts Sheet and include the historical information. If the defendant declines to be referred, this should also be recorded on the Police Facts Sheet.
3. Email the MERIT Referral Form plus the Facts Sheet to the local MERIT team identified in the Drug Diversion Field Referral Folder.
4. Provide the potential participant with the contact information for the local MERIT team.

Once the referral is made, the MERIT team will acknowledge receipt of the referral by email.

MERIT Brochure

If a NSW Police officer identifies a potential participant in the field, a MERIT brochure can be supplied to the individual to provide further information about MERIT.

⁷ A reference number used by NSW Police to identify a unique charge associated with an individual's Court Attendance Notice (CAN)

3.2 Referrals from legal representatives

Where current issues with AOD are identified, legal representatives will discuss the MERIT program with the defendant so that they can make an informed decision about whether to consent to referral and assessment. If the defendant gives consent, a referral will be made to the MERIT team for an initial suitability assessment.

Subject to the local MERIT team, legal representatives will either:

1. Refer the defendant for assessment in person at court on the same day or on the adjourned date, or
2. Contact the local MERIT team by phone or email for assessment to take place during the adjournment period.

Court staff may also provide a MERIT leaflet to the defendant.

Defendants can be referred into the program on more than one occasion, provided the referral is under different charges/H numbers.

3.3 Local Court referrals

If a judicial officer of the Local Court recommends that the defendant is a candidate for MERIT, the defendant's legal representative can discuss participation in the program with the defendant prior to completing a referral.

If the defendant is self-represented and elects to progress with the judicial officer's recommendation, they can either:

- Approach Court staff to connect with the on-site MERIT team, where available, or
- Call 1800 250 015 or the local MERIT team phone number, also printed on the MERIT leaflet, or
- Use a smart phone to scan the QR code that is printed on the MERIT leaflet (available at Court registry). This connects them with their local MERIT team and they can provide their contact details so that MERIT can contact them.

3.4 Self-referral and referrals through family/friends and/or service providers

If a defendant, or someone connected with them, wants to make the referral, they can either:

- Approach Court staff to connect with the on-site MERIT team, where available or
- Call 1800 250 015 - National Alcohol and Other Drug hotline, or
- Use a smart phone to scan this QR code, that is printed on MERIT resources and enter their contact details so that the MERIT team can contact them.

Scan the QR code or visit:

<https://dcjns.w.info/MeritReferrals>



MERIT and bail

4

Bail is the authorisation for a person accused of an offence to be at liberty, pending the finalisation of their matter. Bail may be granted at any stage of the legal proceedings, including before or after the entry of plea. Bail may be granted with or without conditions. Bail may be revoked if the defendant breaches their bail conditions or fails to appear before the Court.

Where a defendant is bail refused, a MERIT clinician may perform an intake assessment while they remain in custody. If they are assessed as suitable for participation in MERIT, the solicitor will, subject to instructions, make a release application on behalf of the defendant. Conditions to report to the relevant MERIT team may or may not be imposed and are ultimately for determination by the court. MERIT is a voluntary program and participation ought not be mandated as a bail condition.

There are three different bail options that the Court may consider.

1. The requirement for bail has been dispensed with
2. Bail is granted and a MERIT bail condition is added
3. Bail is granted and a MERIT bail condition is not added

When the Court accepts a defendant into the program, they can impose an additional bail condition relating to MERIT.

4.1 Variation of bail conditions for MERIT participants in a residential treatment facility

When a MERIT participant has bail conditions applied and is intending entering a residential treatment facility as a part of the MERIT program, the bail conditions may need to be varied. MERIT participants can seek a variation of bail conditions through the Local Court, and the police system will usually be automatically updated. The participant should also take a copy of the notice of change of bail conditions for their own records.

4.2 Variation of bail conditions in other circumstances

There may be other circumstances where a defendant's bail condition needs to be varied. For example, a defendant may have a bail condition to not enter a part of a suburb or town which is in the same location as the AOD treatment service. If this is the case, as noted above, the defendant can seek a variation of a bail condition.

Assessment process

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5.1 Intake assessment (applying suitability criteria)

Upon receiving a referral, a local MERIT team undertakes an assessment of a defendant's suitability for the MERIT program.

MERIT intake is conducted by the MERIT team at the MERIT office or at Court. The initial intake assessment will determine if the person meets MERIT program suitability criteria, that is the person:

- has a treatable AOD problem, and
- lives in or has a connection to an area that provides MERIT, and
- consents to participate.

The MERIT team also considers at intake if the person meets MERIT eligibility criteria (see also sections 5.2–5.3). Screening for other issues also occurs at this stage, including physical or mental health issues that may require urgent referrals or further assessments (e.g., child wellbeing, risk of harm to self or others). For more information on the health assessment at intake see the *MERIT Model of Care*.⁸

Once intake is complete and initial consent has been provided, an Initial Court Report⁹ is submitted by the MERIT team to the judicial officer for consideration.

The purpose of the Initial Court Report is to:

- provide the judicial officer with information to assist in determining eligibility for MERIT
- request an adjournment to allow for eligible and suitable defendants to attend MERIT for a comprehensive assessment
- suggest that defendants deemed ineligible/unsuitable are not accepted into MERIT.

5.2 Eligibility assessment

Once the Initial Court Report is received, the judicial officer will assess the defendant against the MERIT eligibility criteria.

It is the role of judicial officers to decide whether a defendant is eligible for the MERIT program.

Where a judicial officer finds a defendant is ineligible, the defendant's court matters proceed independent of the MERIT program.

5.3 Eligibility criteria

The Local Court will apply the following criteria when determining if the defendant is eligible to participate in the MERIT program:

- The defendant must be an adult
- The offences should not involve strictly indictable offences or sexual offences and the defendant should not have like offences pending before a Court
- The defendant must be suspected of using drugs or have a history of drug use
- The defendant must be eligible for bail and suitable for release on bail or not require bail consideration
- The defendant must voluntarily agree to participate.

Previous convictions for strictly indictable offences or sexual offences are not considered when determining eligibility.

Based on the defendant's eligibility and the 'Initial Court Report' completed by the MERIT team, the judicial officer may recommend eligible defendants to complete a comprehensive assessment.

In some cases, a comprehensive assessment may have already been completed before the defendant's first court appearance. In this case, eligibility and suitability can be determined at the first court appearance.

⁸ MERIT Model of Care: <https://www.health.nsw.gov.au/aod/programs/Publications/merit-model-of-care.pdf>, p. 4.

⁹ Template 2, Appendix 1.

5.4 MERIT team is present at court

The defendant should be asked to attend the Registry to be directed to the MERIT team onsite.

If the defendant is found initially suitable and eligible, the MERIT team will need to undertake a comprehensive assessment. This is to confirm suitability.

If this is not possible to complete on the day, the judicial officer may grant an adjournment (generally of up to two weeks) for this assessment to take place.

If the defendant does not attend for this assessment during the adjournment, the MERIT team should inform the court as soon as possible.

Where the defendant is found unsuitable, the defendant's court matters will proceed independent of the MERIT program.

5.5 MERIT team is not present at court

If a defendant is deemed eligible by the judicial officer, and the MERIT clinician is not available at court, the defendant will be directed to attend the court registry for further information. The judicial officer may grant an adjournment (generally up to two weeks) for this assessment to take place.

Defendants seeking to connect with the local MERIT team can:

1. Call 1800 250 015 – National Alcohol and Other Drug hotline or
2. Use a smart phone to scan this QR code that is printed on MERIT resources and enter their contact details so that the MERIT team can contact them.

