

# **Mental Health Liaison and Diversion**

## **Court Liaison Services and Mental Health Court Programs in Australia.**

**2015**

**The Australian Centre for Research Excellence in  
Offender Health**  
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## Introduction

Mental health and criminal justice systems have responded to the high rates of mental illness among offenders with the development of forensic mental health services and innovative court approaches. A key component of Australian forensic mental health services is court liaison. This type of forensic mental health service can provide early mental health intervention and, in some cases, diversion from the criminal justice system to mental health care for those who require it. A varied approach to diversion for mentally ill offenders is that of specialised mental health courts or diversion lists. The components of service delivery and range of options that are available to individuals who have a mental illness and have come into contact with the criminal justice system differ across jurisdictions in Australia. To date there has been limited opportunity for collaboration between jurisdictions to compare models and to explore methods to measure their outcomes

In 2014 a descriptive survey of court liaison and court diversion programs was conducted in Australia. This report describes the findings of the study. The survey included teams or programs with the specific focus of mental health court liaison or court based diversion rather than individual practitioners from health services who perform this function in addition to their usual role. In situations where more than one service exists, the largest of the services was approached to participate in the survey (this was the case in New South Wales for Court Liaison Service which provides a service to the majority of the state).

The report is comprised of three parts. Part one includes a table that lists the services/programs that were contacted, and agreed to participate in, a national survey of mental health court liaison and mental health court diversion in Australia. Part two describes the role of court liaison services and describes the model of each of the participating services with reference to the legislation that supports mental health diversion. Part three of the report describes the mental health court programs in Australia that use a problem solving court or therapeutic jurisprudence approach to diversion of mentally impaired offenders.

## Context

Rates of mental disorder are widely acknowledged to be considerably higher than in the offender population, than in the general population. This appears to be the case at all stages of the criminal justice procedure including police contact (pre-arrest), arrestees in watch house settings, court proceedings and in prisons. Ogloff et. al (1) described the Australian situation as follows, "Rates of the major mental illnesses, such as schizophrenia and depression, are between three and five times higher in offender populations than those expected in the general community." An Australian study of adult police detainees determined that nearly half of females (47%) and 32% of males reported having been diagnosed or treated for a mental health issue (2).

Post arrest rates of mental illness appear to be high in Australia and internationally (3). Butler et. al (4) identified in an Australian study of prisoners that substantially more psychiatric morbidity was found in the prison sample than in comparison with a community sample. A 2012 study of Australian detainees determined that almost half (49%) of detainees sampled were experiencing a diagnosable mental disorder, as determined by a validated screening instrument (5). The authors of the study noted that this is likely to be an under estimate as individuals who appeared to be mentally unwell were likely to have been taken to mental health facilities and as such would not have been available to participate in the study.

Various responses throughout the world have been undertaken to the high rate of imprisonment of individuals with mental illness. Specialised mental health courts have developed rapidly in the 1990's in the United States while the United Kingdom has adopted the use of court based diversion and liaison services to identify individuals who may be diverted to the mental health system (6). Australia has a mixture of these approaches.

The Australian Mental Health Commission has noted that provisions in each jurisdiction related to mental health diversion are varied, and has indicated that a more equitable situation would be achieved through increased uniformity (7).

*“We need to have all our jurisdictions to adopt more consistent legal provisions so that people with a mental illness are equitably treated throughout our nation; we see the high levels of mental health and co-existing physical health problems among the prison population and the high priority to provide the right physical health and mental health treatment and support they require, and we consider that diversion is essential to supporting the individual to bring justice to people living with mental health difficulties to reduce the consequences of living with a mental illness upon themselves and the wider community.”*

## Approach

The aim of this study is to identify and describe the current mechanisms for mental health diversion for adults (older than 18 years), supporting legislation, clinical and criminal justice eligibility and exclusion criteria, program characteristics and the types of routinely collected data in each jurisdiction.

State wide Forensic Mental Health Directors in each jurisdiction were approached and asked to nominate one or more representatives to participate in a written and telephone survey. A list of stakeholders who were involved in the study is located in appendix 1. Nominated representatives were provided with a description of the study and written consent was sought. Ethical approval for the study was provided by the University of Queensland Human Research Ethics Committee. All Australian jurisdictions and services that were identified agreed to take part in the survey.

A written version of the survey questionnaire was sent to participants and a telephone interview of up to 1 hour duration was scheduled. Responses from the interview were compiled for each jurisdiction and sent to the participant for amendment and validation. Participants were provided with an opportunity to revise any responses prior to this report being finalised.

## Part One: Overview of Mental Health Court Liaison & Court Diversion Programs in Australia

Programs that aim to identify mentally ill individuals who have been charged with a criminal offence and link them with appropriate mental health and other services fall broadly into two categories in Australia, mental health courts/lists and mental health court liaison services. The table below provides an overview of the services that were invited and agreed to participate in the national survey of mental health court liaison and court diversion programs 2014.

**Table 1 – Profile of services in each jurisdiction**

Jurisdiction	Court Liaison Service		Mental Health Court	
		Agency		Agency
<b>NSW</b>	Yes	NSW Health: Justice Health Forensic Mental Health Network	No	
<b>VIC</b>	Yes	Victorian Institute of Forensic Mental Health (Forensicare) <sup>1</sup>	Yes	Court Services Victoria
<b>QLD</b>	Yes	Queensland Health: Forensic Mental Health Service	No <sup>2*</sup>	
<b>WA</b>	Yes	Department of Health: State Forensic Mental Health Services	Yes	Interagency: MH Commission + Dept Attorney General + Dept Health + Dept Corrective Services + Legal Aid + Police Prosecution + NGO (Outcare)
<b>SA</b>	Yes	SA Health: Forensic Mental Health Service	Yes	Courts Administration Authority of South Australia
<b>TAS</b>	Yes	Department of Health and Human Services: Forensic Mental Health Service	Yes	Department of Health and Human Services: Forensic Mental Health Service + Magistrates Court of Tasmania
<b>ACT</b>	Yes	ACT Health: Division of Mental Health, Justice Health & Alcohol and Drug Services: Mental Health Forensic Services	No	
<b>NT</b>	Yes – limited	NT Health: Forensic Mental Health Service	No	

<sup>1</sup> All CLS staff are employed by the health sector in Victoria with the exception of one position (Sunshine Magistrates Court) which is funded by Court Services Victoria.

<sup>2</sup> The Queensland Mental Health Court performs a different role to that of the Mental Health Court programs in other jurisdictions (see descriptions of court programs in each jurisdiction for further information).

## Part Two: Mental Health Court Liaison Services in Australia

With the exception of the Northern Territory, all Australian states and territories have a dedicated court liaison mental health service. While there is variation between the models and the legislation that supports mental health diversion, the services all have the primary aim of identifying individuals with mental illness (and in some cases intellectual disability) who have been charged with an offence. Court liaison services (CLS's) seek to intervene in the criminal justice process as early as possible. While CLS's may have a role at various stages in the process (as noted later in this document), they describe the majority of their role as identifying those with mental health needs at the pre trial stage or during the trial process. CLS's undertake mental health assessments of individuals and then provide timely clinical advice to the court to assist it in decision making regarding appropriate disposal. Brief supportive mental health interventions may be provided by CLS teams but they are not providers of ongoing longer term mental health care. Their role is described as one of liaison with other care providers who meet this need. Court Liaison Services have been described as a 'gateway' to mental health and community services from the criminal justice system (5).

### Service Descriptions

#### New South Wales

In New South Wales (NSW), the State wide Community and Court Liaison Service (CLS) forms part of the Justice Health and Forensic Mental Health Network which is funded and reports to NSW Health. Within New South Wales the Statewide CLS provides mental health services in 23 NSW Local Courts (Bankstown, Blacktown, Burwood, Campbelltown, Coffs Harbour, Downing Centre, Dubbo, Gosford, Lismore, Liverpool, Manly, Milton, Nowra, Parramatta, Port Macquarie/Kempsey, Penrith, Sutherland, Sydney Central, Tamworth, Wagga Wagga, Wollongong and Wyong).

An additional service in Newcastle Local Court operates independently through the Hunter New England Local Health District.

The aims of the State wide Community and Court Liaison Service are:

- To assist the Courts with diversion of the mentally ill and mentally disordered individuals by linking them to appropriate Mental Health Services in the Community, Prison and Hospital system.
- To enable the Court to make well informed decisions without delay, by providing timely triage psychiatric assessments and evaluations in the Courts and holding cells.
- To ensure mentally ill individuals have access to and obtain psychiatric and psychological treatment and to minimise unnecessary exposure of people with mental illness to the Criminal Justice System.
- Establish and maintain links with a wide range of Mental Health and Community Service Agencies in order to access the broadest possible range of advice regarding options and alternatives for the Court.
- To provide a State wide Network of Court Liaison Services in NSW which maintains consistency throughout the Courts, provides a system of quality improvement and provides best practice for optional patient outcome.
- To provide education and training on mental health matters and its interface with the Criminal Justice System to a wide range of Court Personnel, Local Health Districts (LHD), Community Members, Consumers and Carers.
- To undertake research in the area of Community and Court Liaison Services to ensure that there is provision of evidence based interventions and recommendations.

## Victoria

In Victoria the Mental Health Court Liaison Service is a court based program provided by the Community Forensic Mental Health Service. The CLS was established in 1994 at Melbourne Magistrates' Court before expanding to six other Victorian Magistrates Court locations (Ringwood, Heidelberg, Dandenong, Frankston, Broadmeadows and Sunshine).

The service aims are:

- To divert offenders with a mental illness from the criminal justice system into appropriate mental health treatment.
- To reduce rates of recidivism in offenders with a mental illness through facilitating access to appropriate mental health treatment services
- To reduce the frequency and length of custodial remands to obtain a psychiatric report.
- To make recommendations to the Court to assist them to make suitable and timely decisions.
- To provide rapid advice to the Court to enable it to make dispositions that take into account clinical mental health advice.

The service's scope includes the assessment and reporting of mental state and risk assessment, rather than in the more comprehensive forensic mental health assessment process that would involve linking mental disorder and offending.

It was noted that the service's staffing profile has not significantly altered since the service expanded in 2001. Reports indicate that the demand for the service has increased threefold since this time and continues to grow. In 2001 the service recorded 1500 referrals, in 2013/14 a total of 4500 referrals were received. The service is facing challenges coping with referrals and demand at Melbourne Magistrates' Court, with an increase from 1201 referrals in 2013 to 2019 referrals in 2014. This is consistent with the number of criminal matters increasing from approximately 90,000 to over 188,000 per year and a 50% increase in family violence matters from 2001 to 2013.

## Queensland

The Metro North Mental Health Service Court Liaison Service provides a service in South East Queensland (QLD). Within South East QLD the CLS provides mental health service to twelve Courts and to watch houses in Brisbane, Southport, Maroochydore/Caloundra, Ipswich/Richlands, Toowoomba, Beenleigh, Pine Rivers, Caboolture, Sandgate & Redcliffe. Court liaison officers are also located in Cairns, Townsville, Mt Isa, Mackay and Rockhampton and are managed by the local area health service. In other parts of Queensland, local area mental health services provide court liaison on an ad hoc basis.

The primary purpose of the Court Liaison Service is early identification, assessment, liaison, referral and, whenever possible, diversion of mentally ill individuals in custody, or before the court. The CLS provides short-term clinical interventions to people, as well as assistance, support and advice to a number of stakeholders. The CLS also has a role in facilitating the continuity of care for people leaving correctional facilities and engaging with community based services.

In this respect, the CLS role has several aims:

- Liaison with courts and watch houses in order to identify, assess and, when possible, divert mentally ill offenders from the criminal justice system into appropriate mental health services.
- Liaison with Forensic Mental Health Services and Prison Mental Health Services to ensure offenders with mental health problems who remain in the criminal justice system receive appropriate referrals, treatment and care.
- Liaison with the local Hospital and Health Service (HSS) Mental Health Services and at times primary care providers in order to mitigate the difficulties and disadvantages

that their clients might face in their contracts with the criminal justice system and to facilitate the continuity of care for those leaving custody.

- Notifying the Court of persons with mental health problems who may require special consideration in relation to their charges, including those cases where statutory provisions under the Queensland Mental Health Act 2000 are to be applied.
- Advice and/or clarification to the Registrar of the Court about issues related to mental health and the MHA. It is intended that the CLS is accessible to all stakeholders including the Police; the Court; the HHS; various support and legal services, the person appearing before the court and their relatives.
- Provision of ongoing training and formal education to all stakeholders regarding the role of the CLS; symptoms and behaviours associated with mental illness and the impact the at mental illness might have on people in custody.

