

Appendix D: Stakeholder responses to recommendations

The draft report was provided to the following stakeholders:

- Department of Corrective Services;
- Western Australian Department of the Attorney General;
- Western Australian Disability Services Commission;
- Western Australian Mental Health Commission;
- Mentally Impaired Accused Review Board;
- Western Australian Department of Health;
- Chief Justice of Western Australia;
- Chief Magistrate of the Magistrate Court of Western Australia; and
- Chief Judge of the District Court of Western Australia.

Stakeholders were overall supportive of the recommendations of the report. Some stakeholders addressed specific recommendations, while others provided general comments. Specific responses to recommendations are found in Table 6, while general responses to the report are summarised as follows:

- The Department of the Attorney General stated that it had concluded a stakeholder consultation process to identify the main shortcomings of the Act. A discussion paper will be released as part of a public consultation process later this year.
- The Mentally Impaired Accused Review Board (MIARB) also noted the Department of the Attorney General's forthcoming consultation process. MIARB supported this process and stated that it would provide an opportunity for areas under the Act to be discussed at a wider level.
- The Chief Justice stated that he had no doubt a number of offenders and alleged offenders falling within the purview of the Act are not identified as such by the courts. The Chief Justice stated this was likely due to the draconian consequences that might follow if a person is found unfit to plead or not guilty due to unsound mind. This was considered a significant concern, as people not being able to meaningfully participate in the trial process or who are convicted of offences where they were not criminally responsible at the time of the commission of the offence is a departure from basic standards of justice.

The Chief Justice believed that offenders under the Act may suffer a greater loss of liberty by reason of their mental impairment than if they were convicted. He stated that it would be desirable if the court was empowered to impose a custody order or a conditional release order for a finite term. This term would not be

longer than the period for which the offender might have received had they been convicted.

The Chief Justice agreed with the report’s suggestion that courts should be empowered to release an alleged offender who has been found unfit to plead on a community base alternative to a custody order, such as a conditional release order.

The Chief Justice was not opposed to the executive discretion model, but suggested that that the continuation of a custody order should be reviewed periodically by the courts, perhaps every two years. The Supreme Court was identified as the most suitable court to undertake these reviews given their experience of reviewing those under the Dangerous Sexual Offenders Act.

- The Department of Health reported that clinicians have expressed the view that custody orders contribute to the continued ill health of those subject to them. Clinicians also reported that the current provisions of the Act have numerous negative consequences, criminalising and disadvantaging people with mental disorders who offend. People under the Act were stated to require appropriate treatment so that their condition improves rather than degenerates. WA Health welcomed legislative changes to improve the Act.

Table 6

Stakeholder responses to specific recommendations

Recommendation	Stakeholder Responses
<p>Recommendation 1.</p> <p>The government should examine legislative amendments to give greater flexibility to the courts in dealing with people under the Act, including:</p> <p>(i) community based alternatives to custody orders for people who are found unfit to stand trial but require some degree of supervision; and</p> <p>(ii) repealing or restricting the scope of Schedule 1.</p>	<p>Department of Health</p> <p>Supported in Principle</p> <p>In his draft report, the Inspector recommends amending the legislation so that courts are able to make community based alternatives to custody orders where the accused is found unfit to stand trial. This would be an intermediate option between the current two options: unconditional release or a custody order. This would presumably take the form of a community based sentence that is currently available in the case of a finding of unsoundness of mind in for the lower courts to make, and higher courts if the offence is not a serious one (Schedule 1).</p> <p>Community based sentences are the remit of the Department of Corrective Services. However, given those found unfit to stand trial are likely to have a serious mental health illness, there will need to be appropriate treatment provided for them in the community.</p> <p>WA Health recognises that the strengthening of community mental health services is an area of need in WA. This is something that has been outlined in the Stokes Review and is a priority and key consideration of the MHC.</p> <p>The relevant change to legislation is likely to have a corresponding impact on community mental health services. Whilst WA Health supports treating patients in the community, where appropriate, there will be purchasing implications related with expanding these services. As the MHC is the purchaser of mental health services in WA, service planning and associated impacts for Government’s consideration will be driven by the MHC.</p>

	<p>Disability Services Commission</p> <p>Supported</p> <p>The Disability Services Commission ('the Commission') supports the concept of greater flexibility to the courts in dealing with people under the <i>Criminal Law (Mentally Impaired Accused) Act 1996</i> ('the Act') as in Recommendation 1.</p> <p>Chief Magistrate</p> <p>Endorsed</p> <p>There is clearly a need for an alternative between release and custody orders. I would favour some form of community mental health order.</p> <p>I think that the lack of this option means that people in need of treatment and who might potentially pose a risk to themselves or the community without supervision and treatment are released because judicial officers do not want to take the draconian step of making a custody order.</p> <p>There also needs to be a means of limiting a custody order to a time proportionate to the sentence if they had been found guilty - although I accept that is perhaps difficult.</p>
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Recommendation 2.