Scan the QR code or visit:

<https://dcjns.w.info/MeritReferrals>



If the defendant does not attend the MERIT office for assessment, the MERIT team should inform the court as soon as possible.

At the defendant's subsequent court appearance, the MERIT team will present the judicial officer with the 'Comprehensive Assessment Court Report.'¹⁰

5.6 Comprehensive assessment

The judicial officer refers eligible defendants for a comprehensive assessment to the MERIT team to ensure the defendant is suitable for the program.

The comprehensive assessment is generally completed by the MERIT team during an adjournment period following the initial court appearance (usually two weeks).

The comprehensive assessment can also be completed at an earlier point in the process or in conjunction with the intake assessment. Informed consent through the MERIT program agreement should be received before a comprehensive assessment takes place.

The comprehensive assessment covers the defendant's:

- current and previous AOD use
- current and previous AOD treatment
- social situation
- mental and physical health
- goals regarding treatment
- risk assessment (e.g., domestic and family violence, child wellbeing, injecting drug use).

The comprehensive assessment is further outlined in the ***MERIT Model of Care***.¹¹

If the defendant does not attend for this assessment during the adjournment, the MERIT team should inform the court as soon as possible.

Where the defendant is found unsuitable, the defendant's court matters proceed independent of the MERIT program.

¹⁰ Template 3, Appendix 12.1.

¹¹ MERIT Model of Care: <https://www.health.nsw.gov.au/aod/programs/Publications/merit-model-of-care.pdf> p5.

5.7 Informed consent

MERIT teams obtain consent from potential MERIT participants to conduct an assessment and to participate in the program. Consent is conducted using the MERIT Program Agreement.¹² The MERIT team must make every effort to ensure the participant understands:

- Participation in the MERIT program is voluntary
- They can voluntarily withdraw from the program at any time (the court case will continue in the usual way)
- Participation in treatment is for approximately 12 weeks
- They are required to appear before the judicial officer to provide a progress update (unless excused by the judicial officer)
- They will need to follow the MERIT program conditions which are:
 - make every effort to attend appointments regularly and on time
 - work towards care plan goals agreed between the participant and the MERIT team
 - behave safely at appointments.
- If they do not follow the MERIT program conditions, they may be removed from the program by the judicial officer and their court case will continue in the usual way
- As the MERIT program is a voluntary opt in program, its unsuccessful completion will not, on sentence, attract any additional penalty. On sentence, the successful completion of the MERIT program is a matter of some weight for the court to take into account in the defendant's favour.
- Some personal and health information may be shared with:
 - people in other services for the participant's health care and treatment
 - the Local Court to provide information about the participant's progress
 - a nominated contact. This may be for their health care and treatment or if the MERIT team has concerns for the participant or a dependant's wellbeing.
 - an organisation which will assist NSW Health to evaluate the benefits of the MERIT program (this information will be de-identified).

If the potential participant agrees to participate and follow the MERIT program conditions and share personal and health information set out in the NSW Health privacy policies, the participant signs the MERIT program agreement (template 1).

5.8 Adjournment periods

Each adjournment period will be accompanied by a report from the MERIT team to the judicial officer.

The MERIT team may also make suggestions to the judicial officer on the length of adjournments.

Although the MERIT program is generally planned as a 12-week intensive program, it may be extended in special circumstances with the agreement of the judicial officer, the MERIT case worker and the defendant.

Adjournment period	Activity
Up to two weeks	Commence and complete comprehensive assessment
Typically six weeks (from the commencement of treatment)	Court appearance to report on participant's progress
12 weeks (from the commencement of treatment)	Final appearance

Entry to the program

Following the comprehensive assessment, if the defendant is considered both eligible and suitable for the MERIT program, the judicial officer may approve placement of the defendant into the program.

Even if a potential client meets the eligibility and suitability criteria, a person referred may not be accepted because the program is full or the judicial officer has decided not to endorse the person's entry to the program. Some people may decline to participate, despite a suitability finding.

¹² Template 1, Appendix 12.1.

MERIT treatment options

6

MERIT is a 12-week AOD treatment program. Case management and/or psychosocial AOD counselling are core treatment components of the program provided by MERIT teams. Other AOD treatment and social services are facilitated for clients as needed, including withdrawal management, residential rehabilitation and opioid agonist treatment.

All AOD treatment provided for MERIT participants is person-centred, integrated and best practice. More information about AOD treatment is found in the MERIT Model of Care.¹³

6.1 AOD treatment provided by MERIT Teams

Case management

AOD case management is an assertive coordination of AOD, health and social services for and with clients, based on the client needs and their care plan. MERIT teams use an assertive case management approach to accelerate care coordination and link with other service providers within the 12-week MERIT program period.

Psychosocial counselling

Psychosocial counselling is a talk and activity-based treatment to support clients to understand their AOD use and make changes for improved health and wellbeing. MERIT teams provide individual and/or group counselling with clients in line with the NSW Health Drug and Alcohol Psychosocial Interventions: Practice Guide.¹⁴

6.2 AOD treatment provided by other service providers

Withdrawal management

Withdrawal is the neurophysiological adjustment a person experiences when they stop or reduce their dependent drug use. Assessment of withdrawal management needs is conducted by an appropriately qualified professional. The nature and severity of withdrawal depends on factors such as an individual's drug use history and the types of drugs used.

The aim of withdrawal management is to help a client complete their withdrawal safely and comfortably. This is often a first step before treatment can commence. Withdrawal management can include providing information, support, health monitoring and provision of medication. Withdrawal management can occur in hospitals, residential rehabilitation, home or outpatient settings.

Opioid agonist treatment

Opioid agonist treatment is used for the treatment of opioid dependence. It involves the use of pharmacotherapies such as methadone or buprenorphine. Treatment is usually provided through outpatient clinics, community pharmacies and local hospitals. Opioid agonist treatment is provided in line with the NSW Clinical Guidelines: Treatment of Opioid Dependence (NSW Health July 2018) NSW Clinical Guidelines Treatment of Opioid Dependence.¹⁵

¹³ MERIT Model of Care: <https://www.health.nsw.gov.au/aod/programs/Publications/merit-model-of-care.pdf>, p. 8.

¹⁴ NSW Health, 'Alcohol and Other Drugs Psychosocial Interventions: Practice Guide', <https://www.health.nsw.gov.au/aod/resources/Publications/nsw-health-psycho-social-interventions.pdf>.

¹⁵ NSW Clinical Guidelines: Treatment of Opioid Dependence: https://www1.health.nsw.gov.au/pds/ActivePDSDocuments/GL2018_019.pdf.

Residential rehabilitation

Residential rehabilitation provides 24-hour staffed programs that cover structured drug and alcohol treatment interventions. A structured residential setting can provide a concentrated effort to address underlying causes of drug and alcohol use.

NSW Health funds priority access residential rehabilitation places for MERIT clients.¹⁶

These residential rehabilitation places are for MERIT clients referred from any NSW MERIT team, regardless of where the client resides. For more information about MERIT and residential treatment services refer to the *MERIT Residential Treatment Guidelines*.¹⁷

Health and ancillary interventions

The client care plan will identify and outline any external or (non-drug treatment) specialist services the MERIT client may need to support their program. It can include any:

- health-related services in the public, private or community sector, such as mental health services (psychiatric and psychological assessment and interventions), General Practice, specialist medical services, and pre-natal and post-natal services for pregnant women
- ancillary and welfare services, such as vocational and employment services, assistance with housing, family counselling, education and training, child at risk services, disability services or financial counselling/assistance.