## Western Australia

The Western Australian Court Liaison Service is one of the services that are provided by the State Forensic Mental Health Service. The team's mental health practitioners attend the metropolitan courts on a daily basis, assessing defendants brought to the attention of the court liaison service. The service is available, on call, during working day mornings to the police lock-up for assessment of suspected, acutely mentally ill persons arrested by the police. The Service is provided on a daily basis to the Metropolitan Central Law Court, on an as required basis in person to other metropolitan Magistrates Courts (Joondalup, Midland, Armadale, Rockingham & Fremantle) and via videoconference to regional and remote Courts (Albany, Broome, Bunbury, Busselton, Carnarvon, Christmas Island, Cocos Island, Collie, Derby, Esperance, Geraldton, Kalgoorlie, Karratha, Katanning, Kununurra, Manjimup, Merredin, Moora, Narrogin, Northam, South Hedland and Roebourne).

The service aims and objectives are:

- To provide assessment of offenders displaying apparent symptoms of mental illness who are on the overnight arrest list (identified by forensic staff conducting searches on State wide psychiatric services information system (PSOLIS), or at the request of custody staff, the duty lawyer or the Magistrate).
- To provide recommendations to the Court with regards to mental health issues
- To ensure that the Court receives accurate advice as to whether a person meets the statutory criteria for a Hospital Order. To provide a state wide service (have a representative attend Central Law Courts on a daily basis to attend to the overnight listings, visiting metropolitan Courts as needed to cover remote and regional courts through the use of videoconferencing).

## South Australia

The Forensic Court Liaison Program is the first of its kind in South Australia. It has only recently commenced and currently provides a service in three Magistrates Courts (Adelaide, Elizabeth and Port Adelaide). These courts have the highest volume of cases processed on a daily basis. They have also been identified as hearing a greater number of cases that have a higher need from a mental health perspective.

The objectives and aims of the program are

- To provide early identification to ensure that defendants are directed to the appropriate legal options available to individuals who may have a mental illness and may not require the stringent supervision and court order as a Not Guilty by Reason of Mental impairment defence carries.
- To provide assessments, recommendations and expert advice to the Court.
- To ensure that the Forensic Mental Health Service is represented in the Court.
- To facilitate appropriate diversion options (provided this does not include the emergency department as an assessment or management point).

## Tasmania

In Tasmania, the clinical function of court liaison services and the Mental Health Court program are performed by the same individuals. The Court Liaison Service is a part of the Department of Health and Human Services, Tasmanian Forensic Mental Health Service. Court Liaison Officers provide assistance for people with mental health problems who are in police custody or those who have to go to court. The service provides advice to the Court as to the need for court ordered psychiatric reports. Court Liaison Officers undertake psychiatric assessments as requested by magistrates and judges and provide assessments and recommendations to the Mental Health Diversional List in all court registries. They can also provide support for individuals and family members, explain court processes or advise on how to contact a lawyer. A Court Liaison Service is provided in Hobart, Launceston, Burnie and Devonport.

The aim of the Court Liaison component of the service is:

- To provide information to the Court of mental health issues for defendants who appear before it.
- To assist people with mental health problems to move through the court processes.

## Australian Capital Territory

The Court Assessment and Liaison Service in the Australian Capital Territory (ACT) forms a part of the Forensic Mental Health Service. The Forensic Mental Health Service in the ACT is a state wide service comprised of four teams: Court Assessment and Liaison, Alexander Maconochie Centre (Prison Mental Health), Bimberi Youth Justice Team and Community Forensic Outreach Service.

The aims of the ACT Court Assessment and Liaison Service are:

- To act as a link between the judiciary and mental health services;
- To promote improved outcomes for people with mental illness who have been charged with an offence as they move through the court process; and
- To provide screening of people in custody who may require immediate mental health treatment of care.

In the ACT, the Court Liaison Officer conducts assessments for both adult and youth populations. The service is described as geographically centralised with 1 court and 1 prison environment which are located within a short distance of each other and of the health service. The ACT Court Liaison Officer also attends relevant ACT Civil and Administrative Review Tribunal Hearings.

## Northern Territory

In the Northern Territory there is no formal mental health court liaison service. The Forensic Mental Health Service does conduct a small number of assessments in watch house environments on request. Local Community Assessment teams largely perform this service on an ad hoc basis.

The NT State wide Forensic Mental Health Service provides direct case management of people with mental illness or disability in prison and a small number of consumers in the community who have current forensic issues and/or are considered to be a high risk of offending or harming themselves or others.

## Court Liaison Team - Staffing

Participating services were asked to list the CLS team staffing profile. In the majority of jurisdictions nurses comprised the largest professional discipline. While all services had access to psychiatry advice via on call advice or supervision, only half of the services surveyed had psychiatrists with the primary role of court liaison. As previously noted, the Northern Territory staffing profile described is not court liaison specific. Further work to describe the population served by each of the services is planned in a future national benchmarking project. Estimated resident population for each jurisdiction has been taken from Australian Bureau of Statistics June 2014. Population >17 years used for all jurisdictions with the exception of ACT who see children and adolescents (total population recorded for ACT). Figures have been rounded to the nearest thousand.

**Table 2 – Staffing profile for Court Liaison Services and estimated population eligible for service**

Jurisdiction	NSW	VIC	QLD	WA	SA	TAS <sup>1</sup>	ACT	NT <sup>2</sup>
Estimated Population eligible for CLS	5,836,000	4,566,000	3,040,000	1,950,000	1,236,000	407,000	386,000	173,000
Nurses	18	3.5	14.3	4		1		2
Occupational Therapist						1		
Social Workers		1		1	2		1	1
Psychologists						f		1
Psychiatrists	1.8	s	1	s	s	f	1.3 <sup>f</sup>	2
Aboriginal Health Advisor								1
Team Leader/Manager	1	1	1	0.5	Yes <sup>a</sup>		f	1
Administrative Support	1			0.5			f	0.8

1 – In Tasmania, Court Liaison and the Mental Health Court Program are provided by the same team.

2- The Northern Territory does not have a workforce with the specific role of court liaison at the time of the report. The staffing profile presented for the NT is for the state wide Forensic Mental Health Service.

s - Denotes the availability of clinical supervision provided by psychiatrist on an as needed basis.

a – denotes that the role is shared with 1 or more other teams with a similar role and function.

f- Denotes that support for the Court Liaison and Diversion List team is provided by the Forensic Mental Health Service on an as required basis.

## Diversion – defining the concept

The term mental health ‘diversion’ has been defined in a number of ways in the relevant literature. Services were asked to describe mental health diversion from the perspective of their service by listing the goals that align with the concept and findings are summarised in Table 2 below. While all services listed improved mental health through treatment and support that is integrated with the criminal justice system, few services included cessation of criminal justice proceedings as integral to diversion. Further, while the majority of CLS’s listed reduced contact with the criminal justice system and a reduction in recidivism as a service goal, this was not the case for all services.

**Table 3 – The concept of ‘diversion’ for participating services**

Jurisdiction	NSW	VIC	QLD	WA	SA	TAS	ACT	NT
Improvement in mental health through the provision of treatment and support	✓	✓	✓	✓	✓	✓	✓	✓
Provision of treatment and processes support that is integrated with criminal justice	✓	✓	✓	✓	✓	✓	✓	✓
Reduced contact with the criminal justice system	✓	✓	✓	✓	✓	✓	✓	✓
Reduction in recidivism in individuals with serious mental illness	✓	✓	✓	✓	✓	✓	✓	✓
Transfer of individuals from the criminal justice sector to the health care sector	✓	✓	✓			✓	✓	
Cessation of criminal justice proceedings				✓			✓	

## Points of criminal justice system where service is involved in diversion

There are various stages of the criminal justice process where Court Liaison Services may be involved in assessing individuals and providing advice regarding mental illness. All services with CLS specific teams identified the point of bail as a stage where they may be involved. New South Wales and Tasmania's CLS teams noted that they may be involved at all stages of the criminal justice process in providing advice.

**Table 4 – Criminal justice system points of service involvement**

Jurisdiction	NSW	VIC	QLD	WA	SA	TAS	ACT	NT
Charge	✓	✓	✓	✓		✓	✓	
Prosecution	✓	✓	✓		✓	✓	✓	✓
Bail	✓	✓	✓	✓	✓	✓	✓	
Plea	✓	✓			✓	✓	✓	
Trial	✓	✓			✓	✓	✓	✓
Sentence	✓	✓			✓	✓	✓	

## Legislation related to mental health diversion

Participating services were asked to identify legislative provisions that describe the options available to individuals who have been charged with an offence who have, or are reasonably suspected to have, a mental illness in their jurisdiction. While all jurisdictions have legislation related to the issue of fitness to stand trial and the defence of mental impairment, there is variation around definitions and processes in each of the States and Territories as described below, and a variety of outcomes for findings. This section provides a brief overview of the legislation, definitions and provisions related to individuals who are charged with an offence who may have a mental illness and/or intellectual disability. A table located in Appendix 2 provides a summary of the legislative provisions related to mental illness and offending in each jurisdiction.

### New South Wales

The Mental Health Act 2007 ascribes that a mentally ill person is a person suffering from a mental illness and owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary. Mental illness is defined as a condition that seriously impairs, either temporarily or permanently the mental functioning of a person and is characterised by the presence in the person of any one or more of the following symptoms: delusions, hallucinations, serious disorder of thought form, severe disturbance of mood, and/or, sustained or repeated irrational behaviour indicating the presence of any one or more of these symptoms.

A mentally disordered person under the Act is described as "someone whose behaviour is so irrational that there are reasonable grounds for deciding that the temporary care, treatment or control of the person is necessary to protect them or others from serious physical harm. This category is most commonly used where a person is actively suicidal following a crisis and can be used where a person is suffering a condition such as dementia. It is not intended to include intoxication from alcohol or substance misuse.

Under s33 of the Mental Health (Forensic Provisions) Act 1990, if during the course of proceedings, it appears to a Magistrate that a defendant is a mentally ill person; the Magistrate may order that the defendant be taken to and detained in a mental health facility for assessment. In circumstances where the defendant is found on assessment not be a mentally ill or mentally disordered person, they may be brought back before a Magistrate. Alternatively the Magistrate may discharge the defendant unconditionally or subject to conditions in to the care of a responsible person. If at the commencement, or any time during the course of the hearing of proceedings under the Bail Act 1978, before an authorised officer it appears that the defendant is a mentally ill person, similar provisions apply.

Under s32 of the Mental Health (Forensic Provisions) Act 1990, if it appears to the Magistrate that the defendant is (or was at the time of the alleged commission of the offence to which the proceedings relate): developmentally disabled, or suffering from a mental illness, or suffering from a mental condition for which treatment is available in a mental health facility the Magistrate may adjourn the proceedings, grant bail, make any other order that they consider is appropriate. Alternatively they may make an order dismissing the charge and discharge the defendant in to the care of a responsible persons (with or without conditions), on condition that the defendant attend for assessment or treatment or dismiss without conditions. If the Magistrate suspects that a defendant subject to an order (as described above) may have failed to comply with a condition, they may within 6 months of the order, issue a warrant for the person to appear before them.

The Mental Health (Forensic Provisions) Act describes the options available to Magistrates for summary proceedings related to persons affected by mental disorders in Magistrates, District and Supreme Courts. While provisions exist regarding fitness for trial and not guilty on the ground of mental illness apply in all courts, indictable offences are not eligible for diversion into the community. The Act outlines the provisions related to criminal proceedings in the Supreme and District Court (indictable offences) related to persons affected by mental disorders. Where the question of fitness is raised the court must conduct an inquiry. The Court may do any one or more of the following: adjourn proceedings; grant bail, remand in custody for up to 28 days, request a psychiatric examination and report; make any other order it considers appropriate. The question of fitness is determined by the Judge. In situations where the person is found to be unfit for trial, the Court refers the person to the Mental Health Review Tribunal. The Tribunal determines whether the person is likely to become fit for trial within a period of 12 months. It also provides advice to the court regarding the care and treatment of the person. In circumstances where the person is not fit for trial within 12 months, a special hearing is held by the Court. A determination is made by the Judge unless election for a jury is made. If following the special hearing it is found on the evidence available that the person committed the offence the Court must indicate if it would have imposed a sentence of imprisonment in a normal proceeding where the person was fit for trial. The Court must nominate a 'limiting term,' which is the best estimate of the sentence that would have been imposed in these circumstances. After a limiting term has been imposed, based on advice from the Tribunal, the Court will order that the person be taken to and detained in a mental health facility if they do not object to detention or that they be detained in a place other than a mental facility if they object to detention.

