

Appendices



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Mental impairment court intervention programs

PROPOSAL 3.1

[pages 114–15]

Establish a mental impairment court intervention program

That there should be a mental impairment court intervention program established in Western Australia at the earliest opportunity to service all metropolitan courts dealing with adults, with the following features:

- The program should have psychiatric diagnostic criteria that includes mental illness, personality disorder and dual diagnosis substance use disorder, but excludes intellectually disabled and cognitively impaired offenders (who may apply for referral to the Intellectual Disability Diversion Program).
- The program should be available, in principle, to offenders in all of the state's adult court jurisdictions, but be monitored by the Magistrates Court pursuant to Proposals 6.4 and 6.12.
- There should be no formal requirement to plead guilty to an offence to be accepted onto the program; however, the objective facts of the offence should not be in dispute or contested.
- An offender should not be barred from participating in the program for a particular offence simply because he or she has pleaded not guilty to, or disputes the facts of, another offence, whether related or unrelated.
- An applicant that has been referred to, but is assessed as ineligible to participate in, the program should be returned to the general court list to be dealt with at the earliest opportunity.
- An offender who has been returned to the general court list or who withdraws from the program before completion and who has simply indicated no contest to the objective facts of the offence should retain the option to plead the defence of insanity under s 27 of the *Criminal Code* (WA).
- Participation in the program must be on a voluntary basis and the offender's written consent to sharing of information among the court, relevant government departments and external service providers should be obtained.
- Anything done by the offender in compliance with the program should be taken into account during sentencing and all sentencing options (including the option to impose no sentence) after successful completion of a program should be available to the magistrate. Unsuccessful participation in the program should not be taken into account during sentencing.
- The program should be established as a justice initiative with joint resource responsibility from the Departments of the Attorney General, Health and Corrective Services.
- The program should be sufficiently resourced to purchase services from relevant non-government service providers on behalf of participants.
- The program should begin as a two-year pilot program in the Perth Magistrates Court taking referrals from all metropolitan courts with the aim of extending its operation, subject to independent evaluation, to as many metropolitan courts as possible.
- The program should be assigned a designated magistrate who has an appropriate understanding of issues faced by mentally impaired offenders and an interest in improving outcomes for mentally impaired offenders. G7.6(ation, subject to indep.) aft G7.6edinTSrs anw849lishedromiefrs. G7.6(ation, sucrs picipatga two-t

Legal and policy issues

PROPOSAL 6.1

[pages 181–82]

General legislative framework for adult offenders: *Criminal Procedure Act 2004 (WA)*

That a new division headed 'Court Intervention Programs' be inserted into Part 5 of the *Criminal Procedure Act 2004 (WA)*. This division should:

- Define a 'court intervention program' as a program prescribed under the *Criminal Procedure Regulations 2005 (WA)*. The following current programs should be prescribed: Perth Drug Court; Joondalup Family Violence Court; Rockingham Family Violence Court; Fremantle Family Violence Court; Midland Family

Court Intervention Programs Unit

- That the Department of the Attorney General establish a Court Intervention Programs Unit within the Court and Tribunal Services Division.
- That a Director be appointed to be responsible for all administrative and policy matters within the Court Intervention Programs Unit.
- That a coordinator may be appointed for each prescribed court intervention program or, if appropriate, a coordinator may be appointed for a number of similar court intervention programs.
- That staff from relevant government departments and agencies (eg, the Department of Corrective Services,

Sentencing purposes

- That the *Sentencing Act 1995* (WA) be amended to provide that the purposes of sentencing are:
 - to impose punishment;
 - to protect the community;
 - to rehabilitate the offender;
 - to deter the offender and others from committing offences;
 - to denounce the conduct of the offender;
 - to prevent the offender from committing further offences;

PROPOSAL 6.11 [page 201]

Breaching a PSO

That s 330 of the *Sentencing Act 1995* (WA) be amended to provide that if a court administering a prescribed court intervention program is satisfied that the offender has been, is, or is likely to be in breach of any requirement of the pre-sentence order, the court may amend or cancel the Pre-Sentence Order.