¹⁶ NSW Health, Criminal justice diversion programs: <https://www.health.nsw.gov.au/aod/programs/Pages/diversion.aspx#merit>.

¹⁷ MERIT Residential Treatment Guidelines: https://www1.health.nsw.gov.au/pds/ActivePDSDocuments/GL2007_010.pdf.

Exit from MERIT

7

7.1 Premature program exit

A judicial officer may remove a participant from the MERIT program at any time. Disengagement with program conditions or reoffending are two factors considered by the judicial officer.

As the MERIT program is voluntary, judicial officers should note that premature program exit should not attract any additional penalty at sentencing. Participants should be advised that not completing an AOD treatment program will not attract additional penalties or be dealt with by punitive measure. If convicted, the penalty would relate to the offence only.

Voluntary withdrawal

A participant can voluntarily withdraw from the MERIT program at any time.

In case of voluntary withdrawal, the MERIT team is to notify the court, and the judicial officer will formally remove the participant from the program. When removed, the matter proceeds independent of the MERIT program.

A Voluntary Withdrawal Court Report¹⁸ is to be submitted to the court if a participant decides to withdraw from MERIT.

The purpose of the Voluntary Withdrawal Court Report is to:

- inform the judicial officer that the participant has chosen to withdraw from MERIT, and the date of the decision
- allow the judicial officer to formally remove the participant from MERIT.

Disengagement with program conditions

When a client is accepted into the MERIT program, they agree to follow the MERIT program conditions. These are:

- attend appointments regularly and on time
- work towards care plan goals agreed between the participant and the MERIT team
- behave safely at appointments.

The MERIT team makes a clinical judgment about the need to report a participant not following the MERIT program conditions to the court. There are three primary reasons for reporting disengagement:

1. Repeated non-attendance, such as:
 - a. the participant has missed a number of consecutive appointments with the MERIT team and/or other treatment or service providers
 - b. the participant has been consistently late for scheduled appointments without valid explanation
 - c. the participant has not attended and cannot be contacted by the MERIT team.
2. Repeatedly not following the agreed care plan
3. Incidents of aggression or violence towards staff or damage to MERIT property.

¹⁸ Template 7, Appendix 12.1.

Decision relating to submitting a 'Disengaged with Program Conditions Court Report'

The decision for MERIT teams to submit a 'Disengagement with Program Conditions Court Report'¹⁹ should consider the participant's behaviour, needs, experiences and any other relevant facts. Questions MERIT teams may consider include:

- On how many occasions has the participant attended MERIT appointments and how many sessions have been missed?
- What attempts has the participant made to contact MERIT?
- What attempts have MERIT made to contact the participant?
- What (if any) are the other key issues related to disengagement with the treatment program?
- What attempt has MERIT made to follow up on the participant's progress with agreed treatment?
- Are there extenuating circumstances that may be influencing the participant's involvement in treatment (e.g., children, homelessness, mental health issues, domestic violence, threats, or transport)?
- Is the participant Aboriginal/Torres Strait Islander? If so, are there any cultural circumstances,²⁰ that may influence their engagement?
- Does the participant report to have left messages that have not been communicated to MERIT, and has this been investigated?
- What documentation has occurred and does the information adequately represent and detail the relevant events?
- Is reporting reasonable under the circumstances?

Informing the participant about the submission of a 'Disengaged with Program Conditions Court Report'

The participant is to be informed of the decision to submit a 'Disengagement with Program Conditions Court Report.' Where possible, this information should be given in person. However, if there are issues relating to distance, personal risk or safety concerns, notice can be given by phone or in writing.

Where possible, participants are given information about treatment or support services that may be available outside the MERIT program. Refer to the **MERIT Model of Care** (Program Exit and Transfer of Care)²¹ for more information on transfer of care clinical responsibilities.

Informing the Court about disengagement with program conditions

Once a decision has been made, the MERIT team submits a 'Disengaged with Program Conditions Court Report' to the court as soon as possible.

The MERIT team is to inform the participant's solicitor, where possible.

If a participant is removed from MERIT, the matter proceeds independent of the MERIT program.

¹⁹ Template 6, Appendix 12.1.

²⁰ For many Aboriginal people/Torres Strait islanders, frequent short-term mobility is a normal part of life. People may need to travel for a few days or longer: perhaps they have responsibilities such as caring for elderly or unwell relatives, but also to attend funerals, cultural or sporting festivals or to access health services.

²¹ MERIT Model of Care: <https://www.health.nsw.gov.au/aod/programs/Publications/merit-model-of-care.pdf>, p. 12.

7.2 MERIT program completion

The completion of the MERIT program coincides with a participant's final hearing or sentence date. The MERIT team do not generally attend the sentencing hearing.

A participant's progress in relation to their care plan goals, engagement and attendance over the 12-week period is documented in a Final Court Report by the MERIT team to the judicial officer.²²

Treatment completion is defined by:

- good attendance and engagement throughout the 12-week program
- engagement with AOD treatment goals
- engagement with other care plan goals.

The participant's completion of the MERIT program may be considered by the Local Court in determining their court matters.

Participants who have completed the program may be regarded as successful by the Local Court following consideration of their achievements as documented in the 'Final Court Report.' Successful completion is a matter of some weight to be taken into account in the defendant's favour.

The Local Court Practice Note Crim 1 makes it clear that unsuccessful completion of MERIT will not attract additional penalties or be dealt with by punitive measure. If convicted, the penalty would relate to the offence only.

Where a participant has, or will, plead guilty (either to the charges laid, or negotiated alternatives) or is found guilty following a hearing, participation in MERIT, whether or not they completed the program, may be considered as part of the sentence submission.

7.3 Transfer of care by MERIT teams

Transfer of care is an ongoing process to ensure participants access services to address their health and social care needs.²³ MERIT is a time-limited intervention and in many cases, participants may have some ongoing needs once they exit the program. At MERIT program exit, care is transferred to other service providers or to the client's own care. Transfer of care practice occurs whether clients complete the MERIT program or otherwise. For more information on the transfer of care see the **MERIT Model of Care**.²⁴

²² Template 5, Appendix 12.1.

²³ Refer to the MERIT Model of Care (Program Exit and Transfer of Care) for more information on transfer of care responsibilities, <https://www.health.nsw.gov.au/aod/programs/Publications/merit-model-of-care.pdf>, p.12.

²⁴ MERIT Model of Care: <https://www.health.nsw.gov.au/aod/programs/Publications/merit-model-of-care.pdf>

MERIT

reporting



Court reports are drafted and submitted by MERIT teams to judicial officers at various program stages.

The court reports include the:

- Initial Court Report²⁵
- Comprehensive Assessment Court Report²⁶
- Progress Court Report (4-8 weeks)²⁷
- Final Court Report (12 weeks)²⁸
- Disengaged with Program Conditions Court Report²⁹
- Voluntary Withdrawal Court Report³⁰

On each MERIT court date, the solicitor will request a copy of the MERIT report, which is provided by the MERIT team at court, or to court staff. The solicitor may make submissions about the MERIT team's court reports to the judicial officer.

8.1 Vetting reports by MERIT teams

Court reports should be vetted before submission to the court by the MERIT Manager (or their delegate) to ensure consistency and quality. Reports are required to be relevant, not excessive, accurate and not intrusive.

MERIT reports are 'hearsay evidence.' The reports are a collection of information from various sources and an assessment based on that information. Any unverified information in the report should be clearly stated.

MERIT court reports should be discussed with the participant, as they are entitled to object to any evidence that is not relevant to the matter before the court.