Under the NSW Crimes Act 1900, Magistrates may also issue a Bond with mental health conditions or may use the NSW Bail Act 1978 with mental health conditions.

## **Victoria**

Mental illness is defined by the Mental Health Act 2014 as a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory. The mere presence of intellectual disability and the use of drugs or alcohol are not included in the definition of mental illness.

In situations where an individual before the court or in the police cells appears to have a mental illness, and appears to need immediate treatment, the Court Liaison Officer can complete an inpatient assessment order under the Mental Health Act 2014. If it is deemed appropriate, Magistrates are able to issue bail to enable the person to be transported to the mental health service for an assessment to take place. Magistrates are also able to Bail the defendant to the mental health inpatient unit (although this is not the preferred method).

The Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (CMIA) describe the criteria to determine whether a person is unfit to stand trial, describes a statutory defence of mental impairment and provides procedures for dealing with people who are unfit to stand trial or are found not guilty because of mental impairment for Supreme, County and Magistrates Courts. If fitness to stand trial is in question, the judge must adjourn or discontinue the trial and proceed with an investigation into the person's fitness. The Court may make any one or more of the following orders: grant bail, remand in custody or an appropriate place for a specified period, remand in prison (where there is no practicable alternative in the circumstances), order an examination and report or any other order it deems appropriate. In Victoria, a jury makes a determination regarding fitness. If the jury finds that the person is not fit to stand trial, the judge must determine by reference to relevant evidence whether the person will become fit for trial within 12 months. If the person is likely to become fit for trial within 12 months the judge must adjourn the matter and may grant bail or remand the defendant in custody in an approved mental health service or residential service, remand in prison or make any other order the judge deems appropriate. Where the person is deemed to be unlikely to be fit for trial within 12 months a special hearing is to be held to determine whether the person is not guilty of the offence, not guilty of the offence due to mental impairment or committed the offence.

The CMIA states that the defence of mental impairment is established for a person charged with an offence if at the time of engaging in conduct constituting the offence the person was suffering from a mental impairment that had the effect that –

- a) He or she did not know the nature and quality of the conduct; or
- b) He or she did not know that the conduct was wrong (that is, he or she could not reason with a moderate degree of sense and composure about whether the conduct, as perceived by a reasonable person, was wrong).

If the defence of mental impairment is established, the person must be found not guilty because of mental impairment. The Court must declare that the defendant is liable to supervision under an order or order the defendant is to be released unconditionally. Supervision orders may be custodial (the person is in a mental health service or prison) or non-custodial. The Court may not make a supervision order to custody in prison unless there is not practicable alternative in the circumstances. Nominal terms for the supervision order are set. The nominal term for murder or treason is taken to be 25 years, for other offence punishable by imprisonment with a statutory maximum term the nominal term is a period equivalent to half the maximum term of imprisonment for the offence, and for any other offence punishable by imprisonment the term is a period specified by the Court.

Part 5 of the Sentencing Act 1991 includes sentencing provisions related to mentally ill offenders. If a person pleads guilty or is found guilty of an offence, is not remanded in custody and the court believes that the person's mental illness was a factor in their offending behaviour, it may make a Court Assessment Order under S91 of the Sentencing Act. The person is then compulsorily assessed by a psychiatrist in either an inpatient or community setting. A report is provided to the court regarding the person's current mental condition and provides advice regarding whether sentencing should occur, a Temporary Treatment Order or Court Secure Treatment Order should be made.

Court Secure Treatment Orders (S94B of Sentencing Act 1991) are made where but for the person's mental illness the person would have been sentenced to a term of imprisonment. Individuals who are subject to a CSTO are described as 'security patients' under the Mental Health Act. The CSTO must not exceed the period of time that the person would have been sentenced. It requires that the person commence their sentence in a designated mental health service and receive compulsory treatment. The primary purpose is as an alternative to imprisonment. If during this period the CSTO criteria no longer apply, the person must service the unexpired portion of the sentence in prison unless released on parole.

An additional legislative option for people with mental illness, intellectual disability, an acquired brain injury, autism spectrum disorder and/or a neurological impairment including dementia who are charged with certain offences and meet eligibility criteria is that of the Victorian Assessment and Referral Court. The Magistrates' Court Amendment (Assessment

and Referral Court List) Act 2010 describes the provisions related to the Assessment and Referral Court List. The ARC List is described in a later section of this report.

## Queensland

The Mental Health Act (MHA) 2000 defines mental illness as a condition characterised by a clinically significant disturbance of thought, mood, perception or memory. The MHA states that a person cannot be considered to have a mental illness solely on the basis of one or more exclusions including alcohol or drug use, intellectual or cognitive disability.

The MHA enables a person to be admitted to an authorised mental health service from a court or place of custody to receive assessment and treatment for mental illness. These individuals come under the classified patient provisions. A classified patient is involuntarily detained to a mental health service. Classified patient provisions do not deal with how charges are decided. On becoming a classified patient, proceedings for any offence (other than Commonwealth offences) are suspended until the person ceases to be a classified patient. Bail may be granted if deemed appropriate under the Bail Act 1980. An authorised doctor decides if the individual needs to be detained at the service for treatment. In situations where an authorised doctor determines that the person does not have inpatient treatment needs and can have their mental health care needs met in custody a return to custody form is completed. If the Director of Mental Health (DMH) is satisfied that the person does not need to be detained for treatment as a classified patient, action is taken to return the patient to Court or custody.

The Queensland Mental Health Act includes provisions for individuals who are subject to Involuntary Treatment Orders or Forensic Orders who are charged with an offence. If the individual who is charged is subject to an Involuntary Treatment Order or Forensic Order (or an order is made for the person), the Mental Health Act mandatorily requires an examination by a psychiatrist of the issues of unsoundness of mind and fitness for trial through the application of Chapter 7 Part 2 (CH7 P2) where the person has an outstanding charge for any offence. Where an authorised mental health service becomes aware that CH7 P2 applies, the Act requires the service to arrange an examination and report by a psychiatrist within 21 days (S238 report). The report includes an opinion on the person's mental capacity when the alleged offence was committed and the person's fitness for trial. Ch7 P2 applies for every alleged offence from serious offences to minor offences. Multiple offences can be dealt with in a single Ch7 P2 process, but a separate assessment is required for each charge. The psychiatrist's report is provided to and examined by the DMH who decides whether to refer the matter to the Mental Health Court for hearing, or to the Director of Public Prosecutions for decision as to the action to take for the offence. Only indictable offences may be referred to the Mental Health Court. The DMH refers these offences to the MHC if there is a reasonable suspicion that the person may have been unsound of mind at the time of offence or may be unfit for trial.

If the individual who is charged with an offence is not subject to an Involuntary Treatment Order or Forensic Order, the CH7 P2 provisions of the MHA do not apply. Should persons want to have the question of unsoundness or fitness heard by the MHC or another court they must obtain their own psychiatric reports.

In Queensland the Mental Health Court (MHC) is a supreme court which is constituted by a Supreme Court Judges, assisted by two psychiatrists. The MHC can make decisions about unsoundness of mind at the time of the alleged offence, fitness for trial, or in the case of the charge of murder diminished responsibility. The court also hears appeals from the Mental Health Review Tribunal and inquiries into the lawfulness of patients' detention in authorised mental health facilities. Referral to the MHC can be made by the Director of Mental Health, Director of Public Prosecution, the person charged with an offence or their lawyer. If a person is found of unsound mind and/or permanently unfit for trial, the proceedings are discontinued. The Mental Health Court may impose a Forensic Order or in the case of the outcome related solely to intellectual disability, a Disability Forensic Order under the MHA. If a person is found unfit for trial but not permanently unfit, the proceedings are suspended and regular reviews of the person's fitness for trial are conducted by the Mental Health Review Tribunal. The MHC must make a Forensic Order in this instance. If the person becomes fit, the legal proceedings are continued.

A Supreme or District Court may make a Forensic Order when a jury makes findings of unsoundness or unfitness under the criminal code (section 299). (Forensic Order) The Forensic Order may be made for the person to be detained in an authorised mental health service or in custody.

Magistrates Courts only have one option following a finding of unsoundness of mind - to discharge the defendant. It is uncommon for Magistrates to make a finding of unsoundness. In cases where an individual is charged with a simple offence, and is under the involuntary treatment provisions of the Mental Health Act, the process of Chapter 7 Part 2 (as described above) applies. In cases where the person is not subject to involuntary treatment under the MHA, and is charged with a simple offence only (if the person is also charged with an indictable offence, the matters are able to be referred to the Mental Health Court), legal representatives are unlikely to seek private psychiatric reports due to the associated cost. For indictable offences that can be dealt with summarily, there is the option of reference to the MHC by the accused person, Department of Public Prosecution or Director of Mental Health. Currently there is no clear process for dealing with unfitness for trial in the Magistrates Court for simple offences.

### **Western Australia**

The Mental Health Act 1996 describes a person as having a mental illness if they suffer from a disturbance of thought, mood, volition, perception, orientation or memory that impairs judgment or behaviour to a significant extent. The presence of an intellectual disability or the use of drugs and alcohol are not included in the definition of mental illness. New mental health legislation, the *Mental Health Act 2014*, is expected to be implemented in late 2015.

Western Australia's Criminal Law (Mentally Impaired Accused) Act (CLMIA) 1996 describes the provisions related to criminal proceedings involving mentally impaired people who are charged with an offence including fitness for trial and unsoundness of mind. Under the CLMIA 1996, a mental illness means an 'underlying pathological infirmity of the mind', whether of short or long duration and whether permanent or temporary, but does not include a condition that results from the reaction of a healthy mind to extraordinary stimuli (e.g. the effects of drugs). Under the CLMIA mental impairment is defined as intellectual disability, mental illness, brain damage or senility.

In WA, if a judicial officer suspects on reasonable grounds that the accused has a mental illness requiring treatment; the treatment is required in order to protect the health or safety of the accused or any other person or to prevent the accused doing serious damage to property and the accused has refused or is unable to consent to treatment, proceedings may be adjourned and the officer may make a hospital order. The accused is then detained in an authorised hospital and may become subject to the provisions of the Mental Health Act 1996.

Western Australia has separate provisions for Summary Courts and for Supreme and District Courts where fitness for trial is an issue. The question of whether an accused person is mentally fit for trial is to be decided by the presiding judicial officer who may for the purpose of inquiry: order an examination and report by a psychiatrist or other expert, adjourn proceedings, discharge the jury or make any other order deemed appropriate. For proceedings in courts of summary, supreme and district jurisdiction, where the issue of fitness for trial is raised and the court is satisfied that the accused will not become mentally fit to stand trial within 6 months, the court must make an order dismissing the charge without deciding the guilt or otherwise of the accused and either release the accused, or make a custody order with respect to the accused. For proceedings in the Supreme or District Court, where an accused person is found to be not mentally fit to stand trial, and the judge is satisfied that the accused will not become mentally fit within 6 months, the Judge must make an order quashing the indictment or dismissing the charge and quashing the committal without deciding the guilt or otherwise of the accused and either release the accused or make a custody order.

Courts have a range of options available in situations where an accused person is acquitted on account of unsoundness of mind. The Court may discharge the accused unconditionally or make a custody order. Despite the fact that the accused is not an offender under the

Sentencing Act 1995, the Court may make a conditional release order, a community based order, an intensive supervision order or custody order. Where an individual is acquitted on account of unsoundness of mind of a schedule 1 offence (e.g. murder, manslaughter, unlawful assault causing death, attempt to murder, grievous bodily harm serious assaults, sexual coercion etc.) a custody order must be made. For other offences, a conditional release order, community based order, intensive supervision order or custody order may be made. Such orders may only be made in situations where such an order would have been made had the accused been found guilty of the offence.

People subject to a custody order are placed under the supervision of the Mentally Impaired Accused Review Board (MIARB), a judicially led body. The MIARB advises the Attorney General who in turn advises the Governor. Once a custody order is made the MIARB decides on placement: hospital (for those with a treatable mental illness), a prison, a detention centre, or a 'declared place'. No declared places exist at present, although a 10 bed unit is currently being built for those with intellectual or cognitive disability. This facility will be operated by the WA Disability Services Commission.

The Western Australian Start Court is seen as providing an additional intervention for non-indictable offences. The Start Court is described in detail at a later stage of this report.

## **South Australia**

The Mental Health Act 2009 describes mental illness as, 'any illness or disorder of the mind' and states that a person does not have a mental illness merely because of the development disability or the use of drugs or alcohol.

A mental illness is defined by the Criminal Law Consolidation Act 1935 as a 'pathological infirmity of the mind (including a temporary one of short duration) where a condition that results from the reaction of a healthy mind to extraordinary stimuli is not included.