PROPOSAL 6.12 [page 202]

Pre-sentence orders imposed by a superior court

- That s 33C of the *Sentencing Act 1995* (WA) be amended to provide that if a superior court imposes a Pre-Sentence Order on an offender who has been or is participating in a prescribed court intervention program, the superior court *may* order that the offender reappear in the magistrates court that is administering the court intervention program so that that court can ascertain whether the offender is complying with the order.
- That s 33P of the *Sentencing Act 1995* (WA) be amended to provide that a court administering a prescribed court intervention program may commit an offender to the superior court that imposed the Pre-Sentence Order if satisfied that the offender has been, is, or is likely to be, in breach of any requirement of the order.

PROPOSAL 6.13 [page 202]

Eligibility for a Pre-Sentence Order

That s 33A(2a)(b) of the *Sentencing Act 1995* (WA) be repealed to enable an offender who was subject to a suspended sentence of imprisonment at the time of committing the current offence(s) to be eligible for a Pre-Sentence Order.

PROPOSAL 6.14 [page 202]

Taking into account compliance with a PSO at sentencing

That s 33K of the *Sentencing Act 1995* (WA) be amended to provide that a court sentencing an offender who has been subject to a PSO must take into account anything done in compliance with the requirements of the PSO.

PROPOSAL 6.15 [page 205]

No sentence

That s 46 of the *Sentencing Act 1995* (WA) be amended to provide that a court sentencing an offender may impose no sentence if it considers that

- the circumstances of the offence are trivial or technical; or the offender has successfully completed a prescribed court intervention program; and
- having regard to —
 - the offender's character, antecedents, age, health and mental condition; and
 - any other matter that the court thinks is proper to consider,
- that it is not just to impose any other sentencing option.

PROPOSAL 6.16 [page 206]

Conditional Suspended Imprisonment

That all references to a 'speciality court' in Part 12 of the *Sentencing Act 1995* (WA) be repealed.

Appendix B: Consultation questions

General

CONSULTATION QUESTION 1.1

[page 29]

Information sharing

The Commission invites submissions about whether any legislative reform is required in relation to the sharing or disclosure of information between the various agencies and individuals (other than legal practitioners) involved in court intervention programs.

CONSULTATION QUESTION 1.2

[page 32]

Determining treatment and program needs

The Commission invites submissions as to whether legislation should provide that an offender participating in a court intervention program can only be ordered to undergo a particular treatment if a qualified person has recommended that the offender undergo such treatment.

Drug and alcohol court intervention programs

CONSULTATION QUESTION 2.1

[page 65]

Case reviews

The Commission invites submissions about the best way to facilitate a collaborative team-based approach in the Drug Court but, at the same time, ensure that the rights of offenders are protected. In particular, the Commission seeks submissions as to the following matters:

- whether the offender should be entitled to be present during case review meetings;
- whether the matters that can be discussed during a case review meeting should be expressly limited; and
- whether the matters discussed in case review meetings should be formally recorded.

CONSULTATION QUESTION 2.2

[page 69]

Protection against self-incrimination

The Commission invites submissions as to the following matters:

- whether offenders should be provided with legislative protection against the use of admissions made during referral to, assessment for, or participation in the Drug Court;

- whether there should be a dedicated custodial unit or facility for Drug Court participants who require detoxification in a secure setting, who have been remanded in custody during the assessment stage of the program or for the serving of custodial sanctions during the program.

CONSULTATION QUESTION 2.4

[page 78]

Drug Treatment Orders

The Commission invites submissions as to whether there are any other matters that should be included within the proposed Drug Treatment Order.

CONSULTATION QUESTION 2.5

[page 87]

Eligibility criteria

The Commission invites submissions as to whether it is appropriate to enable participation in the Supervised Treatment Intervention Regime before a plea of guilty has been entered.

CONSULTATION QUESTION 2.6

[page 87]

Court intervention programs addressing alcohol-dependency

The Commission invites submissions about the following matters:

- what is the most appropriate way to increase the availability of court intervention programs for alcohol-dependent offenders; and
- whether Western Australia should establish a specific alcohol court intervention program for Aboriginal offenders.