Court reports should be

- ✓ Clear, succinct and relevant
- ✓ Tailored based on the individual's experience and outcome
- ✓ Written in the third person
- ✓ Honest, factual and objective, outlining what the participant has or has not done
- ✓ Both positive and negative aspects of participant progress
- ✓ Clear when statements are verified, for example, 'attendance at an opioid treatment clinic was confirmed through...'
- ✓ Clear when information is not verified, for example, 'the participant states/reports that...'
- ✓ In plain English and understood by the participant
- ✓ Free of technical or specialist terminology
- ✓ Relevant and provide medical or health information where appropriate and with the participant's consent.

Court reports should not

- ✗ Include personal opinions or judgment
- ✗ Read as a plea for leniency
- ✗ Use the participant's first name or names of associates or family members or name places of employment
- ✗ Use the words 'appears to be'
- ✗ Make suggestions or recommendations related to sentencing
- ✗ Use abbreviations such as 'he can't' instead of 'he cannot'
- ✗ Include historical information that is not relevant to current circumstances, for example, information about past trauma that has no bearing on current issues
- ✗ Report a history of sexual abuse of the participant without their consent
- ✗ Name the alleged perpetrator if reporting sexual abuse
- ✗ Give the impression that the author has expertise in an area where they have no formal qualifications.

²⁵ Template 2, Appendix 12.1.

²⁶ Template 3, Appendix 12.1.

²⁷ Template 4, Appendix 12.1.

²⁸ Template 5, Appendix 12.1.

²⁹ Template 6, Appendix 12.1.

³⁰ Template 7, Appendix 12.1.

8.2 Presentation of reports in court

MERIT teams are to submit the court reports securely to the nominated court representative. Court reports should be submitted at least one day prior to the court date.

All court reports are to include:

- participant information (name, date of birth, JusticeLink number)
- court information (date of appearance and court location)
- referral source and date
- name and contact details of the MERIT worker completing the report
- relevant H Number
- signature of MERIT clinician and date.

Initial Court Report

The MERIT worker should submit an 'Initial Court Report' to the court after the first interview with the defendant.

The purpose of the Initial Court Report is to:

- provide the judicial officer with information to assist in determining eligibility for MERIT
- request an adjournment to allow eligible and suitable defendants to attend MERIT for a comprehensive assessment
- suggest that defendants considered ineligible/unsuitable are not accepted into MERIT.

Comprehensive Assessment Court Report

A 'Comprehensive Assessment Court Report' is submitted to the court once the MERIT team completes the assessment.³¹

The purpose of the Comprehensive Assessment Court Report is to:

- inform the judicial officer of the defendant's suitability for MERIT
- inform the judicial officer that the defendant has understood and signed the MERIT program agreement
- outline the key components of the defendant's proposed care plan
- advise if the most suitable treatment is residential rehabilitation and what adjustments to bail may be needed
- inform the judicial officer of the reason(s) for their unsuitability (for unsuitable defendants)
- if the judicial officer accepts the defendant into the program, the MERIT team requests a further adjournment to commence treatment.

Progress report to judicial officer

A 'Progress Court Report' is provided to the judicial officer on adjournment dates, generally four to eight weeks from when the participant begins MERIT. The judicial officer determines the frequency of court appearances.³²

The purpose of the 'Progress Court Report' is to:

- provide a summary of the participant's attendance and progress with the health care plan
- highlight any major concerns about engagement and attendance in treatment
- request an adjournment for the participant to continue treatment.

Final Court Report

The 'Final Court Report' is completed at the end of the participant's 12-week participation in the MERIT program. It is submitted to the court on the final MERIT court appearance date.³³

The purpose of the 'Final Court Report' is to provide information to the judicial officer to assist in the sentencing proceedings, if the participant has pleaded or been found guilty.

The report outlines relevant facts about the participant's progress, engagement and achievements, with reference to:

- their past and current AOD use
- relevant psychosocial information
- the care plan and progress towards the care plan goals
- their attendance and level of engagement.

³¹ Template 3, Appendix 1.

³² Template 4, Appendix 12.1.

³³ Template 5, Appendix 12.1.

8.3 Other reports (as required)

Disengaged with Program Conditions Court Report

When a participant is accepted into the MERIT program, they agree to follow the MERIT program conditions.

These are:

- attend appointments regularly and on time
- work towards care plan goals agreed between the participant and the MERIT team
- behave safely at appointments.

The MERIT teams should report disengagement with program conditions to the court by the 'Disengaged with Program Conditions Court Report'.³⁴ The judicial officer will decide if the participant should continue on the MERIT program, or if they should be removed.

Voluntary Withdrawal Court Report

A 'Voluntary Withdrawal Court Report' is submitted to the court if a participant decides to withdraw from MERIT.³⁵

The purpose of the 'Voluntary Withdrawal Court Report' is to:

- inform the judicial officer that the participant has chosen to withdraw from MERIT
- allow the judicial officer to formally remove the participant from MERIT.

Any requests by the judicial officer for additional reports such as sentencing assessment or psychiatric reports will be included on JusticeLink and actioned by court staff.

³⁴ Template 6, Appendix 12.1.

³⁵ Template 7, Appendix 12.1.

MERIT protocols for MERIT teams



9.1 Management of caseload

MERIT teams may reach the limit of their caseload capacity.

Temporary suspension of new referrals should be a last resort and determined by the MERIT manager with endorsement from the LHD AOD Director or NGO equivalent. The communication protocol for a temporary suspension of new referrals is:

1. Once approved locally, notification of temporary suspension should be circulated to relevant stakeholders, including:
 - Judicial officers and court staff
 - Police
 - Other stakeholders who regularly refer MERIT clients (e.g., Aboriginal Legal Services, Legal Aid NSW)
 - Ministry of Health's Centre for Alcohol and Other Drugs.
 - Other local staff that regularly interact with MERIT.

The notification should cover:

- suspension start date
 - planned suspension end date
 - high level reason for suspension of new referrals (e.g. clinicians' caseload at capacity)
 - where referrals for general AOD treatment can be made during the temporary suspension of new referrals for MERIT.
2. The Ministry of Health will forward this information to:
 - The MERIT Program Advisory Committee
 - Department of Communities and Justice.
 3. If more than one temporary suspension occurs in a 12-month period, the LHD should review the temporary suspensions and determine action to minimise future suspensions. Services should have a contingency plan in the event of service provision challenges.
 4. When new referrals are being accepted again, the MERIT team should notify relevant stakeholders as identified above.

9.2 Client transfers

Circumstances requiring transfer

Transfers of MERIT clients are required when their matters are before a Local Court in a different LHD catchment area to where they reside. This may occur at the time of the referral or if the client moves to a different LHD catchment area during their MERIT treatment phase. A client may have matters before multiple courts in NSW and should undertake the program in the LHD catchment area where they are residing or have full-time work.

When there are multiple court locations, a client will be considered a 'transfer-out' in the event that a MERIT team at one of those courts assessing or treating the client sends the details through to the treating team.

MERIT teams should follow the 'no wrong door approach'. This is based on the principle that regardless of where a client enters the system, they are supported to access appropriate care to meet their needs and manage any risks as they arise.

Transferring clients at referral

The responsibilities of the transferring team are to:

- process the referral
- conduct the intake assessment with the client
- if the client is eligible, identify the closest MERIT team to the client's place of residence
- contact the relevant MERIT team to check if they are taking referrals. If referrals are accepted, request an appointment for a comprehensive assessment of the client.