Mental impairment under the Criminal Law (Sentencing Act) 1988 varies from the definition listed in the Criminal Law Consolidation Act as described above. In the Criminal Law (Sentencing Act) 1988 mental impairment is defined as an impaired intellectual or mental function resulting from a mental illness, an intellectual disability, a personality disorder or a brain injury of neurological disorder (including dementia)

Part 8A of the Criminal Law Consolidation Act (CLCA) 1935 describes the legislative provisions related to 'mental competence to commit offences,' the defence of mental impairment, mental fitness to stand trial and options for Magistrates for those found unfit to stand trial.

A person is deemed to be 'mentally incompetent to commit an offence' if, at the time of the conduct alleged to give rise to the offence, the person is suffering from a mental impairment and, in consequence of the mental impairment:

- a) Does not know the nature and quality of the conduct; (or)
- b) Does not know that the conduct is wrong; (or)
- c) Is unable to control the conduct.

Where the issue of mental competence is raised, the question of the defendant's mental competence to commit the offence is separated from the remainder of the trial regarding the objective elements of the offence. The court may require the defendant to undergo an examination by a psychiatrist or other appropriate expert and results are reported to the court. If the court finds that a defendant was mentally incompetent to commit the offence the court must then determine whether the objective elements of the offence are established. If the objective elements are established, the court must find the defendant not guilty of the offence but declare the defendant to be liable to supervision; otherwise the defendant is found not guilty and discharged.

Under the CLCA the defence of 'mental impairment' is described as follows, an individual who is suffering from a mental impairment is one with any or all of the following:

- 2) Mental illness
- 3) Intellectual disability

#### 4) Disability resulting from senility but not intoxication.

For individuals placed on a supervision order the court may release the defendant unconditionally, commit the defendant to detention, or release the defendant with conditions. If the court makes a supervision order it must fix a limiting term equivalent to the period of imprisonment or supervision that would in the courts opinion have been appropriate if the defendant's mental impairment had not been a consideration and they had been convicted of the offence of which the objective elements have been established.

The Criminal Law (Sentencing Act) 1988 outlines the options for Magistrates Courts in relation to summary or minor indictable offences where the defendant has a mental impairment. The provisions described by the Act are as follows:

1. If the court finds a defendant guilty of a summary or minor indictable offence it may release the defendant without conviction or penalty if it is satisfied that the defendant suffers from a mental impairment that explains and extenuates, at least to some extent, the conduct that forms the subject matter of the offence; and has completed, or is participating to a satisfactory extent in an intervention program, and recognises that he or she suffers from the impairment and is making an effort to overcome behavioural problems associated with it; and that this would not involve an unacceptable safety risk.
2. A court may, at any time before a charge of a summary or minor indictable offence has been finally determined, dismiss the charge if the conditions described above are met and that if a finding of guilt were made the court would not make an order for compensation, loss or damage resulting from the offence.
3. The Magistrates Court may also release the defendant on an undertaking to complete an intervention program, to appear before the determination of the charge after completion of the program or if they fail to complete the program. (The South Australian Magistrates Court Diversion Program and Treatment Intervention Program are included in this option).

The Criminal Law (Sentencing Act) 1988 includes provisions that are relevant to the Magistrates Court Diversion and Treatment Intervention Programs, which are described in detail at a later stage of this report.

### **Tasmania**

The Mental Health Act 2013 states that a person is taken to have a mental illness if he or she experiences, temporarily, repeatedly or continuity a serious impairment of thought (which may include delusions); or a serious impairment of mood, volition, perception or cognition; and nothing prevents the serious or permanent physiological, biochemical or psychological effects of alcohol use or drug taking from being regarded as an indication that the person has a mental illness. Under this Act, a person is not to be taken to have a mental illness by reason only of the person's intoxication (however induced), intellectual or physical disability, acquired brain injury or acquired brain injury.

Under the Mental Health Act 2013, if an individual in custody is reasonably believed by police or a mental health officer to have a mental illness and it is determined that the person should be examined to see if he or she needs to be assessed against assessment and treatment criteria and the person's safety or that of others is likely to be at risk, the person can be placed in protective custody. This allows the officer to escort them to an approved assessment centre. In situations where an individual is charged with an offence, the Magistrate may allow bail for this to take place. If charged with an offence individuals can be remanded in custody to a correctional centre and then transferred via the Corrections Act 1997 to the secure mental health facility for assessment and treatment. Direct transfer from court to the secure mental health inpatient facility is also possible. Admission to the secure mental inpatient facility requires the approval of the Chief Forensic Psychiatrist.

S 16 of the The Criminal Code defines the criteria for a defence due to a mental disorder. The Criminal Justice (Mental Impairment) Act 1999 outlines the disposition provisions related to unfitness to stand trial (s18) and the defence of insanity (s21) for all courts. Under s8 of the Criminal Justice (Mental Impairment) Act, A person is deemed to be unfit to stand trial for an

offence if because the person's mental processes are disordered or impaired or for any other reason they are unable to understand the charge, unable to plead or exercise the right of challenge, unable to understand the nature of or to follow the course of the proceedings or unable to make a defence or answer the charge.

If the question of a defendant's fitness to stand trial is reserved for investigation the court may admit the defendant to bail on conditions, remand the defendant in custody or order that the defendant be detained in a secure mental health unit or make another order that it thinks is appropriate for the custody or detention of the defendant. In cases before a Supreme Court a jury must determine the issue of whether the defendant is fit to stand trial. If an individual is deemed to be unfit to stand trial, the jury must determine whether or not the defendant is likely to become fit during the next 12 months. If the accused is not deemed to be fit to stand trial within 12 months a special hearing takes place. The findings of the special hearing for the defendant include: not guilty of any offence; not guilty of the offence with which they were charged, but a finding cannot be made that the defendant is not guilty of an alternative offence; not guilty of the offence on the ground of insanity; or, a finding cannot be made.

On a finding of not guilty on the ground of insanity, the Court can make a Restriction order, release the defendant and make a Supervision Order, make a Treatment Order, release the defendant with conditions or release the defendant unconditionally. The Supreme Court can place a person on a Restriction Order or Supervision Order if the person is found unfit to plead or not guilty by reason of insanity.

Assessment, Hospital and Restriction Orders are also available as sentencing options under the Sentencing Act 1997 (Part 10). In cases where the person would have been sentenced to a term of imprisonment, had they not been found unfit to plead or not guilty by reason of insanity, a Restriction Order can be made. Restriction Orders require a person to be admitted and detained in a secure mental health unit until the order is discharged by the Supreme Court. The court can order a person to submit to a Supervision Order, which can impose a range of conditions related to treatment. The Mental Health Review Tribunal is required to review all persons subject to Restriction and Supervision Orders.

An alternative option for defendants who have a mental illness and or impaired intellectual functioning who meet eligibility criteria is provided by the Tasmanian Diversion List Program which is described at a later stage of this report. The legislation relevant to the Diversion List Program includes the Sentencing Act 1997 and the Bail Act 1994.

### **Australian Capital Territory**

Under the Mental Health Treatment and Care Act 1994, a mental illness is defined as an underlying pathological infirmity of the mind, whether long or short in duration and whether permanent or temporary, but does not include a condition (or reactive condition) resulting from the reaction of a healthy mind to extraordinary stimuli (e.g. drugs). Mental Health Treatment and Care Act provisions do not include intellectual disability; however s27 of the Criminal Code 2002 defines mental impairment as including senility, intellectual disability, mental illness, brain damage and severe personality disorder.

Under the Crimes Act 1900, s309 outlines that individuals who are deemed to be requiring assessment for immediate treatment or care (inpatient) because of mental impairment are transferred from the court to the mental health assessment unit (Emergency Department) of the Canberra Hospital. From there they can be admitted for inpatient assessment and care. In this circumstance, charges are held over until they are well enough to attend court. If the individual is deemed to be not in need of immediate treatment, they are released to the custody of the Australian Federal Police and returned to court.

Division 13.6 of the Crimes Act outlines the powers of Magistrates in summary proceedings against mentally impaired people. In cases of summary offences and indictable offences that may be heard summarily, if the Magistrate is satisfied that the accused is mentally impaired and on outline of the facts to be alleged in the proceedings or any other evidence considered relevant, the Magistrate deems it appropriate, the Magistrate has the power to dismiss the charges and require the accused to submit to the jurisdiction of ACAT to make a mental health order, or may dismiss the charge unconditionally.

If the question of fitness to plead is raised in the Magistrates Court and the court is satisfied that there is a real and substantial question the Court proceed with an investigation. The Court may make 1 or more of the following courses of action: grant bail, remand in custody in an appropriate place, order an examination and report by the psychiatrist or other health practitioner, discharge the jury if empanelled, any other order considered appropriate. On consideration of available evidence or submissions the Court must decide whether the defendant is unfit to plead and if unfit, whether they are likely to become fit within 12 months.

In cases where a person is found unfit to plead and unlikely to become fit to plead in the next 12 months, the Supreme Court or Magistrates Court will hold a special hearing. Supreme Court special hearings are primarily trial by jury unless the Court is satisfied that the accused is capable of electing to trial by single judge or their guardian does so where the accused is incapable. Special hearings for non-serious offences are primarily heard by a single judge. Possible verdicts at special hearings include: that the accused engaged in the conduct required for the offence charged (or alternative offence), or not guilty of the offence charged.

In the case of acquittal at special hearings of a non-serious offence (those that do not involve violence or acts endangering life), where the judge is satisfied that the accused engaged in the conduct of the offence, and in cases of non-acquittal, the Supreme Court or Magistrates may make orders considered appropriate including that the accused be detained in custody until the ACT Civil and Administrative Review Tribunal orders otherwise, and or that the accused submit to the jurisdiction of the ACAT to allow them to make a mental health order. Where special hearings are held, if the Supreme or Magistrates Court makes an order that the accused be detained in custody it must nominate a term that is the best estimate of the sentence it would have considered appropriate if fitness to plead was not a consideration. Where the offence is one involving violence or endangering life, the Supreme or Magistrates Court will order that the accused be detained in custody until ACAT orders otherwise.

If the accused person is found to be unfit to plead by the Supreme or Magistrates Court and the charge is for an offence punishable by imprisonment, and, is subject to S319 of the Crimes Act, they then must submit to the jurisdiction of the ACAT for consideration of a mental health order (e.g. psychiatric treatment order).

## **Northern Territory**

Under the Mental Health Act 2014, a mental illness is defined as a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person in one or more of the areas of thought, mood, volition, perception, orientation or memory and is characterised by the presence of at least one of the following: delusions; hallucinations, serious disorders of the stream or form of thought; or serious disturbances of mood. A person is not considered to have a mental illness merely because they are intellectually disabled, use alcohol or drugs, have acquired brain damage or have a personality disorder.

The Mental Health Act 2014 (Part 10) describes the powers of the courts relating to assessment, admission, dismissal of charge and voluntary treatment plans.

The court can request from the Chief Health Officer (CHO) advice regarding the need for treatment. In this situation, the proceedings may be adjourned. Subject to advice from the CHO, the court can make an assessment order (inpatient or outpatient). The court can request from the CHO a certificate that states whether at the time of carrying out the conduct resulting in the alleged offence, the person was suffering from a mental illness or mental disturbance and whether this was likely to have materially contributed to the conduct. Pending this advice, the court may dismiss the charge or proceed according to law.

In situations where the court is exercising summary jurisdiction in the proceedings and the proceedings are not for a committal or preliminary hearing and the court is of the opinion that if the person were found guilty the court would dismiss the charge unconditionally or decline to record a condition, the court may make an order or dismiss the charge at any time if in the opinion of the court the person may require treatment or care under the Mental Health Act.

The Criminal Code Act 2014 (Part 11A) describes the circumstances related to the defence of 'mental impairment' and the issues associated with unfitness to stand trial. Its provisions relate to proceedings in the Supreme Court. Under the Criminal Code Act 2014 mental illness means an underlying pathological infirmity of the mind, whether of long or short duration and whether permanent or temporary, but does not include a condition that results from the reaction of a healthy mind to extraordinary stimuli. Mental impairment includes senility, intellectual disability, mental illness, brain damage and involuntary intoxication. A defence of mental impairment is established if the court (Supreme) finds that a person charged with an offence was, at the time of carrying out the conduct constituting the offence suffering from a mental impairment and as a consequence of that impairment:

1. he or she did not know the nature and quality of the conduct;
2. he or she did not know that the conduct was wrong; or
3. he or she was not able to control his or her actions.