Family violence court intervention programs

CONSULTATION QUESTION 4.1

[page 142]

Acceptance of statement of material facts

The Commission invites submissions about the following matters:

- Whether offenders being dealt with in the family violence courts should be eligible to be assessed for suitability to participate in the perpetrator program if they indicate that a plea of guilty will be entered or, alternatively, that they are willing to plead guilty to the offence charged (but they dispute some aspect of the statement of material facts).
- Whether removing the requirement to offer a formal plea of guilty or the requirement for a full admission of the statement of material facts would demand any changes to the eligibility criteria to ensure that participation in perpetrator programs is targeted to appropriate offenders (for example, should an offender be required to admit that he or she has previously been violent or abusive to a family member).

CONSULTATION QUESTION 4.2

[page 143]

Superior court matters

The Commission invites submissions about whether family violence courts should be extended to enable

CONSULTATION QUESTION 4.4

[page 145]

Protective bail conditions and violence restraining orders

The Commission invites submissions about the following matters:

- whether clause 2(2a) of Schedule 1 Part D of the *Bail Act 1982* (WA) should be repealed or amended; and
- whether s 63 of the *Restraining Orders Act 1997* (WA) should be amended to enable a judicial officer hearing a bail application to make an interim, rather than a final, violence restraining order.

CONSULTATION QUESTION 4.5

[page 145]

Victim input in the family violence courts

The Commission invites submissions about the input of the victim at the time of sentencing in the family violence courts, in particular:

CONSULTATION QUESTION 4.11 _____ [page 150]

Duty lawyers

The Commission invites submissions as to whether specialist Legal Aid duty lawyers should be assigned to each family violence court and, if not, the best way of ensuring that general duty lawyers and other defence lawyers are sufficiently informed about the objectives and the operation of the family violence courts.

CONSULTATION QUESTION 4.12 _____ [page 151]

Programs for respondents to violence restraining orders

The Commission invites submissions about the following matters:

- whether respondents to violence restraining orders should have the opportunity for court-referred counselling programs;
- whether participation by respondents to violence restraining orders in court-referred counselling programs should be voluntary or ordered by the court;
- how the respondents' participation in a court-ordered counselling program could be monitored or enforced; and
- whether the existing perpetrator programs could accommodate respondents to violence restraining orders.

CONSULTATION QUESTION 4.13 _____ [page 152]

Aboriginal participation in family violence courts

The Commission invites submissions about how the family violence courts can better meet the needs of Aboriginal victims and offenders.

CONSULTATION QUESTION 4.14 _____ [page 153]

Participation in family violence courts by vulnerable groups

The Commission invites submissions about what measures can be put in place to ensure that the needs of particularly vulnerable groups in the community are met in the family violence courts.

CONSULTATION QUESTION 4.15 _____ [page 153]

Family and domestic violence court intervention programs in regional courts

The Commission invites submissions about:

- whether a general court intervention program (as proposed in Chapter Five) could accommodate family and domestic violence offending; and
- the best way to facilitate access to family and domestic violence court intervention in regional areas.

General court intervention programs

CONSULTATION QUESTION 5.1 _____ [page 167]

Training

The Commission invites submissions about the following matters:

- what type of training would be required for judicial officers, lawyers and police prosecutors if general court intervention programs were established in Western Australia; and
- which agencies or individuals should be involved in this training.

Establish a pilot community court

The Commission invites submissions as to whether a pilot community court (similar to the Neighbourhood Justice Centre) should be established in Western Australia. Further, the Commission invites submissions about

- the most appropriate location for the court;
- the appropriate jurisdiction for the court;
- the eligibility criteria for the court including whether eligibility should be determined by reference to