If the referral MERIT team agrees to accept the referral, the transferring team will:

- submit the initial report to the court and ask the Local Court to determine if the client is eligible for MERIT. The judicial officer will grant an adjournment to the client so that they can attend the assessment appointment
- provide the client with details about their appointment. This includes the address and phone number of the MERIT office, the name of the case manager (if known), and the appointment date and time
- enter the information about the client and their appointment into the MERIT information management system. This will generate a Diversion Identification Number for the client
- email/fax the completed intake form and the Diversion Identification Number (DIN) to the referring MERIT team
- complete the care plans as per local protocols.

Note: If the MERIT team cannot accept the referral, the transferring team will include this information in the Initial Court Report. The Report will request that the client is not accepted into MERIT at this time.

The responsibilities of the referral (receiving) team are to:

- accept the referral (subject to capacity)
- organise an appointment time for the client to attend a comprehensive assessment
- conduct the comprehensive assessment to determine if the client is suitable for MERIT
- confirm if the judicial officer has determined the client's eligibility into MERIT
- commence treatment with the client (if eligible).

Transfer during the MERIT treatment phase

The transferring team is responsible for contacting the referring MERIT team. The transferring team will discuss the potential for transferring the client.

Factors that need to be considered are:

- the client's treatment plan and if the client will be able to access the agreed treatment from the new location
- where the client will reside, and access to the MERIT office and other treatment services.

It is important to consider the above factors when referring clients to rural MERIT teams due to limited access to services.

If the referral team agrees to accept the referral, the transferring team will:

- make an appointment time for the client to attend the referring MERIT office
- provide the client with the address and phone number of the referring MERIT office, a map and the appointment date and time
- email/fax the client's assessment information, the treatment plan, the Facts Sheet and the Diversion Identification Number to the referring MERIT team.

Court reports for transferred clients

Transfer of court matters to other locations is granted by a separate legal process. Formally transferred Court matters for transferred clients will remain with the court of their initial appearance. For transferred clients:

- the MERIT team responsible for treatment is responsible for preparing all court reports. This applies when the transfer of the client is complete, as well as to ensure that reports are submitted at the client's scheduled court appearances
- the MERIT team responsible for treatment should also ensure copies of documents are sent to the appropriate parties
- the referring MERIT team is responsible for coordinating the submission of court reports for transferred clients as per usual processes.

9.3 JusticeLink

The Chief Magistrate's Office approves MERIT teams having external, read-only, access to JusticeLink. JusticeLink is a database for managing NSW courts case information. It provides MERIT teams with court appearance dates and outcomes. The JusticeLink number is recorded into the MERIT Information Management System (MIMS), to provide a personal identifier linkage for de-identified research purposes.

Access provision is restricted to two staff at each MERIT team office. Numbers at each office needs to be maintained and is subject to an annual audit by the Chief Magistrate's Office. Each user of the JusticeLink system signs an individual confidentiality agreement where they agree to only look up court cases of individuals that they are involved with as part of their MERIT duties. MERIT teams are required to notify the Ministry of Health's Centre for Alcohol and Other Drugs through moh-merit@health.nsw.gov.au if a JusticeLink user no longer requires access or to provide a new team member access to JusticeLink.

9.4 Drug screen urinalysis

Drug screen urinalysis is not a mandatory component of the MERIT program. Drug screen urinalysis should only be undertaken where clinically indicated by suitably qualified professionals and with the consent of the MERIT client.

Urinalysis results should not be reported in court reports unless they meet Australian Standard AS 4308 and clients have been informed that results may be reported. MERIT teams should provide contextual information in reporting drug screen urinalysis results to represent the client's progress and treatment.

Positive results are confirmed by Gas Chromatography or Mass Spectrometry. Many drugs are tested for, including cannabis.

The process for sample collection for Medico-legal drug analysis is:

- the donor provides photo identification to the supervisor
- the donor provides the specimen under direct supervision
- the supervisor inspects the urine specimen to determine its colour and look for any indication of adulterants or diluents
- the specimen temperature is taken and should be in the range of 33°C to 38°C
- the specimen is placed in tamper-resistant bottles
- the donor signs the seals
- urinalysis should be random.

Participant information and privacy for MERIT teams

10

10.1 Health information and privacy

Legislation about personal and health information

NSW Health is required by law to protect the privacy and security of personal information and health information. MERIT teams must comply with the Health Privacy Principles of the Health Records and Information Privacy Act 2002³⁶ and the Information Protection Principles of the Privacy and Personal Information Act 1998. Operational guidance on compliance with these obligations is provided by the NSW Health Privacy Manual for Health Information.³⁷ MERIT team members must not disclose client information unless authorised to do so.

Legal information

MERIT teams are not required to access a person's criminal record to assess the person for MERIT program suitability or provide health treatment. Police, Courts, and participants are not obliged to provide criminal records to MERIT teams. Police or court generated documents such as Facts Sheets must be used appropriately and stored confidentially. Legal documents generated by Police or Courts including client charges and court orders should be accessible only to the MERIT clinicians who work directly with participants.

Health records

In most cases, health records such as participant notes or court reports do not need to include the participant's legal information. If legal information impacts the participant's assessment and care, references to legal information may be included in health records. MERIT teams need to exercise professional discretion to ensure that references to legal information in health records are relevant, not excessive, accurate and not intrusive. (Refer to section below for appropriate storage of legal information in health records).

It is recommended that Police and Court generated documents are not included in health records. If a court generated document is essential to explain an aspect of health assessment or care, copies of these documents (or relevant extracts) can be annexed to health documents (refer to paper and electronic medical record storage below).

Paper storage

Where MERIT teams maintain paper files, they must be organised to prevent unauthorised access to restricted legal documents (i.e. in separate files or separate opaque sleeves labelled 'restricted legal data – MERIT access only – do not scan').

Police and court generated documents such as criminal histories, facts sheets and charge sheets must be destroyed when the participant exits the MERIT program.

Electronic medical records

All documents created by NSW Health, or contracted NGOs, must be stored in the agency's electronic medical record. It is recommended that Police and court generated documents are not uploaded onto electronic medical records.

If Police or court generated documents form annexures to health records (such as annexures to court reports prepared by the MERIT team), they should be held in a part of the electronic medical record with sufficient access restrictions to comply with the obligation to ensure security safeguards against unauthorised access or other misuse. MERIT teams should ensure local procedures are in place for restricted 'locked down' access to legal information held in the electronic medical record.

³⁶ <https://legislation.nsw.gov.au/view/html/inforce/current/act-2002-071>.

³⁷ Privacy Manual for Health Information: <https://www.health.nsw.gov.au/policies/manuals/Pages/privacy-manual-for-health-information.aspx>

10.2 Requests for information by participants

A participant may request access to documents or files held by the MERIT team. Access to health records in NSW is regulated by the *Health Records and Information Privacy Act NSW 2002 (HRIPA)*³⁸ and the NSW Health Privacy Manual.³⁹ MERIT teams should follow local health district or NGO policies about access to health records.

Requests for court documents should be referred to the relevant court.

10.3 Requests for sharing the comprehensive assessment with residential rehabilitation providers

A residential rehabilitation provider may request the provision of the comprehensive assessment from the MERIT team. The comprehensive assessment supports residential rehabilitation providers to complete their assessment process, while minimising repetitive and sometimes traumatic questioning of the participant. However, it is a local decision if a MERIT team will share a comprehensive assessment. The MERIT team must believe it is in the best interest of the participant and the participant must provide specific documented consent.

Process for providing the comprehensive assessment to residential rehabilitation providers

Specific documented consent must be obtained from the participant. For this purpose, there is a state form 'consent to release health information to non-health agencies' which is available to order for all LHDs. This form is available from Finsbury Green the NSW Health forms provider (product code - NH606548). Once consent is obtained, the comprehensive assessment can be emailed from eMR via secure file transfer (Kiteworks). If it is a paper file, scan the document and send via secure file transfer (Kiteworks).