A person charged with an offence is unfit to stand trial if the person is:

1. unable to understand the nature of the charge, or
2. unable to plead to the charge or exercise the right of challenge; or
3. unable to understand the nature of the trial, or
4. unable to follow proceedings; or
5. unable to understand the substantial effect of any evidence that may be given in support of the prosecution; or
6. unable to give instructions to his or her legal counsel.

Where a person has been found to be not guilty because of mental impairment the court must declare that they are liable to a Supervision Order (custodial or non-custodial), or that they be released. Persons subject to a custodial order must be committed to custody in a prison or another 'appropriate place.' Supervision Orders are for an indefinite term, but are subject to review, at least annually and can be varied or revoked by the Court. When the order is made a nominal term is set which is equivalent to the sentence of imprisonment that would have been imposed if the person had been found guilty. At the end of the nominal term, a major review is conducted. On completing the major review the court must release the supervised person unconditionally unless it considers that the person's or public's safety is at risk.

Under s78 of the Mental Health Act, if an individual has pleaded guilty to an offence or has been found guilty of an offence, and the court is of the opinion that the person suffers from a mental illness or disturbance that is likely to have contributed to the conduct constituting the offence, and deems it appropriate, the court may issue treatment order in collaboration with the CHO. The court must review the person's participation in the plan at a time not exceeding 6 months. Charges may then be dismissed or dealt with under the Sentencing Act (S78).

## Referral

Court Liaison Services in all jurisdictions had a broad range of referring agencies including police, custody staff, legal representative, Magistrate, Judge, family, NGO's, public and private mental health providers, self referral. In NSW Corrective Service Staff, Police, Court Officers, Solicitors commonly refer to the CLS. Other referral sources included Local Health District Services, MERIT, Family, self referrals, other treatment providers, Forensic Hospital, Community Forensic Mental Health Service, Prison Hospitals (e.g. Long Bay, Silverwater), mental health screening units. In the Northern Territory, referrals to the Forensic Mental Health Service are made by the local health service Community Assessment Team, prisons and Magistrates. In cases where an individual in the local watch house requires mental health assessment, the local mental health service would undertake these.

In several jurisdictions (QLD, WA, VIC, ACT, NSW) mental health data bases are used to cross check custody and court lists to determine whether a mental health history or current treatment plan was in place for individuals. This process assists CLS teams to identify people involved in the criminal justice system who are currently subject to mental health act legislative provisions or who may be experiencing mental illness.

Standardised screening tools are used only in NSW for agencies who make a referral to the CLS. The service has broad and inclusive criteria for the identification of mental illness. Offenders who display overt aggressive, unusual, bizarre or suicidal behaviour; have an intellectual impairment; have communication difficulties; display significant drug and/or alcohol intoxication or withdrawal symptoms; have a past or current need for psychiatric medication; have a history of mental health contact; or previous suicide attempt; are suspected of having a mental illness that requires further evaluation.

## Assessment

In all jurisdictions assessments are undertaken by clinical members of the CLS. Assessments are performed in both court and watch house/police cell environments. Mental state examinations were described as the form of most assessments. Standardised assessment tools were described by all jurisdictions with the exception of South Australia and Tasmania. Risk assessment was described as an essential feature of each assessment including harm to self/others, substance abuse, treatment adherence.

The Northern Territory Forensic Mental Health Service noted that the majority of its assessment and treatment was provided as an in-reach service in prison. In contrast to other jurisdictions, general mental health services conduct assessments in the watch house in the Northern Territory.

In Victoria, it was noted that a standard mainstream mental health assessment is performed. Specific forensic offender assessment is not conducted by the CLS (e.g. violence, stalking, and sex offender specialist assessments).

The environment in which assessments are conducted was often described as less than ideal from a clinical perspective, as in watch house/police cell settings, privacy is limited and noise levels can be high. The need for brief assessments, which incorporate knowledge of past and current mental health treatment, was described by several services.

Recommendations for further assessment and or treatment in inpatient or community mental health settings were options available for most CLS teams.

None of the jurisdictions described a waiting list for CLS assessments. Three jurisdictions described a process of determining priority for assessments, New South Wales, Victoria and Queensland. In Victoria, individuals with a previous or current diagnosis of serious mental illness, those where there is an identified risk (self harm, suicide, harm to others) and those currently in custody are prioritised for assessment. In Queensland a detailed list of criteria are used to determine priority for assessment:

- Expression of active suicidal ideation
- Thought to have been exhibiting bizarre behaviour suggestive of a mental illness

- Subject to a recommendation for assessment under the Mental Health Act 2000, and returning to court from custody
- Charged with the following offences: murder, attempt murder, arson, unlawful stalking
- Identified by police watch house health staff on reception into custody as having a history of suicidal ideation; a history of previous contact with mental health professionals,; or currently being prescribed psychotropic medication
- Open clients of a mental health service
- Requesting to be seen by a mental health clinician.

In New South Wales detainees in custody were given priority as they cannot access external health practitioners. Anyone with significant morbidity such as risk of self harm, harm to others or in acute distress is given priority. Requests for assessment from the Magistrate are also prioritised.

Each participating service provided information regarding the types of client related data that is routinely recorded, and that may be accessible for the purpose of benchmarking (subject to appropriate ethical and organisational approval processes). A table is located in Appendix 3 with the details of service responses.

The professions of staff conducting Court Liaison Service assessments in each jurisdiction are described below:

**Table 5 – Staff involved in court liaison assessments**

Jurisdiction	NSW	VIC	QLD	WA	SA	TAS	ACT	NT <sup>1</sup>
Nurses	✓ 100%	✓ 80%	✓ 95%	✓ 80%		✓ 75%		✓ 33%
Occupational Therapist		✓ 5%				✓ 25%		
Social Workers		✓ 15%	0.5%	✓ 20%	✓ 100%		✓ 100%	
Psychologists								✓ 33%
Psychiatrists	✓ A. J.	✓ A	✓ 4.5%				✓ A	✓ 33%

1- For the Northern Territory assessments are not Court Liaison Specific – this is the general Forensic Mental Health Service.

A- denotes that advice may be sought from psychiatrist on an as required basis.

J – denotes that a proportion of assessments are undertaken on a joint basis (Clinical Nurse Consultant and Psychiatrist).

## Feedback to courts

The form and level of detail that Court Liaison Services provide to the courts on assessments that have been undertaken varied between jurisdictions. In Victoria and Queensland, the CLS provide brief written feedback through the use of a proforma which includes information such as the person's current mental health treatment needs & status under the relevant mental health legislation and recommendations if the person is detained or released.

Written and verbal information regarding mental health assessments are provided to the court by the Western Australian, South Australian and Tasmanian Court Liaison Services. In Tasmania it was noted that the court generally requires rapid information and thus the majority of information is provided verbally. In situations where cases are more complex, a written report may be provided.

Lengthier feedback to the courts was described by the Australian Capital Territory and New South Wales CLS's. In the Australian Capital Territory a full copy of the standardised assessment form is given to the Magistrate, prosecution and defence. The New South Wales CLS provide a written 2-3 page standardised typed report is provided. This is a descriptive report rather than a brief tick box proforma. In New South Wales and the ACT, if required, the CLS team provide verbal evidence to the court. Verbal evidence is estimated to be provided for 15% of cases, depending on the court location.

## Medico-legal or Judicial reporting

Due to the requirement for Court Liaison Services to provide rapid and timely advice to the court to facilitate decision making, services described the aim to keep more detailed medico-legal or judicial report writing to a reasonable minimum. In some jurisdictions advice regarding the need for more detailed assessment and reporting is warranted is provided to the court by the CLS. While terminology varies between jurisdictions, this type of reporting is generally understood to be a more comprehensive document which is usually produced with (or in some cases by) a forensic psychiatrist after detailed assessment.

In the Australian Capital Territory, Queensland, South Australia and Victoria – formal medico-legal reports are not regularly provided by the Court Liaison Service. In these jurisdictions the broader Forensic Mental Health Service meets this need. The Forensic Mental Health Service in ACT performs this function.

In New South Wales the court can request a medico-legal psychiatric report from the Court Liaison Service. These are often undertaken by consultant psychiatrists in prisons. They often involve indictable and summary offences. These are more detailed (usually 6-7 pages in length). Reports of this nature usually take approximately 6 weeks to produce and inmates are transported to Sydney for these requests to be met.

In the Northern Territory Magistrates are able to mandate the FMHS to produce a formal medico-legal report. A copy of the report is sent to the Chief Executive of Northern Territory Mental Health. A brief is prepared regarding impairment at the time of the offence, and a certificate is provided to the court. Certificates regarding fitness for trial and unsoundness of mind are provided to the court by Northern Territory Mental Health after a comprehensive medico legal report is prepared by the FMHS and provided to the Chief Executive of Northern Territory Mental Health. In addition, the FMHS provides reports to the courts for forensic patients at intervals that are prescribed by the Magistrate.

Tasmanian courts can order that psychiatric or psychological reports be produced. While the Forensic MHS meets the majority of this need, the Court Liaison Service will produce medico-legal reports in cases that considered simple in nature.

## Mental health treatment

In all CLS services surveyed, limited (if any) direct mental health treatment was provided by the service. Clinical service provision was limited to brief short term support, assistance in obtaining medication where required during custody, consultation liaison with custodial health staff and local area mental health staff. Ongoing mental health care was provided by local area mental health teams, General Practitioners, private or non government providers. Mental health service provision for individuals remanded in custody varies between jurisdictions and may include prison mental health service providers or forensic inpatient services.

In the Northern Territory the Forensic Mental Health Service provides ongoing mental health treatment to people in prison with a mental illness. A small number of non custodial (community) orders are also case managed by the FMHS. This group of clients were described as those who had a high risk of violent behaviour. It was noted that community clients presented significant challenges to the FMHS in cases where they lived in remote areas.

## Legal outcomes

Legal outcomes for individuals with mental illness who are charged with an offence and may be eligible for diversion to the health sector varied across jurisdictions. Depending on the relevant issues, in most jurisdictions (ACT, VIC, QLD, TAS) the full range of legal outcomes were described as being possible.

In New South Wales Section 33, 32, bond or bail may be applied. A residual group are sent into custody and may be sentenced. The service also has a gaol diversion in MRRC (Silverwater), Wellington, Moura and Kempsey Correctional Centres. The gaol diversion program is staffed by a Clinical Nurse Consultant in each of the centres. Where an individual who has been charged with a summary offence on remand in the centre is assessed as having mental health needs, a letter is sent by the gaol diversion staff member to the Magistrate with a recommendation for diversion.

In Queensland, depending on circumstances, the accused may be released on bail, receive parole/probation, the case may be referred to MHC to determine fitness, insanity defence, forensic orders; charges may be dropped by DPP; or the matter dealt with according to due process.

In South Australia the accused may be released on bail, matters may be dismissed, parole/probation granted, a s269 (Part A) order (limiting term order) may be made, or the matter dealt with according to law.

In Tasmania the full range of outcomes are possible: imprisonment, suspended sentence, probation, community orders, good behaviour bond, Mental Health Act 2013 order, matter dismissed with no conviction recorded (note that this will still be recorded on the criminal history).

In Western Australia, the range of possible outcomes was described as follows: released on bail (possible form 1 under MHA, released on bail (with condition to attend community mental health), Hospital Order (CLIMIA), or the matter can be dealt with according to law.

## Part Three: Mental Health Courts and Diversion Lists

Mental health courts and diversion lists offer a different model for individuals with mental illness who have been charged with an offence. Currently, four Australian jurisdictions have developed mental health court or diversion lists programs. Mental health courts are specialist courts which aim to address the needs of individuals who have been charged with an offence and who have mental illness. The principle that underpins the mental health court or diversion list approach is that of 'therapeutic jurisprudence' which seeks to use the law as a therapeutic agent (8). Payne (9) provides the following definition, "Specialty courts...are typically defined as new criminal court structures and procedures, developed to manage and deal with specific offender populations, where it is recognised that traditional criminal justice procedures have not been effective." Procedural features of specialty courts include a level of judicial monitoring and cross agency collaboration. The United States Council of State Governments Justice Centre 2008, p4, cited in Richardson and McSherry, 2010 (6)) define a mental health court as,

*"A specialised court docket for certain defendants with mental illness that substitutes a problem-solving model for traditional model of criminal court processing. Participants are identified through mental health screening and assessments and voluntarily participate in a judicially supervised treatment plan developed jointly by a team of court staff and mental health professionals. Incentives reward adherence to the treatment plan or other court conditions, non-adherence may be sanctioned, and successor graduation is defined according to predetermined criteria."*

Scott et al (10), further describe the key components of Mental Health Courts as a judge trained in mental health issues and a 'treatment team' of mental health and legal professionals.

Variation between specialist courts for individuals with mental illness has been described in Australia (6). Each of the Australian mental health court programs are listed in this section.

