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**SUBMISSION – ESTABLISHMENT OF A MENTAL IMPAIRMENT
INTERVENTION PROGRAM**

Thank you for the opportunity to provide a submission on the issues raised in the 'Petition in Relation to Mental Impairment Court Intervention Programs', tabled in the Legislative Council on Wednesday 13 October 2010. I believe this issue is of sufficient public interest to warrant significant inquiry by the Committee.

Introduction

I would like to use this submission to draw the Committee's attention to the issue of how people with mental health issues are currently treated within the WA justice system. Approximately one in five Australian adults will experience a mental illness at some point in their life.¹ Persons with mental illness are more susceptible to health and social risk factors which lead to contact with the criminal justice system.² Research has shown that mentally impaired people come to court with existing problems such as homelessness, unemployment, poor social skills and social exclusion.³ For example, in the period from 1 July 2008 to 30 June 2009, the Mental Health Law Centre of WA dealt with a total of 2721 new matters and provided services to 1010 clients.⁴ The Commonwealth Parliament's Senate Select Committee on Mental Health has noted the 'prevalence' of persons with mental health coming into contact with the criminal justice system.⁵

I support Recommendations 22, 23, 24 and 25 of the Law Reform Commission of Western Australia Final Report 'Court Intervention Programs: Project No. 96' (June 2009) that propose to:

- a) expand the Intellectual Disability Diversion Program;
- b) establish a mental impairment court intervention program in Western Australia in all metropolitan courts, establish general court intervention programs to service mentally impaired offenders in regional areas; and
- c) establish general court intervention programs to service mentally impaired young offenders.

Mental impairment intervention programs are aimed at assisting offenders whose mental illness 'contributes to their offending behaviour or otherwise inhibits their understanding of

¹ Australian Bureau of Statistics (ABS), Mental Health and Wellbeing: Profile of adults 1997 (Canberra: ABS, 1998) 1

² Law Reform Commission of Western Australia, 'Court Intervention Programs: Project No. 96' (June 2009) available at: www.lrc.justice.wa.gov.au/2publications/reports/P96-FR.pdf (accessed 10 November 2010) 73

³ Ibid

⁴ Mental Health Law Centre of Western Australia Inc, 'Annual Report 2008/2009' (2009) available at: <http://www.mhlcwa.org.au/> (accessed 10 November 2010) 16

⁵ Commonwealth Parliament, Senate Select Committee on Mental Health, A National Approach to Mental Health: From crisis to community, First Report (March 2006) [13.19]

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the criminal justice system and the court process.⁶ The types of Magistrates courts programs proposed are currently operational for mentally impaired offenders in South Australia, Tasmania and Queensland.⁷

There are various definitions of 'mentally impaired' persons under law, but for the purposes of the Report the Commission defined it broadly to include mental illness or disorder, personality disorder, intellectual disability, acquired brain injury, dementia or senility.⁸ Currently, persons with mental health issues can cause delays and added expense in the criminal justice system in the process of determining whether they are suitable for the 'insanity' defence. The Report considered that the intervention program would help improve court efficiency in this regard. There are also benefits like cost savings in other areas such as health, unemployment and Legal Aid.⁹

The current system

WA currently has the Intellectual Disability Diversion Program ('IDDP') operating out of the Perth Magistrates Court. The program was established in 2003, and has a dedicated magistrate, coordinator and support officer. Eligible persons must fit the criteria of a Level 3 disability according to the Disability Services Commission standards. The offender must be willing to plead guilty or not to contest the charges. Anyone can make a referral to the program and once referred, the Coordinator assesses the person. Once accepted, the Coordinator devises a program related to offending behaviour and this is presented to the court. The offender is bailed on the condition that they will comply with the program. The Coordinator meets with the offender on weekly basis and the offender is brought back to court about every two months. If the offender is non-compliant they can be sent back to the general list for sentencing. Under this system, the matter is usually finalised within 6 months. At sentencing, the Magistrate hears the defence and prosecution and makes an order under the Sentencing Act.