Process for not providing the comprehensive assessment to residential rehabilitation providers

Where MERIT teams are unable to share the comprehensive assessment (due to local policy, participant request or clinical discretion), MERIT teams should use a transfer of care summary. The transfer of care summary should use the ISBAR approach (Introduction, Situation, Background, Assessment, Recommendation) outlined in the MERIT Model of Care.⁴⁰ The transfer of care summary should provide enough clinical information (including offending behaviours that may impact on treatment) to support residential rehabilitation providers completing the assessment process, while minimising repetitive and sometimes traumatic questioning of the participant.

³⁸ <https://legislation.nsw.gov.au/view/html/inforce/current/act-2002-071>.

³⁹ <https://www.health.nsw.gov.au/policies/manuals/Pages/privacy-manual-for-health-information.aspx>.

⁴⁰ MERIT Model of Care: <https://www.health.nsw.gov.au/aod/programs/Publications/merit-model-of-care.pdf>.

10.4 Safe transferring of personal and health information by MERIT teams

Kiteworks for NSW Health MERIT teams

All court reports and written communication with external agencies (court staff, legal representatives, Police) by LHD MERIT teams are to be sent through Kiteworks. Kiteworks is the state-wide platform for secure file transfer between Health users and other third-party persons or organisations. All NSW Health staff have a restricted access to Kiteworks secure file transfer. This default access only allows file transfer between Health users. LHD MERIT teams require 'standard' Kiteworks access, this will enable secure file transfer between MERIT teams and external agencies.

How to set up and access 'standard' Kiteworks and send files securely for LHD MERIT teams

1. Contact the Ministry of Health Centre for Alcohol and Other Drugs through moh-merit@health.nsw.gov.au to set up a Kiteworks account.
2. The Ministry of Health coordinates and manages Kiteworks registration with eHealth NSW (via a SARA request) for all LHD MERIT teams. An email notification will be received when access has been granted.
3. To access **Kiteworks**, go to <https://secureft.health.nsw.gov.au/> and enter email/Stafflink and password credentials.
4. Select 'Compose'.
5. Type in recipient's email address, attach court reports and other applicable files.

Note: Do not use any identifying information in email subject lines, as they are not secure. Other local level procedures can be established, for example, cc'ing an LHD shared MERIT email address so all MERIT clinicians have access to the reports in the event of any absences.

For further information about Kiteworks, see [Secure File Transfer Procedure \(nsw.gov.au\)](#)

10.5 Email encryption for non-government organisation MERIT teams

Non-government organisations (NGOs) contracted to deliver the MERIT program are not able to access the NSW Health Kiteworks platform at this time. To ensure NGO MERIT teams are also able to safely send reports, they are instructed to use encrypted email when transferring participant health and legal information with external stakeholders.

Encrypting an email message in Outlook means it's converted from readable plain text into scrambled cipher text and only the intended email recipient can decipher the message.

How to send encrypted email messages using MS Outlook

Using Microsoft 365, in an email message, choose Options, select Encrypt and select the encryption that has the restrictions you would like to enforce, such as Encrypt – Only or Do not Forward

Note: There is a file size limit of 25MB.

Webmail users (who are in Exchange Online) can select the encrypt option from the ellipses menu then selecting encrypt.

Third-party users get prompts to authenticate with the provider (e.g., Gmail) or with a onetime passcode.

For further information about Encrypt email messages, see [Microsoft support - encrypt email messages](#).

Key descriptions and definitions

11

Outlined below is the suggested language and key definitions to ensure that the MERIT program is described in a consistent way by all program partners.

11.1 What is MERIT?

The MERIT program is a court-based diversion program for adults facing charges in the Local Court who have issues related to their alcohol and other drug (AOD) use. MERIT provides access to a range of AOD treatment services for 12 weeks while court matters are adjourned. Participation in the program is voluntary and does not require a plea of guilty to be eligible.

MERIT commenced in 2000 and operates under the Local Court Practice Note Crim 1 issued by the Chief Magistrate.⁴¹

The MERIT program is being expanded across NSW over a four-year period up until June 2026 to help more people access the support they need to address their AOD use. This program expansion involves establishing 29 new AOD MERIT sites and enhancing 12 existing Drug MERIT sites to include alcohol treatment services. The extension will enable the program to reach approximately 93 per cent of eligible defendants across NSW through a total of approximately 89 sites.⁴²

The current list of MERIT courts can be found on the MERIT website.⁴³

11.2 How does MERIT work?

Defendants can be referred to MERIT by police officers, a judicial officer, solicitor, family member or they can self-refer. If assessed as suitable and eligible, the judicial officer adjourns the defendant's court matter to allow participation in the program.

The MERIT team develops an individualised care plan in partnership with participants. The plan aims to address harms associated with AOD use and factors that may influence offending behaviour. Case management and/or psychosocial AOD counselling are core treatment components of the program. Other AOD treatment and social services are facilitated for participants as needed, including withdrawal management, residential rehabilitation, and opioid agonist treatment. Other health and ancillary interventions can include pre/post-natal care for pregnant women, vocational and employment services, housing and family counselling.

Court reports are developed and submitted by the MERIT team to judicial officers at various program stages. These reports offer insights into the participant's

progress to address their AOD use and associated behaviours. Positive engagement and progress towards care plan goals may be considered favourably at sentencing. Non-completion carries no punitive consequences. This therapeutic jurisprudence model reinforces the value of rehabilitation and supports more informed judicial outcomes.

11.3 MERIT program partners

MERIT is delivered through an interagency partnership between the NSW Department of Communities and Justice, the Chief Magistrate's Office, NSW Health and NSW Police. MERIT receives strategic and operational advice and support from Legal Aid NSW and the Aboriginal Legal Service (NSW/ACT).

11.4 Aims of the MERIT program

MERIT aims to reduce the harms associated with AOD use, improve the health and wellbeing, and reduce offending for adults who use AOD and are in contact with the criminal justice system.

The MERIT program's long-term goals are to break the cycle of AOD use and offending by addressing the underlying drivers of criminal behaviour through early access to treatment. By diverting defendants with AOD issues away from the criminal justice system and into therapeutic support, MERIT aims to reduce reoffending. The program takes a health-focused, rather than a punitive approach, seeking to improve participants' health and wellbeing, support long-term behavioural change and reduce recidivism.

11.5 Benefits of the MERIT program

MERIT has demonstrated positive health outcomes for participants with decreased AOD use and harms and improved health and wellbeing for participants.⁴⁴ A 2025 evaluation has shown a reduction in reoffending and imprisonment for MERIT participants compared to controls.⁴⁵ There are also economic benefits, with a 2024 cost benefit analysis of MERIT finding that the program is more cost effective than traditional court processes, with benefits exceeding the cost of delivering the program.⁴⁶

MERIT seeks to bring a therapeutic response to offending behaviour. It assists defendants with drug and alcohol use, which can be a driver of contact with the criminal justice system.

⁴¹ Local Court New South Wales, Practice Note Crim 1: https://localcourt.nsw.gov.au/content/dam/dcj/ctsd/localcourt/documents/practice-notes/CURRENT_181220_PN_Crim_1.pdf.

