

3 April 2019

Mental Health Inquiry  
Productivity Commission  
GPO Box 1428  
Canberra City ACT 2601



Dear Sir/Madam,

### **The Social and Economic Benefits of Improving Mental Health**

The Criminal Bar Association is grateful for the opportunity to make a submission on the economic benefits of improving mental health.

The Criminal Bar Association (CBA) is the peak body for barristers in Victoria practicing in the criminal law. Its members comprise almost one quarter of all barristers practicing in Victoria and it counts almost one third of Victoria's Judiciary among its Honorary Members.

The CBA represents criminal barristers who principally prosecute, those who principally defend and those who have a mixed practice. We issue press releases, regularly meet with the judiciary and government, and are involved in the continuing legal education scheme of the Victorian Bar.

Members of the CBA appear in criminal cases of all types, both in Victoria, and across all states and territories of the Commonwealth. Further, such appearances are in matters involving all facets of the criminal law, both state and federal.

#### **Scope**

The CBA notes that the scope of the Productivity Commission's report includes an examination of 'how sectors beyond health including ... justice, can contribute to improving mental health and economic participation and productivity.' This broad scope reflects the fact that this 'will achieve improvements not possible by focussing solely on mental health services.'

Further, people who appear before the Courts because of mental health issues often fall into a group prioritised by the Commission's report, specifically 'disadvantaged groups such as individuals from very low socioeconomic backgrounds and people residing in remote areas because they may have more difficulty in accessing services which improve their mental health.' Often, people who appear in Court fall into the 'severe' portion of the distribution spectrum of severity of mental illness.

## **Relationship between mental illness and the criminal justice system**

While only a small proportion of people with mental illness commit crime, there is a high incidence of mental illness in the population of people charged with criminal offences.<sup>1</sup> People with mental illness are disproportionately charged with criminal offences and are the subject of police powers. Anecdotally, it is often people with entrenched or complex mental health issues who find themselves in Court as a result of anti-social behaviour.

While most legal practitioners do not have mental health qualifications, Magistrates frequently become familiar with the symptoms and behaviours of people who are mentally ill by reading reports from psychiatrists, and hearing evidence. There are mental health practitioners positioned in some courts who can assist to inform Magistrates of a person's history and presentation. This service, where it exists, provides a crucial intersection between justice and health.

### **Fruitful interventions**

There have been, in Victoria, examples of successful and sensitive engagement with people who come before the Magistrates Court with mental health issues, including the "Assessment and Referral List" ('ARC') at the Melbourne Magistrates Court. This is an example of innovative thinking, and the CBA would welcome the ARC List being expanded to other courts. Nonetheless, there is considerable 'unmet need' for people with mental health issues accessing the Court.

The Magistrates Court of Victoria has a Forensicare (state-funded service) nurse available to provide some limited services including to assess prisoners, if required.

In some other jurisdictions, specialist courts address issues of mental impairment or unfitness. Overall, some consistency of approach between states is required so that there is some equality in the manner in which a person with a mental illness would be dealt with from one state to another.

### **Case study: Jeremiah**

Jeremiah is a middle-aged man suffering chronic schizophrenia. He has, at times, received effective treatment at his local area mental health service. During those times, he has contributed to the community through working. He was treated on a compulsory order but, given his stable progress, was made a voluntary patient. After a relationship breakdown, he started to 'self-medicate' using drugs. He stopped his oral anti-psychotic medicine and started associating with drug users. Whilst probably psychotic, he went in a car with a number of others who committed two armed robberies to get money for drugs. After being charged, he attended the Magistrates Court and told his lawyer about delusions consistent with psychosis. He said he was sleeping on a friend's couch. His case was adjourned for an assessment of his fitness to have a trial – he is found unfit, because of schizophrenia.

Months later, his case is adjourned to the County Court, where there is a further delay of 15 months until his case is reached. On the day of his trial, it must be adjourned for a further 6

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<sup>1</sup> See Australian Institute of Health and Welfare report 'The health of Australia's prisoners' 2015 at pp 23-24

months. Throughout this 24-month period, Jeremiah has remained actively psychotic and unwell at each court appearance.

### **An opportunity to intervene**

For people who are not socially engaged and are committing anti-social acts, due to mental illness, there is a challenge about how to engage those people and improve their mental health. If a person's criminal offending is related to their poor mental health, there is a double productivity burden – they are not capable of productive engagement in the community, and may be costing the community through service provision, all while they are subject to (and requiring of) the resources of the criminal justice system.

Contact with the criminal justice system provides an opportunity for intervention into the lives of people who suffer from mental health problems. If a person is accused of criminal offences, it may be that engagement with service providers might provide them with an opportunity to demonstrate to a court that they are seeking treatment and capable of rehabilitation. There is a 'carrot' for the person, or an incentive to engage to stabilise their mental health.

At times, people who are very unwell attend at Magistrates Courts. It is undesirable for Magistrates Courts to deal solely with a person's legal case, for instance by granting an adjournment, without attending to obvious mental health needs. Importantly, the Magistrates Court should not be encouraged to exercise separate coercive powers to deal with people with a mental illness. Rather, there should be opportunities provided to mentally ill people to engage with services at that initial point of their contact with the criminal justice system.

Occasionally, a person who comes before a Magistrates Court may be affected by mental illness and may or may not meet the criteria for compulsory treatment under the civil mental health legislation (eg, *Mental Health Act 2014 (Vic)*). A Magistrate ought have the confidence in services being available to which they could refer a person who might meet the criteria for assessment.

### **Benefit to society**

As it stands, in Victoria (and likely most jurisdictions), when a mentally ill person presents to a court (usually Magistrates'/Local courts) due to alleged offending, there is a critical opportunity for intervention. Without resources being available at this point for early intervention, there is increased risk of higher costs down the track.

### **Benefit to criminal justice system**

Further, where courts come to dispose of cases, usually by way of sentence, they must rely on reports from a person's treating team. Such reports can address issues of diagnosis, culpability and prognosis. However, without early intervention and the application of necessary services, the risk of making decisions that fail to address underlying problems is also increased. A properly informed court can make better decisions and thereby increase the likelihood of a person being able to return to productive participation in the community.

## Recommendations

The CBA recommends as follows:

1. That the commission examine the medium to long term benefits of early intervention resources being made available to courts at the 'points of entry' to the justice system.
2. Consideration be given to the productivity benefits of allocating resources to assessment, referral and (possibly) treatment services within easy reach of 'point of entry' courts, for example, by funding mental health staff at court locations, rather than requiring courts to refer mentally ill persons to overcrowded community-based clinics.
3. That the commission examine the economic benefits to the community of a uniform national diversionary program linked to mental health needs of offenders along the lines of the 'justice re-investment' model.

The CBA looks forward to making further contributions or engaging in further community consultation as the Commission advances its work on this referral. The Commission is invited to contact our members Alex Burt or Simon Moglia if we can be of further assistance.

  
Secretary  
Criminal Bar Association of Victoria