## Service Descriptions

### Victoria

The Assessment and Referral Court is a specialist court list developed by the Department of Justice and Magistrates' Court of Victoria in 2010 to meet the needs of accused persons who have a mental illness and/or a cognitive impairment. The Courts and Other Justice Legislation Amendment Bill 2013 amended the Magistrates Court Act 1989 to remove offence-based eligibility restrictions, and modify the plea process within the ARC List. The List is located at the Melbourne Magistrates Court and works collaboratively with the Court Integrated Services Program. A high percentage of ARC participants are provided with case management prior to their involvement in the List. ARC clinical/ case advisors provide clinical case management which may include psychological assessment, referral to welfare, health, mental health, disability, housing services and/or drug and alcohol treatment. The List is a pre-sentence plea court with program duration of up to 12 months. Members of the ARC team are employed as court officers by Court Services Victoria. The ARC program is currently a pilot with funding to operate until June 2015. A funding bid will be put to the Victorian Government for a continuation of the program.

The Aims of the Assessment and Referral List are to:

- Reduce the risk of harm to the community by addressing the underlying factors that contribute to offending behaviour.
- Improve the health and wellbeing of accused persons with a mental impairment by facilitating access to appropriate treatment and other support services
- Increase public confidence in the criminal justice system by improving court processes and increasing options available to courts in responding to accused persons with a mental impairment
- Reduce the number of offenders with a mental impairment received into the prison system.

#### Eligibility Criteria

1. The accused person is charged with a criminal offence listed at Melbourne Magistrates Court
2. The accused person has not been charged with an excluded criminal offence that involves serious violence or serious sexual assault. For sex offences a Sex Offences List is conducted first, the Magistrate presiding determines whether a referral to the ARC is appropriate based on this process.
3. The accused person has (or is likely to have) a mental illness, intellectual disability, acquired brain injury, autism spectrum disorder and/or a neurological impairment, including dementia.
4. The disorder/s cause/s a substantially reduced capacity in at least one of the areas of self-care, self-management, social interaction or communication.
5. The accused person would derive benefit from receiving co-ordinated services in accordance with an individual support plan. These may include psychological assessment; welfare, health, mental health, and/or disability services; drug and alcohol treatment; or housing and support services; and/or would benefit from participation in a problem solving court process
6. The accused person consents to participate in the List, including attending court regularly and meeting with ARC staff.

A notable feature of the Assessment and Referral Court program is that it is able to access discretionary funds for a variety of assessment and rehabilitative functions ranging from health and fitness programs, brief crisis accommodation, services to assist with family reconnection and vocational training. If the funding is for recreational purposes ie gym membership the participants who access these discretionary funds are required to make a part contribution to the costs associated. The assessments are fully funded by the program. Participants of the ARC program are described as an older population with a history of high rates of recidivism and multiple incarcerations. They are described as a population that has previously been difficult to engage in health and social service programs, with limited connection to health or disability services. A large proportion of program participants are

described as having a diagnosis of personality disorder. The presence of acquired brain injury diagnosis in participants has been identified as an increasing trend.

## Western Australia

The Western Australian Start Court Program is the newest of the mental health courts in Australia. The Start Court is an interagency program involving the Department of Health (State Forensic Mental Health Service), WA Mental Health Commission, Department of the Attorney General, Department of Corrective Services, Legal Aid, Police Prosecution and Outcare (a Non Government Agency). The program is based in the Central Law Courts (Perth) and is led by a Magistrate. It operates on a problem solving/therapeutic court model.

The aims of the Start Court Program are to:

- Help reduce an individual's future contact with the criminal justice system
- Increase an individual's connection with treatment support services and re-engage and link individuals with the most appropriate services to help manage their mental illness
- Improve a participant's mental health
- Collect data to evaluate and determine what needs are being met and seek areas that could be improved
- Improve public safety and public health by reducing recidivism and ensuring that those who need help receive it.

Participants engage with the program while on bail for a period of approximately 6 months.

A key feature of the Start Court is that it is operated by a dedicated, multi-disciplinary team under the guidance of a dedicated Magistrate. This model provides significant benefits. Non-clinical staff are able to develop a strong understanding of the needs of people with mental health issues through access to training, proximity to clinical expertise, and constant interaction with Court participants and their families and carers. The clinical team, NGO support staff and the Community Corrections Officer share an office and attend joint care planning meetings, enabling effective information sharing and helping to ensure that Court participants receive a seamless, holistic service. The existence of a dedicated Police Prosecutor and defence lawyers facilitates informed and efficient legal negotiations.

### Eligibility

1. Participants must have a mental illness (no diagnosis is excluded).
2. Participants must volunteer for the program and consent to participate in the Start Court and its requirements.
3. Participants must be within the community (i.e. eligible for bail).
4. A guilty plea is a requirement to commence the program. However, assessment for the program and the provision of support may be commenced prior to a plea being entered.

### Exclusion

1. Individuals who have a primary diagnosis of intellectual disability or drug misuse are ineligible as there are other specialised court programs that target these groups.
2. Those with no mental disorder
3. Those refused bail and remanded in custody
4. Those on serious charges that require immediate remand in custody
5. Those deemed to pose a high risk to themselves or to the community
6. Those who do not voluntarily agree to follow the program as a condition of bail.

The Start Court is open to adults only. A separate program for children, known as Links, operates out of the Children's Court of Western Australia. Links differs from the Start Court in that it is not a dedicated court. However, like the Start Court, it offers both clinical and community support to program participants.

The Start Court and Links pilot programs commenced in 2013 and are currently funded to 30 June 2015. Ongoing funding is being sought through the State Budget process.

An evaluation of the Mental Health Court Diversion and Support Program (encompassing both the Start Court and Links) was completed in December 2014. The evaluation found that the Start Court is highly valued by all stakeholders and operates in accordance with the principles of good practice. It was deemed too early to draw firm conclusions about the Start Court's impact on client outcomes, though preliminary data relating to clinical outcomes was encouraging. Similar findings were made in respect of the Links program.

## South Australia

The South Australian Magistrates Court Diversion Program (MCDP) was the first mental health court in Australia when established in 1999. It commenced as a pilot and gained ongoing funding in 2001. The MCDP aimed to assist the Court in the identification and management of defendants with a mental impairment and began as an alternative to the complex mental impairment defence. In recognition of the co-occurrence of substance dependence with a mental illness and the increased risk of offending that is associated; the Treatment Intervention Court (TIC) has been formed to replace the Magistrates Court Diversion Program. Where TIC operates it has replaced the Magistrates Court Diversion Program, and more recently the Drug Court program, which only operates at the Adelaide Magistrates Court and is a more intensive 12 month program specifically for substance dependent offenders likely to be imprisoned.

The TIC in all but the Adelaide Magistrates Court is a six month voluntary program with three treatment streams to address issues associated with mental impairment, co-occurring mental impairment and substance dependence,. The mental impairment stream provides the same level of service formerly offered by the MCDP. In the primary diagnoses of within the category of mental impairment and co-morbid streams is mental illness, including personality disorders. A small proportion has an intellectual disability or acquired brain injury.

The mental impairment stream provides an opportunity for eligible individuals who have been charged with minor indictable or summary offences to be heard in the Magistrates Court of South Australia, to voluntarily address their mental health and/or disability needs and offending behaviours, while legal proceedings are adjourned for approximately 6 months. During this time the program staff link the individual to relevant services in the community and monitors their progress. Participation in the program is in accordance with the provisions of the Bail Act 1985.

Participants in the co-morbid stream must agree to address their drug use and specialised drug treatment services are available and weekly random drug testing is mandatory. The person's involvement and progress is reported back to the court and the Magistrate, police and defence lawyers may use this information in dealing further with the case. The Magistrate reviews the individual at intervals as defined by the program stream ranging from fortnightly (in the early stages for individuals with mental impairment and/or substance use), to monthly (at the later stage of the program) to reinforce and reward compliance with treatment regimes and lifestyle changes and to take alternative action if the interventions are not working or if the individual is not complying with the interventions. The Magistrate may excuse the defendant from appearing in court for their reviews; however, all participants are required to appear for a final determination at the end of the adjournment period.

At the final hearing, the Magistrate makes a determination taking into account the participant's involvement in the Program. Depending on the nature of the offences, the Magistrate may dismiss the matter or convict without penalty (S19C of the Criminal Law (Sentencing Act) 1988). However the fact that a person has failed to make satisfactory progress is not relevant to the sentencing process. (Section 10 Criminal Law (Sentencing Act) 1988). Program staff are employed by the Courts Administration Authority and are responsible for assessment, case coordination, monitoring and reporting to the Court on progress.

### Eligibility Criteria

TIC targets adults and youths (13-18) who have been charged with a minor indictable or summary offence, where there is a link between the offending behaviour and mental impairment and/or substance dependence.

To be eligible a defendant must:

1. Be charged with an offence that is related to drug use (but not necessarily a drug offence) and/or
2. Have a mental impairment and be charged with an offence that is related to the mental impairment.

Mental impairment is defined as:

- mental illness
- intellectual disability
- a personality disorder
- acquired brain injury, or
- a neurological disorder including dementia

Defendants with a mental impairment may only be required to agree to the objective elements of the charges before being accepted onto TIC whereas defendants with substance abuse as the primary issue must be prepared to plead guilty to their most serious offences.

The Program aims to achieve the following outcomes:

- To reduce re-offending
- To improve mental and physical health and social functioning
- To cease or significantly reduce drug use.

## Tasmania

The Tasmanian Diversion List is a specialist court list targeting defendants who have a mental illness and/or impaired intellectual functioning including acquired brain injury. It is a therapeutic alternative to the general magistrate court process and provides a voluntary option for people with a mental illness or cognitive disability who have minor charges and who want to participate in treatment and rehabilitation programs to address their mental health and any related issues that may have led to their offending behaviours. It is a less formal but structured process that occurs in the Magistrates Court in Hobart. The Diversion List defendants offend usually in a nuisance way i.e. shoplifting, disorderly conduct and similar and the general court lists are not suited to consider the reasons behind the offending behaviour of this group of offenders. They are usually repeat offenders and present problems in sentencing as they often have little money with which to pay a fine.

Originally named the Mental Health Diversion List, the program commenced operation as a pilot program in the Hobart registry of the Magistrates Court of Tasmania in 2007. The program has evolved since this time and now receives ongoing funding. The Diversion List operates with dedicated Magistrates in the Hobart, Launceston, Devonport and Burnie registries of the Tasmanian Magistrates Court.

Staff of the program are employed by the Forensic Mental Health Service and the team perform the functions of a Court Liaison Service in addition to meeting the needs of the Diversion List. The program duration for individuals who are diverted via the diversion list is usually for a period of 6 months.

### Eligibility Criteria

1. The defendant is charged with a summary offence or an indictable offence triable summarily.
2. The defendant has not been charged with an excluded criminal offence that involves serious violence or sexual assault, unless the court, at its discretion considers the harm minor.
3. The defendant has (or is likely to have) a mental illness, intellectual disability, acquired brain injury, autism spectrum disorder and/or a neurological impairment including dementia.
4. The impairment/s cause/s a substantially reduced capacity in at least one of the areas of self-care, self-management, social interaction or communication.
5. A connection exists between the mental impairment and/or mental illness and the offending behaviour, the defendant being likely to derive benefit from participation in a problem-solving court process.
6. There is no formal requirement that the defendant pleads guilty to any offence before he or she is accepted onto the program, however the objective facts of the offence cannot be contested.
7. The defendant may not be eligible if the defendant, based on the opinion of the Forensic Mental Health Services (Court Liaison) staff has exhausted all reasonable and available treatment and/or support services for the mental illness and/or impaired intellectual functioning.
8. The defendant consents to participate in the List, including attending court regularly and following the reasonable direction of the Forensic Mental Health Service (Court Liaison) staff.

## Court Diversion Programs – Staff Profile

Participating services were asked to describe the team staffing profile. Note that the number of courts that are included in each program is listed in the previous description for each jurisdiction. Estimated resident population for each jurisdiction has been taken from Australian Bureau of Statistics June 2014. Population >17 years used for all jurisdictions with the exception of ACT who see children and adolescents (total population recorded for ACT). Figures have been rounded to the nearest thousand.

**Table 6 - Staffing profile for Court Diversion Program and estimated population eligible for service**

Jurisdiction	VIC	WA <sup>1</sup>	SA <sup>2</sup>	TAS <sup>3</sup>
Estimated Population eligible for program	4,566,000	1,950,000	1,236,000	407,000
Nurses		2		1
Social Workers	2	1	7	
				1
Psychologists	2		1.5	F
Psychiatrists		0.4		F
Urine Drug Screener			1.5	
Team Leader/Manager	1 (Nurse)	1 (Nurse)	1 Manager 1 Team Leader (Nurse)	
Administrative Support	data analyst (shared across court programs)	1	2	

1 – The WA Start Court team also includes 3FTE employed by an NGO (2 Community Support Coordinators & 1 Manager).