⁴² DCJ Media Release, Expansion of court diversion program to reach 93 per cent of eligible defendants across NSW, 16 September 2024: <https://dcj.nsw.gov.au/news-and-media/media-releases/2024/expansion-of-court-diversion-program-to-reach-93-per-cent-of-eli.html>

⁴³ The MERIT Program: <https://dcj.nsw.gov.au/legal-and-justice/diversion-and-therapeutic-programs/the-magistrates-early-referral-into-treatment-merit-program/coverage-statewide.html>

⁴⁴ Department of Communities and Justice, MERIT 2021 Annual Report: <https://dcj.nsw.gov.au/documents/legal-and-justice/merit-documents/dcj-merit-annual-report-2021.pdf>

⁴⁵ Weatherburn, D., Rahman, S., Todd, S., Poynton, S., Black, S., Merinda, T and Farrell, M. The impact of a voluntary alcohol and other drug diversion program on reoffending, imprisonment and health. International Journal of Drug Policy, 2025, 138: 104747

⁴⁶ Rahman, S. & Chronopoulos Theore, N. (2024). The costs and benefits of the Magistrates' Early Referral into Treatment (MERIT) program (Crime and Justice Bulletin No. 266). Sydney: NSW Bureau of Crime Statistics and Research.

11.6 Key MERIT definitions

Table 1 defines the key terms used in the MERIT program – defendant, client/participant, MERIT team, referred, eligible, suitable, accepted, exited, completed and not-completed.

Table 1: MERIT program definitions

Term	Definition
Defendant	A person facing criminal charges in the Local Court.
MERIT client/participant	A person accepted into the MERIT program.
MERIT team	The clinical team from either a NSW Health local health district or contracted non-government organisation delivering the AOD health service as part of the MERIT program.
Referral	A defendant referred to the MERIT team for assessment for entry to the MERIT program.
Suitable	A defendant assessed by the MERIT team as meeting the suitability criteria for the MERIT program, that is the person: <ul style="list-style-type: none">• has a treatable AOD problem, and• lives in or has a connection to an area that provides MERIT, and• consents to participate.
Eligible	A defendant determined by the Local Court as meeting the criteria for eligibility to participate in the MERIT program, that is: <ul style="list-style-type: none">• the defendant must be an adult• the offences should not involve strictly indictable offences or sexual offences and the defendant should not have like offences pending before a Court• the defendant must be suspected of using drugs or have a history of drug use• the defendant must be eligible for bail and suitable for release on bail or not require bail consideration• the defendant must voluntarily agree to participate.
Accepted	A defendant approved by the judicial officer for entry into the MERIT program having been assessed as eligible and suitable.
Exited	A MERIT client/participant no longer on the program, having completed or not completed it.
Not completed	A MERIT client/participant who has not completed the program and has been formally removed by the Court for reasons that include: <ul style="list-style-type: none">• leaving voluntarily• disengaging with the program• death• court matters being dismissed before program completion• other reason not adequately described above.
Completed	A MERIT client/participant who has engaged in the program until its conclusion (usually 12 weeks) and made progress towards care plan goals. Program completion is documented by the MERIT team in a 'Final Court Report.'

11.7 Language for working with people on the MERIT program

Person-centred language focuses on the person not the alcohol and/or other drug use or offending behaviour. Use the preferred language below which is based on the Network of Alcohol and Other Drug Agencies (NADA) [Language Matters](#)⁴⁷ resource and is outlined in Table 2 below.

Table 2: Language for the MERIT program


Use this language	Rather than this language
Person Participant Client Defendant	Patient Offender
Person who uses alcohol and/or other drugs Person experiencing alcohol and/or drug dependence	Drug user Abuser Addict Alcoholic Drug abuse
Treatment has not been effective The person chooses not to engage	Non-compliant
Client has chosen not to engage in MERIT Client has disengaged with MERIT program conditions	Has breached program conditions Has been non-compliant with program conditions

⁴⁷ https://www.nada.org.au/wp-content/uploads/2021/01/language_matters_-_online_-_final.pdf?_gl=1*fhhcj5*_ga*MTMzMDQwMDYxOC4xNzQxMjM3ODg4*_ga_M0VWVJZV6V*MTc0MTIzNzg4OC4xLjEuMTc0MTIzNzkyMi4wLjAuMA.

Appendices

12


Template 1 MERIT Program Agreement Page 1

 NSW GOVERNMENT Health	FAMILY NAME		MRN
	GIVEN NAME		<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE
	D.O.B. ____/____/____	M.O.	
	ADDRESS		
Facility:			
MAGISTRATE'S EARLY REFERRAL INTO TREATMENT (MERIT) PROGRAM AGREEMENT		LOCATION / WARD	
		COMPLETE ALL DETAILS OR AFFIX PATIENT LABEL HERE	
Please provide your name and contact information.			
Given names:			
Family name:		DOB:	
Address:			
Mobile:			
(Optional) Nominated contact name:			
Mobile:			
What information to share and when (with contact):			
What do you need to know about the NSW Health MERIT Program? Before you start the MERIT Program, it is important that you understand what is involved. This will help with your success in the program. The key points fall into two areas. Firstly, who is part of the MERIT Program team and how the MERIT Program works. Secondly, how will your privacy be protected if you participate in the MERIT Program. If you agree to join the MERIT Program, you will need to sign both Part 1 and Part 2 where indicated to accept the conditions of the MERIT Program.			
PART 1. The NSW Health MERIT Program Who is part of the NSW Health MERIT Program team? The MERIT Program team include staff from NSW Health and non-government organisations. This team will review and discuss your personal circumstances to provide you with drug and alcohol treatment for a 12 week period. The team consists of a clinical manager, case managers and an administration officer.			
How does the MERIT program work? This information should be explained to you before you start the program. <ul style="list-style-type: none"> <input type="checkbox"/> The MERIT Program Conditions, outlined in the MERIT Program Brochure are: <ul style="list-style-type: none"> <input type="checkbox"/> work towards treatment goals agreed between you and the MERIT team <input type="checkbox"/> attend appointments regularly and on time <input type="checkbox"/> behave safely at appointments <input type="checkbox"/> NSW Health MERIT Program Brochure <input type="checkbox"/> The Australian Charter of Healthcare Rights <input type="checkbox"/> NSW Health Privacy Leaflet for Patients 			
Participation in the NSW Health MERIT Program By signing this form, you agree to participate and follow the MERIT Program conditions. This agreement remains valid throughout your participation in the MERIT Program.			
Client Signature:		Date:	
Case Manager:	Signature:	Date:	
Interpreter:	Signature: Emp ID/Prov No:	Date: Time:	

NO WRITING

Page 1 of 2

Template 1 MERIT Program Agreement Page 2

 Health	FAMILY NAME		MRN
	GIVEN NAME		<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE
Facility:	D.O.B. ____ / ____ / ____		M.O.
	ADDRESS		
MAGISTRATE'S EARLY REFERRAL INTO TREATMENT (MERIT) PROGRAM AGREEMENT			
	LOCATION / WARD		
	COMPLETE ALL DETAILS OR AFFIX PATIENT LABEL HERE		
PART 2. Privacy			
How will my privacy be protected if I participate in the MERIT Program?			
<p>NSW Health is required by law to protect your personal and health information. The MERIT Program team follow the strict rules set out in NSW Health privacy policies. The NSW Health Privacy Leaflet for Patients provides full details. You have been given a copy of this leaflet. In addition, please note the information below which is specific to the MERIT Program</p>			
What information will be collected about me on the MERIT Program?			
<p>The MERIT Program team will need to collect personal details about you, such as your name, contact details and date of birth. In addition, the team will need to know relevant health information about you, such as any medications you are taking, and your medical history, especially where this is relevant to your treatment on the MERIT Program.</p>			
Why do the MERIT Program team need to share information with other people?			
<ul style="list-style-type: none"> The MERIT Program team may share your information with people in other services if it is necessary for your health care and treatment. For example, the MERIT team may share your information with a drug treatment service, a hospital, your General Practitioner (GP), Centrelink, Justice and Community Service, Police and Community Corrections. The MERIT team may share your information with the Local Court to provide them with information about your progress on the MERIT program. The MERIT team may share agreed information with a nominated contact. This may be if it is necessary for your health care and treatment or if they have concerns for your wellbeing. Your information may also be provided to an organisation who will assist NSW Health evaluate the benefits of the MERIT program. 			
Privacy agreement			
<p>By signing this form, you are confirming that you agree to how your personal and health information may be shared during your participation in the MERIT Program. This agreement remains valid throughout your participation in the MERIT Program.</p>			
Client Signature:		Date:	
Case Manager:	Signature:	Date:	
Interpreter:	Signature: Emp ID/Prov No:	Date: Time:	