<p>The government should examine legislative amendments to repeal the current 'executive discretion' model and to vest authority for decisions regarding the release of individuals under the Act to:</p> <p>(i) the Mentally Impaired Accused Review Board; or</p> <p>(ii) the courts; or</p> <p>(iii) the Mental Health Review Board.</p>	<p>Department of Health</p> <p>N/A</p> <p>The change to review and release procedures is not for WA Health to comment on. However, if the aim is to make the Mental Health Review Board (MHRB) the body responsible for the decision to release a person from the custody order, it should be noted that the MHRB will become the Mental Health Tribunal under new legislation. The Mental Health Bill is currently in Parliament, and if passed will become the new Mental Health Act. One of the aspects of the Mental Health Bill 2013 is to legislate for the creation of a Mental Health Tribunal. The Mental Health Commission is the agency responsible for the establishment of this tribunal, and should be addressed regarding any queries.</p> <p>Chief Magistrate</p> <p>Supported</p> <p>Although it would increase work for the courts I think they provide the adequate level of transparency to any review.</p>
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Recommendation 3.

<p>The government should increase the number of dedicated forensic mental health beds in hospitals. The increase should, at a minimum, match the increase in prisoner numbers since 1993 and projected future growth in prisoner numbers over the next decade.</p>	<p>Department of Health</p> <p>Supported in Principle</p> <p>The issue of a shortage of Forensic Mental Health Beds is something that WA Health is well aware of and is something that has been identified in the Stokes Review. As the purchaser of mental health services, the MHC provides funding for mental health beds. The MHC is currently developing a Mental Health Service Plan, including the development of a Forensic Mental Health Service plan which will consider the forensic mental health service requirements over the next ten years. The future resourcing/development of forensic mental health services will be considered by Government in its consideration of the plan.</p> <p>Chief Magistrate</p> <p>Supported</p> <p>There is a constant problem in being able to place someone on a hospital order because of the lack of beds. This means that again magistrates may not make the appropriate order because they take this into account and as a result someone in need of treatment ends up in prison.</p>
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Recommendation 4.

In addition to expanding the number of forensic beds in a hospital setting, the government should develop transitional mental health units at Bandyup Women's Prison and at least one male prison. These units should be evaluated with respect to their uptake and effectiveness, with a view to introducing such units at other prisons.

**Department of Health
Supported in Principle**

The desirability of Mental Health units within prisons is also something that WA Health is aware of and this too, has been identified in the Stokes Review. As this is also within the scope of the Forensic Mental Health Plan the same comments apply as those made to Recommendation 3 above.

Recommendation 5.

The government should continue to progress the establishment of declared places for people with a cognitive impairment held under the Act.

**Disability Services Commission
Endorsed**

It is pleasing that the draft report notes the development of a 'declared place' and the range of other services and supports that the Commission provides to mentally impaired accused persons in prison and in the community. As such, the Commission endorses Recommendations 5 and 6, particularly in relations to proposals to improve release planning for people held under the Act.

Recommendation 6.

The government should examine ways to improve the co-ordination of release planning for people held under the Act. Consideration should be given to establishing a multi-agency committee directed by MIARB, which is resourced accordingly.

**Department of Health
Supported in Principle**

The Inspector has identified the need for improved release planning for people under the Act and recommended the establishment of a multiagency committee directed by the Mentally Impaired Accused Review Board. Whilst the role of WA Health is not clear and requires further clarification, WA Health recognises the importance of good discharge planning in line with the implementation of the key findings of the Stokes Review.

Provision around the making of treatment, support and discharge plans, and involving patients in the planning are set out in the Mental Health Bill and apply to patents under the *Criminal Law (Mentally Impaired Accused) Act*. The Chief Psychiatrist will also publish standards and guidelines that will consider aspects of treatment, support and discharge planning for mental health services in WA as per the Mental Health Bill 2013.