2 – The South Australian Treatment Intervention Program staffing profile incorporates the three treatment streams (Mental disorder, co-morbid mental disorder and substance dependence and substance dependence)

3 – In Tasmania, Court Liaison and the Mental Health Court Program are provided by the same team.

F – Denotes that the Forensic Mental Health Service provides some clinical service provision as required.

## Diversion – defining the concept

The term mental health ‘diversion’ has been defined in a number of ways in the relevant literature. Services were asked to describe mental health diversion from the perspective of their service by listing the goals that align with the concept. All jurisdictions identified the following as goals for the service: Improvement in mental health through the provision of treatment and support, Provision of treatment and processes support that is integrated with criminal justice, and Reduction in recidivism in individuals with serious mental illness. All jurisdictions with the exception of South Australia noted that reducing contact with the criminal justice system is a goal of the program.

## Points of criminal justice system where service is involved in diversion

Mental health court and diversion list programs may become an option for individuals at the stage in the criminal justice process of bail. Tasmania's service varies in that it meets both the requirements of court liaison and the Diversion List. All programs described having a role to play at the bail, plea and sentence stage of the process.

**Table 7 - Criminal justice system points of service involvement**

Jurisdiction	VIC	WA	SA	TAS <sup>1</sup>
Charge				✓
Prosecution				✓
Bail	✓	✓	✓	✓
Plea	✓	✓	✓	✓
Trial	✓			✓
Sentence	✓	✓	✓	✓

1 – in Tasmania, Court Liaison and the Mental Health Court Program are provided by the same team.

## Referral

Programs provided information regarding the referral process for prospective participants. In Tasmania, Western Australia and Victoria a broad range of referring agencies were described including legal representatives (described as the primary referring agent), police, defendants, Magistrates, family, mental health and other service providers. In South Australia legal representatives ask permission at court or the Magistrate at the first hearing generally refer people to the program.

## Assessment

In the majority of jurisdictions (South Australia, Tasmania, Western Australia), clinical assessments for eligibility for the program are undertaken by members of the program team. In Victoria, this process varies with the program sourcing private providers to undertake comprehensive psychiatric and psychological assessments on a fee for service basis.

Services were asked to indicate whether a standardised assessment process and or tools were used. Tasmania indicated that a psychiatric interview with offence analysis is conducted without the use of standardised tools. In South Australia a combination of clinical assessment and a range of psychometric tests are used if necessary (URICA – self report measure for stages of change (10); DASS – Depression, Anxiety and Stress Scales (11); GAINS-SS – Global Appraisal of Individual Needs Short Screener (12) ; VORAS (13) – risk screen to determine whether a more comprehensive risk assessment is indicated; HCR-20 (14) – risk assessment; WHO-ASSIST (15) to assess substance use and level of intervention required). Reports are provided to the court and are admissible evidence.

The Western Australian clinical team have developed an assessment (based on the standardised mental health assessment form), which allowed the clinicians to provide a

written report within a brief timeframe. The clinical assessment includes Mental State Examination; HoNOS (16); Life Skills Profile (17); and a brief risk assessment.

Each participating service provided information regarding the types of client related data that is routinely recorded, and that may be accessible for the purpose of benchmarking (subject to appropriate ethical and organisational approval processes). A table is located in Appendix 4 with the details of service responses.

## Mental Health Treatment

Mental health court and diversion list programs vary from court liaison service in that they have an ongoing role in coordinating and supervising treatment of individuals who have been diverted. Participants were asked to describe the treatment arrangements and providers for their jurisdiction.

In South Australia treatment is accessed from the health system beginning with the GP who is the central point for referral for psychiatric assessment and/or a mental health plan. Community mental health services are also utilised and specialist health services such as Disability SA, Brain Injury SA and mental health NGO's. Urine drug screening is used in monitoring of program compliance. The Magistrate reviews the individual every two months to reinforce and reward compliance with treatment regimes and lifestyle changes and to take alternative action if the interventions are not working or if the individual is not complying with the interventions.

In Tasmania public mental health services provide the majority of treatment. Other treatment service providers include Non Government Organisations (community support agencies), private psychology via mental health care plans initiated by General Practitioners, Forensic MHS, and private providers. Individuals present to the Magistrate on a monthly basis to review progress for what is usually a 6 month period.

For participants of the Victorian Assessment and Review Court Program treatment is provided by existing community services including Psychiatric Disability Rehabilitation Services (NGO's across Victoria that provide outreach, assistance, support, housing, etc.), public mental health services, GP's, private mental health providers. Feedback on progress is monitored by the Magistrate and ARC team, participants present to the Court generally on a monthly basis or more frequently if determined appropriate by the Magistrate. The ARC list clinical case management team provide comprehensive reports providing evidence that the person meets the legal criteria of the program. This may include copies of external assessments. A further written report is provided at each hearing until matters finalised.

In Western Australia the Start Court team provide an assessment of needs, short term prescribing of medication and crisis management (where required) and referral to external treatment providers. Long term psychosocial care is provided by a Non Government Organisation (Outcare). Clients present to the Magistrate at intervals determined by the Court to monitor progress and provide judicial supervision. Urine drug screening is used to monitor compliance.

## Legal outcomes

Legal outcomes for participants of mental health court programs are fairly similar across the programs. At a final hearing, the Magistrate makes a determination taking into account the participant's involvement in the Program. In all jurisdictions, the full range of legal outcomes are possible ranging from proceeding according to law (termination of program involvement), imprisonment (in rare cases where treatment engagement has been low and the program has not been completed), suspended sentence, probation, community service orders, good behaviour bond, and dismissal of matter. In cases where matters were dismissed, the appearance of the charge on the criminal history varied. In Tasmania, where charges are dismissed with no conviction recorded, the charge remains on the criminal history, whereas in Victoria a discharge with no conviction does not remain on the individual's history. Western Australia has the option for a conviction to be declared as a spent conviction. This results in limited disclosure as it is not listed on a National Police Certificate, however certain

government departments, licensing bodies as well as the Police and Courts of Law have exemptions under the *Spent Convictions Act 1988* and have access to convictions that have been spent.

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## Appendix 1 – List of stakeholders who were consulted for this report.

An initial letter was sent to State-wide Directors of Forensic Psychiatry in each jurisdiction seeking endorsement for the National project for mental health court diversion and liaison programs; to seek the assistance of diversion services in each jurisdiction; and to request advice with regard to the appropriate contact person(s) for mental health court liaison and court diversion services for each jurisdiction to take part in the survey.

Endorsement for the project was received by the following stakeholders:

Jurisdiction		
NSW	Prof. Karen Lines	A/CEO, Justice and Forensic Mental Health Network
VIC	Dr Maurice Magner	Clinical Director, Forensicare
QLD	Dr Edward Heffernan	Director, Queensland Forensic Mental Health Service
WA	Dr Edward Petch	State-wide Director of Forensic Mental Health
SA	Dr Ken O'Brien	State-wide Clinical Director of Forensic Mental Health Services
TAS	Dr Mike Jordan	Clinical Director of Forensic Mental Health Services
ACT	Dr Peter Norrie	Clinical Director, ACT Chief Psychiatrist
NT	Ms Emma Reid	A/General Manager of Forensic Mental Health

Key contacts in each of the Court Liaison and Mental Health Court Programs were nominated. The following representatives of each jurisdiction provided detailed information regarding their service and reviewed the material that is in this report.

Jurisdiction		
NSW	Prof. David Greenberg	Clinical Director, Statewide Court Liaison Service
VIC	Mr Danny Gamble	Manager, Mental Health Court Liaison Service
	Ms Viv Mortell	Program Manager, Assessment and Referral Court
QLD	Dr Velimir Kovacevic	Clinical Director, Court Liaison Service, South East QLD
	Ms Kerrie Gill	Team Leader, Court Liaison Service, South East QLD
WA	Ms Hannah Donaldson	Project Officer, Mental Health Commission
	Mr Damien Parke	A/Senior Project Manager, Mental Health Commission
	Mr Mark Hills	Statewide Forensic Mental Health Service Coordinator
	Dr Adam Brett	Consultant Psychiatrist, Start Court
SA	Ms Anna D'Alessandro	Coordinator, Forensic Court Service and Senior Forensic Social Worker, Forensic Mental Health Service
	Ms Sue King	Manager, Intervention Programs, Courts Administration Authority
TAS	Ms Marita O'Connell	Court Liaison Officer
ACT	Mr Ciaran Bird	Team Leader, Forensic Mental Health Service
NT	Ms Maraea Handley	Forensic Team Manager, Top End Mental Health Services

## Appendix 2 – Summary of legislative provisions related to mental illness and offending by Jurisdiction

Table A1: Mental Health Act or other relevant definitions of Mental Illness, Impairment or Disorder (terminology varies)

NSW	VIC	QLD	WA	SA	TAS	ACT	NT
<p>MH (Forensic Provisions) Act:  <b>Mental illness:</b> A condition that seriously impairs either temporarily or permanently the mental functioning of a person and is characterised by the presence in the person of any one or more of the following symptoms: delusions, hallucinations, serious disorder of thought form, severe disturbance of mood, and /or, sustained or repeated irrational behaviour.</p> <p><b>Mental disorder:</b> where behaviour is so irrational that there are reasonable grounds for deciding that the temporary care, treatment or control of the person is necessary to protect them or others from serious physical harm.</p>	<p>MHA: <b>Mental illness</b> is a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory.</p>	<p>MHA: <b>Mental illness</b> is a condition characterised by a clinically significant disturbance of thought, mood, perception or memory.</p>	<p>Under the MHA 1996, a person has a <b>mental illness</b> if the person suffers from a disturbance of thought, mood, volition, perception, orientation or memory that impairs judgment or behaviour to significant extent.</p> <p>Under the CLMIA: <b>mental illness</b> is an 'underlying pathological infirmity of the mind, whether of short or long duration and whether permanent or temporary, but does not include a condition that results from the reaction of a healthy mind to extraordinary stimuli'.</p> <p><b>Mental impairment</b> is defined as intellectual disability, mental illness, brain damage or senility.</p>	<p>MHA: <b>mental illness</b> means any illness or disorder of the mind.</p> <p>Criminal Law Consolidation Act 1935 describes an individual as suffering from mental impairment if they have a mental illness, intellectual disability and/or disability resulting from senility but not intoxication.</p> <p>Criminal Law Sentencing Act 1988: defines <b>mental impairment</b> as an impaired intellectual or mental function resulting from a mental illness, an intellectual disability a personality disorder or a brain injury of neurological disorder (including dementia).</p>	<p>The Mental Health Act 2013 states that a person is taken to have a <b>mental illness</b> if he or she experiences, temporarily, repeatedly or continually a serious impairment of thought (which may include delusions); or a serious impairment of mood, volition, perception or cognition; and nothing prevents the serious or permanent physiological, biochemical or psychological effects of alcohol use or drug taking from being regarded as an indication that the person has a mental illness.</p>	<p>MHA: <b>mental illness</b> is defined as an underlying pathological infirmity of the mind, whether long or short in duration and whether permanent or temporary, but does not include a condition (or reactive condition) resulting from the reaction of a health mind to extraordinary stimuli.</p> <p>Criminal Code 2002 defines <b>mental impairment</b> as including senility, intellectual disability, mental illness, brain damage and severe personality disorder.</p>	<p>MHA: <b>mental illness</b> is defined as a condition that seriously impairs, either temporarily or permanently, the mental functioning of a person in one or more of the areas of thought, mood, volition, perception, orientation or memory and is characterised by the presence of at least one of the following: delusions; hallucinations, serious disorders of the stream or form of thought; or serious disturbances of mood.</p>

**Table A2: Options available to custody officer (watch house or police cell) and Judges if detainee/ defendant appears to be mentally ill or mentally disordered by jurisdiction**