Template 2 Initial Court Report

MERIT Confidential Court Report

Name:

DOB:

Identity number[s]: [e.g. JusticeLink]

Next court date:

Court:

Judicial officer:

Referred to MERIT team by:

Referral date:

[*client name*] was interviewed on [*date*] by a MERIT case manager.
The initial interview indicates that the client [*tick as relevant*]:

- ☐ Is an adult
- ☐ Is using alcohol or other drugs or has a history of alcohol and other drug use
- ☐ Has a treatable alcohol or other drug problem
- ☐ Voluntarily consents to participate in MERIT
- ☐ Lives in or has a connection to an area (e.g., full-time work) that provides MERIT.

Based on this information: [*Either*]

The MERIT team requests that the Local Court determine the client's eligibility for the program. If deemed eligible, an adjournment of [*1, 2 or 3 weeks*] is requested to enable a comprehensive assessment to be undertaken to establish suitability for the program.

[*or*]

The client does not appear to be suitable for the program in that [*provide reason*].
Should the Local Court concur with this, the MERIT team requests that the client is not accepted onto the program at this time.

Please contact me on [*telephone number*] if any further information is required.

Signature:

Case manager:

Date:

Template 3 Comprehensive Assessment Court Report

MERIT Confidential Court Report

Name:

DOB:

Identity number[s]: [e.g. JusticeLink]

Next court date:

Court:

Judicial officer:

Referred to MERIT team by:

Referral date:

[Either]:

[insert name] was assessed for suitability on *[date]* by a MERIT case manager.
[He/She] was assessed as suitable and has given their consent to participate in the program.

Brief summary of:

*[drug use history and current drug use] [past and current drug treatment]
[components of the treatment plan]*

[client's stated motivation to participate in drug treatment]

Mr/Ms [insert name]'s next appointment with MERIT is on [date].

If accepted onto the program, an adjournment of *[4 to 8 – state number required]* weeks is requested to implement the treatment plan, at which time a progress report will be submitted.

[or]

[insert name] was assessed for suitability on [date] by a MERIT case manager.
[He/She] was assessed as not suitable for the program due to *[insert reason/s]*.
The MERIT team requests that they are not accepted onto the program at this time.

Please contact me on *[telephone number]* if any further information is required.

Signature:

Case manager:

Date:

Template 4 Progress Court Report

MERIT Confidential Court Report

Name:

DOB:

Identity number[s]: [e.g. JusticeLink]

Next court date:

Court:

Judicial officer:

Referred to MERIT team by:

Referral date:

[insert name] was accepted onto the MERIT program on *[date]* and has been undergoing treatment for *[x]* weeks.

Brief summary of:

[the primary alcohol or other drug problem identified at assessment] [attendance and punctuality record]

[progress towards treatment goals and, if relevant, any major concerns] [any adjustments to the treatment plan]

An adjournment of *[x – state number]* weeks is requested to enable Mr/Ms *[insert name]* to continue with their treatment, at which time a further report will be presented to the court.

Please contact me on *[telephone number]* if any further information is required.

Signature:

Case manager:

Date:

Template 5 Final Court Report

MERIT Confidential Court Report

Name:

DOB:

Identity number[s]: [e.g. JusticeLink]

Next court date:

Court:

Judicial officer:

Referred to MERIT team by:

Referral date:

Please allow this to serve as the Final Report for Mr/Ms *[insert name]* who was accepted onto MERIT on *[insert date]* and has now completed the program.

Sources of information

[insert a list of the sources of information used in preparing the report]

Alcohol and Other Drug use history

[insert information about the client's past and current alcohol and other drug use, type and quantity of alcohol and other drugs used and level of use on entry to MERIT and on completion]

Psychosocial information

[insert relevant information related to issues such as housing, employment, relationships, education, family and mental health]

Treatment plan

[insert summary information about the initial plan and any subsequent changes or amendments agreed upon]

Implementation of the treatment plan

[insert information about the participant's progress towards treatment goals, their commitment to the program, appointments kept, general engagement, attendance at other groups or services, completion of homework]

Post MERIT plan

[insert discharge planning information, including any planned ongoing treatment, referrals to other services and relapse prevention strategies as agreed with the client]

Summary

[insert brief paragraph summarising the client's overall engagement and progress throughout their MERIT participation]

Mr/Ms *[insert name]* has completed MERIT. We would like to thank the court for their support in this matter. No further reports will be tendered unless otherwise requested by the court.

Please contact me on *[telephone number]* if any further information is required.

Signature:

Case manager:

Date:

Template 6 Disengaged with Program Condition Court Report

MERIT Confidential Court Report

Name:

DOB:

Identity number[s]: [e.g. JusticeLink]

Next court date:

Court:

Judicial officer:

Referred to MERIT team by:

Referral date:

[insert name] was accepted onto the MERIT program on *[insert court date]*.

As part of the MERIT assessment process Mr/Ms *[insert name]* signed a MERIT Program Agreement outlining his/her responsibilities whilst participating in the MERIT program.

Mr/Ms *[insert name]* has not followed the MERIT Program Agreement due to *[insert information about what component of the program agreement has not been followed e.g. : repeated non-attendance despite follow-up by the MERIT team, not following the care plan as agreed between the client and MERIT team, incidence of violence or aggressive behaviour towards staff or MERIT property]*

It is therefore requested that Mr/Ms *[insert name]* be removed from the MERIT program and that the MERIT bail conditions are removed.

Please contact me on *[telephone number]* if any further information is required.

Signature:

Case manager:

Date:

Template 7 Voluntary Withdrawal Court Report

MERIT Confidential Court Report

Name:

DOB:

Identity number[s]: [e.g. JusticeLink]

Next court date:

Court:

Judicial officer:

Referred to MERIT team by:

Referral date:

[insert name] was accepted onto the MERIT program on *[insert court date]*.

As part of the MERIT assessment process Mr/Ms *[insert name]* signed a MERIT Program Agreement outlining his/her responsibilities whilst participating in the MERIT program.

Mr/Ms *[insert name]* would like to voluntarily withdraw from the program.

Please remove Mr/Ms *[insert name]* from the MERIT program as of today's date and remove any bail conditions relating to MERIT.

Please contact me on *[telephone number]* if any further information is required.

Signature:

Case manager:

Date:

12.2 Appendix 2: Aboriginal practice checklist

A copy of the Aboriginal Health and Medical Research Council document *Aboriginal Practice Checklist: A Cultural Assessment Tool for MERIT Teams* can be found on the [MERIT Local Court website](#).

The MERIT program is a joint initiative with the
Department of Communities and Justice and NSW Health.

DCJ1054