Furthermore, as the recommendation is regarding multi-agency collaboration, there needs to be clarification of who the committee will be resourced by. WA Health supports and recognises the clear benefits of cross agency collaborations.

**Disability Services Commission
Endorsed**

Refer to previous response.

Recommendation 7.

The Department of Corrective Services, in collaboration with other agencies, should develop specific policies for managing people under the Act, both in custody and in the community. These should include protocols for enhancing care and treatment, managing challenging behaviour, initiating leave of absence and developing release plans. Appropriate staff training should also be provided.

**Department of Corrective Services
Supported in Principle**

The Department has established a working group that will review and examine existing policies and practices for managing people under the *Criminal Law (Mentally Impaired Accused) Act*. Consideration will be given to the development of specific policies and protocols, as well as associated training requirements.

**Department of Health
Supported in Principle**

The Inspector's draft report notes that there is a lack of policy in the Department of Corrective Services (DCS). The recommendation is that the DCS, in collaboration with other agencies, should develop specific policies for managing people under the CL(MIA) Act, both in custody and in the community. WA Health mental health policy review is a recommendation of the Stokes Review. Therefore where the DCS policy intersects with WA

	<p>Health policy for the management of prisoners with mental health issues, WA Health is open for discussion with DCS for the update of Health policies. It should however be noted that any change to WA Health policy will need to be in line with the Mental Health Bill 2013. DCS should seek to develop policies that would not be at odds with appropriate standards of mental health care as defined through the Mental Health Bill 2013.</p> <p>Disability Services Commission</p> <p>Endorsed</p> <p>The Commission is committed to working with the Department of Corrective Services and the Department of the Attorney General to promote equitable outcomes for people with disability in the justice system. The Commission endorses Recommendation 7, and is working closely with the Department of Corrective Services to develop training, procedures and programs for joint clients, including those held under the Act.</p>
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Recommendation 8.

<p>The Department of Corrective Services, in collaboration with external providers, should make individual treatment programs available to people under the Act who are not eligible for group programs.</p>	<p>Department of Corrective Services</p> <p>Supported in Principle</p> <p>Level of cognitive functioning and mental illness should be taken into account in determining suitability for inclusion to program intervention, whether in a group format or individually tailored counselling. Given the underlying issues associated with those people under the Act, in many cases offence specific program intervention is not relevant because the person lacks sufficient capacity. The need to work more collaboratively with other services, such as health and disability services, to formulate and develop realistic case and risk management plans for those under the Act is supported. The provision of individually tailored counselling to address specific behaviours should be considered when relevant and appropriate to do so. Examination of the resource implications and demand for individual counselling is necessary, Offender Programs is resourced and staffed, based on a group intervention services delivery model.</p> <p>Department of Health</p> <p>N/A</p> <p>This recommendation addresses the lack of targeted programs for prisoners to address diversity in impairments and treatments needs which may take the form of individually tailored counselling. WA Health can see how such programs would be valuable for offenders. They would not however, appear to fall within the public mental health sphere and therefore are outside the scope of WA Health to comment. WA Health notes however, that Health Services are provided to the Department of Corrective Services under a Memorandum of Understanding which has recently been reviewed and agreed upon.</p> <p>Disability Services Commission</p> <p>Endorsed</p> <p>The Commission endorses Recommendation 8, that individual treatment programs should be available to people under the Act who are not eligible for group programs. The Commission believes that all people with intellectual or cognitive disability are disadvantaged in prison, not least due to the lack of appropriate treatment and vocational programs. People with cognitive disability held under the Act who also have a mental illness are doubly disadvantaged, and there is an urgent need to ensure that prison staff are skilled in working with a range of disabilities.</p>
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Recommendation 9.

The Mentally Impaired Accused Review Board, in consultation with the Department of Corrective Services, should document the minimum requirements to be included in treatment completion reports to make them consistent and useful for decision making. The Department of Corrective Services and other agencies should implement these requirements and ensure the reports they make are quality controlled.

Department of Corrective Services**Supported - Existing Departmental Initiative**

The need to improve the quality and consistency of Program Completion Reports across all programs has been recognised by the Department. Staff report writing training has been undertaken over the past 12 months. The Clinical Governance Unit, Operational Support, have prepared new report writing guidelines and report templates as part of the strategy to enhance business capability. Consultation will occur with key stakeholders (e.g. Prisoners Review Board & MIARB) in order to meet necessary requirements. Ongoing reviews will be undertaken following the implementation of new practices, to evaluate the effectiveness of these strategies.