Recommendation 22: Expanding the IDDP

The Commission recommends that the IDDP be expanded in several ways, including to:

- include a broader definition of mental illness, such as acquired or organic brain injury, intellectual disability, dementia and other degenerative brain disorders;
- be expanded and resourced to service outer-metropolitan courts;
- there is no obligation to plead guilty to the offence to participate in the program;
- be made available, in principle, to offenders in all adult court jurisdictions, but be monitored by the Magistrates Court; and
- require that the Magistrate consider anything done by the offender in compliance with the program in sentencing, including the option to not impose a sentence;¹⁰
- assign a designated Magistrate who has received relevant training and has an appropriate understanding of mental health issues to administer the program; and
- allocate resources to purchase services from non-government organisations for participants.

⁶ Law Reform Commission of Western Australia, 'Court Intervention Programs: Project No. 96' (June 2009) available at: www.lrc.justice.wa.gov.au/2publications/reports/P96-FR.pdf (accessed 10 November 2010) 73

⁷ See for more detail: Law Reform Commission of Western Australia, 'Court Intervention Programs, Consultation Paper, Project No. 96' (2008) 99– 107

⁸ Law Reform Commission of Western Australia, 'Court Intervention Programs: Project No. 96' (June 2009) available at: www.lrc.justice.wa.gov.au/2publications/reports/P96-FR.pdf (accessed 10 November 2010) 74

⁹ Ibid at 77

¹⁰ Nb. Failure to comply with the program is not an aggravating factor in this regard

Recommendation 23: Mental Impairment Intervention Programs

The Commission recommends that a court intervention program is established to deal specifically with offenders with mental impairment. Such a program would link the justice system with government and community service providers in areas such as housing, substance abuse, Centrelink, family issues, volunteering or recreational activities, education and employment. These programs take a holistic approach to preventing the likelihood of the offender reoffending.¹¹

The recommended program has certain eligibility criteria, such as psychiatric diagnostic criteria, legal criteria and other criteria.¹² A judicial officer will take certain factors into account when assessing whether an offender can participate in the program. For example, eligible persons must be diagnosed with a specified mental illness or have a certain level of cognitive impairment, and must be likely to respond to a treatment plan. The person's offending history, the seriousness of their offence and their willingness to plead guilty or make a declaration of no contest to the objective facts of the case will be considered. Participants must agree to share information about medical status, offending history, and/or substance abuse with relevant service providers.

The Commission recommended that participation in the program be voluntary with informed consent. An offender who withdraws or is terminated from the program should retain the right to plead the defence of insanity available under section 27 of the Criminal Code of WA. The Commission has suggested that the program could apply to more serious offences, however currently all of the Australian programs apply only to proceedings in the Magistrates Court. Further, the Commission has recommended that adequate resourcing and a designated judicial officer with an understanding of mental health issues is necessary for the success of the program.

Recommendations 24 and 25: Regional courts and Children's Court

The Commission recommended the establishment of court intervention programs in regional courts and in the Children's Court to address mental health issues. This recommendation is pursuant to Recommendation 37 of the Report. The Commission recommends that a broad court intervention program that can assist persons with mental illness, drug or alcohol problems, inadequate social, family or economic support, or persons that are in a dysfunctional domestic relationship that contributes to their offending behaviour.

Conclusion

I whole-heartedly support the adoption of the Commission's recommendations in relation to mental health. People with mental health issues are a large but vulnerable population in our community. The Mental Health Law Centre has long advocated that people with mental health issues do not have equal treatment within the criminal justice system. These issues are even more important in light of the proposed increased powers of the police. It is time that those issues were addressed either with the expansion of the IDDP list or the introduction of a new court intervention program, including the expansion of these services to regional areas. I ask that the committee investigate these recommendations and assess the value of their implementation in WA.

¹¹ Law Reform Commission of Western Australia, 'Court Intervention Programs: Project No. 96' (June 2009) available at: www.lrc.justice.wa.gov.au/2publications/reports/P96-FR.pdf (accessed 10 November 2010) at 75

¹² Ibid at 80