Appendix C: List of people consulted

Anderton, Christine – Operational Services and Management, Department of Corrective Services (WA)
Auty, Kate – Magistrate, Magistrates Court (WA)
Barklay, Madeline – Psychologist, Magistrates Court Diversion Program (SA)
Barone, Mara – Aboriginal Legal Service (WA)
Beckett, Jo – Manager, Court Integrated Services Program (Vic)
Benn, Gregory – Magistrate, Magistrates Court (WA)
Blackburn, Amanda – Criminal Lawyers Association (WA)
Bowra, Guy – Manager, Specialist Jurisdictions, Department of the Attorney General (WA)
Burns, Beverly – Aboriginal Justice Officer, Kalgoorlie-Boulder Aboriginal Court (WA)
Cannon, Dr Andrew – Deputy Chief Magistrate, Magistrates Court (SA)
Caporn, Fiona – Department of Corrective Services (WA)
Childs, David – Wickham Chambers (WA)
Cossins, Annie – National Child Sexual Assault Reform Committee (NSW)
Davis, Kate – Women’s Legal Service (WA)
de Graaf, Adrian – Statistics, Strategic and Executive Services, Department of Corrective Services (WA)
Delany, Marita – Manager, SART, Neighbourhood Justice Centre (Vic)
Donaldson, Ian – Manager, Community Justice Services, Department of Corrective Services (WA)
Fanning, David – Magistrate, Neighbourhood Justice Centre (Vic)
Flaherty, Bruce – Criminal Justice Interventions Unit, Attorney General’s Department (NSW)
Flynn, Martin – Magistrate, Magistrates Court (WA)
Ford, Steve – Geraldton Magistrates Court (WA)
Foster, Julie – Sergeant, Western Australia Police (WA)
Glenndining, Hildreth – Family Violence Service (WA)
Gluestein, Brian – Magistrate, Magistrates Court (WA)
Gobby, Ernie – Clerk of the Courts, Mandurah Magistrates Court (WA)
Halden, Kathy – Clerk of the Courts, Rockingham Magistrates Court (WA)
Harring, Samantha – Department of Corrective Services (WA)
Heath, Steven – Chief Magistrate, Magistrates Court (WA)
Hicks, Paula – Department of Community Protection (WA)
Ho, Karen – Director, Policy, Department of the Attorney General (WA)
Hogan, Pam – Magistrate, Magistrates Court (WA)
Holder, Francine – Disability Services Commission (WA)
Hovane, Michael – Legal Aid Commission (WA)
Hyde, Paula – Department of Corrective Services (WA)
Jordens, Jay – Neighbourhood Justice Officer, Neighbourhood Justice Centre (Vic)
King, Sue – Manager, Specialist Courts (SA)
King-Macskasy, Evan – Family Violence Service (WA)
Kristal, Kedy – Pat Giles Centre (WA)
Lawrence, Robert – Magistrate, Magistrates Court (WA)
Lawrence, Geoff – Magistrate, Magistrates Court (WA)
Lim, Heing – Project Manager Restorative Justice Project, Neighbourhood Justice Centre (Vic)
MacDonald, Scott – Deputy Registrar, Drug Court (Vic)
Macey, Philip – Homeless Persons Court Liaison Officer, Brisbane Magistrates Court (Qld)
Marshall, Andrew – Department of the Attorney General (WA)
Matthews, Andrew – Aboriginal Legal Service (WA)
McLean, Debra – Relationships Australia (WA)
Mitchell, Sherilee – Department for Communities (WA)
Mohan, Bruce – Manager Business Intelligence, Court Technology Group, Department of the Attorney General (WA)
Moore, Hazel – Department of Corrective Services (WA)
Muslim, Amy – Center for Court Innovation (New York)
O’Connell, Marita – Forensic Mental Health Court Liaison Officer, Hobart Magistrates Court (Tas)

Panaia, Laurie – Western Australia Police (WA)
Parker, Andrew – Legal Aid Commission (WA)
Parsons, Catie – Legal Aid Commission (WA)
Perlinski, Amanda – Coordinator, Intellectual Disability Diversion Program (WA)
Piggott, Lynton – Project Manager, Courts Drug Diversion Program, Department of the Attorney General (WA)
Pontifex, Michelle – Magistrate, Magistrates Court (WA)
Port Adelaide Magistrates Court Clinical Liaison Team, Magistrates Court Diversion Program (SA)
Preston-Samson, Amy – Department of the Attorney General (WA)
Putnam, Richard – Salvation Army (SA)
Raph, Nadezhda – Manager, Justice ton – Project.8(1cbility missiunDiv)CareellcA