NSW	VIC	QLD	WA	SA	TAS	ACT	NT
<p>If it appears to Magistrate that the defendant is or was at the time of the offence, developmentally disabled, or suffering from a mental illness or suffering from a mental condition for which treatment is available in a mental health facility they may adjourn, grant bail, make any other order considered appropriate.</p>	<p>Where an individual is in a police cell or before a Court appears to be mentally ill transfer to an authorised mental health service for assessment and treatment if required are possible via an Assessment Order under the provisions of MHA. If deemed appropriate, the Magistrate may grant bail for this to take place.</p> <p>An alternative is that Magistrates are also able to grant bail directly to the mental health inpatient unit.</p>	<p>Where an individual is in a place of custody (watch house/correctional facility), or before a Court appears to be mentally ill transfer to an authorised mental health service for assessment and treatment if required are possible via the Classified Patient Provisions of MHA.</p>	<p>If a judicial officer reasonably suspects that the accused has a mental illness requiring treatment in order to protect the health or safety or to prevent damage to property a hospital order may be made. Proceedings are suspended. Detention in an authorised hospital takes place with assessment, and if indicated, treatment.</p>	<p>Where mental competence to commit an offence is in question, the court may require a defendant undergo an examination by a psychiatrist or other appropriate expert and findings are subsequently reported in court.</p>	<p>If a police or mental health officer reasonably suspects that an individual has a mental illness which requires assessment and may require treatment and safety of the individual or others is at risk the individual is placed in protective custody. Bail may be granted by the Magistrate for this to take place. Assessment takes place either at an approved assessment centre.</p>	<p>Individuals who are deemed to be requiring assessment and immediate inpatient treatment for mental impairment are transferred to the mental health assessment unit under the Crimes Act s309. Charges are held over during this time.</p>	<p>The court can request advice from the Chief Health Officer (CHO) regarding resources to assess a person who has been charged with an offence, to determine whether the person is in need of treatment under the Mental Health Act. Assessment can be either inpatient or outpatient (depending on advice from CHO).</p>

**Table A3: Options for individuals who are charged with indictable offences by jurisdiction**

NSW	VIC	QLD	WA	SA	TAS	ACT	NT
<ul style="list-style-type: none"> <li>- Fitness for trial.</li> <li>- Not guilty on grounds of mental illness.</li> <li>- Diversion to mental health facility is possible if the Crown decide to trial the indictable offence summarily.</li> </ul>	<ul style="list-style-type: none"> <li>- Fitness for trial.</li> <li>- Not guilty due to mental impairment.</li> <li>- Supervision order (custodial or within a mental health facility)</li> </ul>	<ul style="list-style-type: none"> <li>- Fitness for trial.</li> <li>- Not guilty due to unsoundness of mind.</li> <li>- If defendant is under MHA order when charged, the trial is adjourned and a mandatory process of reporting by treating psychiatrist takes place (S 238 reports).</li> <li>- Forensic Order/Disability Forensic Order (inpatient or limited community treatment).</li> </ul>	<ul style="list-style-type: none"> <li>- Fitness for trial.</li> <li>- Not guilty due to unsoundness of mind.</li> <li>- If acquitted on unsoundness of mind for a schedule 1 (most serious) offence, a custody order must be made. For all others a Conditional Release Order, community based order, intensive supervision or custody order may be made).</li> </ul>	<ul style="list-style-type: none"> <li>- Fitness for trial.</li> <li>- Not guilty due to mental impairment.</li> <li>- Supervision Order. Under the order the court may release the defendant unconditionally, commit to detention, or release with conditions.</li> </ul>	<ul style="list-style-type: none"> <li>- Fitness for trial.</li> <li>- Not guilty on grounds of insanity.</li> <li>- Restriction Order (detention in secure mental health unit)/Supervision Order. Treatment Order, orders as the court sees appropriate or unconditional release.</li> </ul>	<ul style="list-style-type: none"> <li>- Fitness to plead.</li> <li>- Not guilty due to mental impairment.</li> <li>- If found not guilty because of mental impairment (but not charged with a violent offence or acts endangering life), the Supreme Court may order that the accused be detained until ACAT orders otherwise or submit to jurisdiction of ACAT to enable it to make a mental health order. For violent or acts endangering life the person is detained in custody until ACAT order otherwise.</li> </ul>	<ul style="list-style-type: none"> <li>- Fitness for trial.</li> <li>- Not guilty due to mental impairment.</li> <li>- If found not guilty because of mental impairment the court must impose a Supervision Order (custodial or non-custodial).</li> </ul>
<b>Limiting terms apply.</b>	<b>Nominal terms apply.</b>			<b>Limiting terms apply.</b>		<b>Nominal terms apply.</b>	<b>Nominal terms apply.</b>

**Table A4: Options for individuals who are charged with non-indictable offences by jurisdiction**

NSW	VIC	QLD	WA	SA	TAS	ACT	NT
<ul style="list-style-type: none"> <li>- Fitness for trial is not applicable to summary offences.</li> <li>- Not guilty on grounds of mental illness can apply but is not used due to onerous process.</li> <li>- Diversion to community is possible.</li> </ul>	<ul style="list-style-type: none"> <li>- Fitness for trial.</li> <li>- Not guilty due to mental impairment.</li> <li>- Diversion to community is possible (Non custodial Supervision Order).</li> </ul>	<ul style="list-style-type: none"> <li>- If defendant is under involuntary treatment order or forensic order when charged or an order is made for the person, the trial is adjourned and a mandatory process of reporting by treating psychiatrist takes place (S 238 reports). If not under an involuntary MHA order, defendants must seek their own private psychiatric reports.</li> <li>- If the person charged with a simple offence is also charged with an indictable offence, there is the option of all charges being referred to the Mental Health Court.</li> <li>- Following finding of unsoundness of mind Magistrates only have option of discharging the defendant. This is very rare.</li> <li>- No clear process for dealing with unfitness for trial in Magistrates Court.</li> </ul>	<ul style="list-style-type: none"> <li>- Fitness for trial.</li> <li>- Not guilty due to unsoundness of mind.</li> <li>- If acquitted on unsoundness of mind a conditional release order, community based order, intensive supervision or custody order may be made.</li> </ul>	<ul style="list-style-type: none"> <li>- Fitness for trial.</li> <li>- Not guilty due to mental impairment.</li> <li>- If found guilty of a summary of minor indictable offence, the court can release the defendant without conviction or penalty if it is satisfied that the defendant suffers from a mental impairment and this explains and extenuates the conduct of the offence; where the person has completed or is participating in an intervention program and does not pose an unacceptable safety risk.</li> </ul>	<ul style="list-style-type: none"> <li>- Fitness for trial.</li> <li>- Not guilty due to mental impairment.</li> <li>- If found not guilty on the ground of insanity, treatment order (inpatient or community based), release with or without conditions, Magistrate can refer a matter to the Supreme Court for consideration of a Forensic Order (Supervision Order or Restriction Order).</li> </ul> <p>Restriction Orders involve detention in a secure mental health unit).</p>	<ul style="list-style-type: none"> <li>- Fitness to plead.</li> <li>- Not guilty due to mental impairment.</li> <li>- If there is a finding of not guilty due to mental impairment in the Magistrates Court it may order that the accused be detained in custody until ACAT orders otherwise or that the accused submit to ACAT to enable a mental health order to be enacted. In the case of serious offence (violent or acts endangering life), detention is ordered until ACAT orders otherwise.</li> <li>- In cases of summary offences and indictable offences able to be heard summarily, the Magistrate has the power to dismiss the charges and require the accused to submit to the jurisdiction of ACAT to make a mental health order or dismiss the charge unconditionally.</li> </ul>	<ul style="list-style-type: none"> <li>- Fitness for trial.</li> <li>- Not guilty due to mental impairment.</li> <li>- In cases of summary jurisdiction the court can elect to dismiss the charge if it is deemed appropriate and a treatment order may be issued.</li> </ul>

**Table A5: Eligibility for diversion options listed in Tables A2, A3 & A4 for intellectual disability and substance disorder**

<b>Jurisdiction</b>	<b>NSW</b>	<b>VIC</b>	<b>QLD</b>	<b>WA</b>	<b>SA</b>	<b>TAS</b>	<b>ACT</b>	<b>NT</b>
<b>Is Intellectual Disability included in legal options described (as per mental health legislation)?</b>	Yes – S32 and S33 developmental disability.	No – separate provisions to the MHA	Yes – Disability Forensic Order.	Yes	Yes	No - separate provisions to the MHA	Yes	Yes
<b>Are Substance Disorders (as a sole diagnosis) included in diversion options described above?</b>	No Other provisions may apply. (Drug and Alcohol Treatment Act, Drug Court Program, MERIT Program)	No	No	No		No	No	No

**Table A6: Mental Health Court Program or Diversion List – brief description of eligibility criteria by jurisdiction**

NSW	VIC	QLD	WA	SA	TAS	ACT	NT
	<p>Yes – the ARC provides an alternative option where there is a diagnosis of any of the following: mental illness, intellectual disability, acquired brain injury, autism, and neurological impairment including dementia. While criminal offences involving serious violence or sexual assault were previously excluded, this has since been amended.</p>	<p>No – the QLD Mental Health Court is a Supreme Court which makes decisions regarding fitness for trial, unsoundness of mind at the time of the offence. The Mental Health Court can impose a Forensic Order or Disability Forensic Order. The Court also hears appeals from the Mental Health Review Tribunal and inquiries into lawfulness of detention in authorised mental health facilities.</p>	<p>Yes – trial of START Court which provides an additional option for those who are eligible for bail.</p>	<p>Yes – the Magistrates Court Diversion Program and Treatment Intervention Program provide options for individuals with mental impairment (mental illness including personality disorder, intellectual disability and acquired brain injury) and/or substance dependence. Summary and minor indictable offences are eligible.</p>	<p>Yes – The Diversion List Program provides an additional option for defendants who have a mental illness, acquired brain injury, intellectual disability, autism spectrum disorder, and/or neurological impairment. Excluded criminal offences involve serious violence or sexual assault.</p>		

### Appendix 3 - Information and data management for Court Liaison Services

	ACT	NSW	NT <sup>1</sup>	QLD	SA	TAS <sup>2</sup>	VIC	WA
<b>Client Data</b> (for all individuals seen by your service/program)								
Aboriginal and Torres Strait Islander status	✓	✓		✓	✓		✓	✓
Mental Health Diagnosis	✓	✓		✓	✓	✓	✓	✓
Previous contact with mental health services	✓	✓		A	✓		✓	✓
Current contact with mental health services	✓	✓		A	✓	✓	✓	✓
Number of referrals	✓	✓		✓	✓		✓	A
Referral date	✓	✓		✓	✓		✓	✓
Date of assessment	✓	✓		A	✓		✓	✓
Recommendation(s) made by person who conducted assessment	✓	✓		A	✓		✓	✓
Recommendation made by CLS officer to Court	A	✓		✓	✓	only if accepted on diversion list	✓	✓
Magistrate action following CLS recommendation	A	A		A	A	only if accepted on diversion lis	A	A
Onward Referral details	A	✓		A	✓		✓	✓
Number of referrals		✓			✓			✓
Referral agency (inpt /community MHS/ other diversion program/Prison MHS/ etc.)	✓	✓		A	✓		✓	✓
Community mental health service contact/treatment information for clients who are diverted to community MHS	A	✓		A	A		A	A
Inpatient mental health admission/treatment information for clients who are diverted to inpatient care	✓	✓		A	A		A	✓
Information about to the number of people taken into police custody in police cells/watch-house	A	A				✓	A	A
Information about the number of people who are charged at local/magistrates courts	A	A		A	A	✓	A	

1. At the time that this report was produced, the NT did not have a specific Court Liaison Service workforce.

2. A small database for the Tasmanian Court Liaison Service and Diversion List is maintained by a volunteer. This is usually a law student.

✓ indicates information is routinely collected by service

A indicates information is not routinely collected by service but may be accessible.

## Appendix 4 - Information and data management for Mental Health Court Programs

	SA	TAS	VIC	WA
<b>Client Data</b> (for all individuals seen by your service/program)				
Aboriginal and Torres Strait Islander status	✓	No	✓	✓
Mental Health Diagnosis	✓	✓	✓	✓
Previous contact with mental health services	✓	No	✓	✓
Current contact with mental health services	✓	✓	✓	✓
Number of referrals	✓	No	✓	✓
Referral date	✓	No	✓	✓
Date of assessment	✓	No	✓	✓
Recommendation(s) made by person who conducted assessment	✓	No	✓	✓
Outcome from recommendation(s)	✓	only if accepted on diversion list	✓	✓
Onward Referral details Number of referrals	✓	No	✓	✓
Referral agency (inpt /community MHS/ other diversion program/Prison MHS/ etc)	✓	No	✓	✓
Community mental health service contact/treatment information for clients who are diverted to community MHS	✓	No	✓	✓
Inpatient mental health admission/treatment information for clients who are diverted to inpatient care	✓	No	A	A
Information about to the number of people taken into police custody in police cells/watch-house	N	✓	A	N
Information about the number of people who are charged at local/magistrates courts	A	✓	✓	N