

Select Committee on Mental Health

Magistrates Court of South Australia
Magistrates Court Diversion Program (mental impairment)

Re: J: The overrepresentation of people with a mental illness in the criminal justice system and in custody, the extent to which these environments give rise to mental illness, the adequacy of legislation and processes in protecting their human rights and the use of diversion programs for such people.

The Magistrates Court Diversion Program (MCDP) commenced operation as a pilot in 1999 and funded by the South Australian Government following an operational review of the Criminal Law Consolidation Act (Mental Impairment Provisions) undertaken by the Attorney General's Department. In June 2001 funding was allocated by Cabinet to continue its operation and expansion after a successful evaluation of the program by the Office of Crime Statistics and Research.

The program was developed to address:

- The large numbers of individuals who were appearing in the Magistrates Court of South Australia who had mental impairments and who were in danger of continuing through the criminal justice system with unresolved mental health or impairment problems. This group also had a high degree of recidivism, which was also not being address effectively.
- Following the Criminal Law Consolidation Act (Mental Impairment) Amendment Act 1995 (CLCA) options for people appearing before the Magistrates Court increased, producing a dramatic increase in those people applying for this defence. This proved to be cumbersome, costly and time-consuming and raised questions regarding its utility when dealing with minor matters.
- The Judicial shift, in certain circumstances away from the criminal conduct and sanctions to focus upon solutions to offenders' problems paving the way for the emergence of the Specialist Sentencing Courts in South Australia.

The MCDP is designed to meet the needs of those individuals appearing in the Magistrates Court of South Australia who have committed certain minor and summary offences and who have impaired intellectual or mental functioning as a result of: a mental illness; an intellectual disability; a personality disorder; acquired brain injury or neurological disorder including dementia.

The program provides an opportunity for eligible individuals to voluntarily address their mental health, disability needs and any offending behaviours while legal proceedings are adjourned. The program is not a service provider in itself. However the program facilitates a range of health and other appropriate services to assist individuals who come before the court. The program facilitates a range of service involvements with the aim of participants addressing any perceived link between offending and their impaired intellectual or mental functioning thereby improving the responses of both the criminal justice system and the health and disability service system.

The SA Government is introducing a Bill to Parliament to provide a formal statutory backing for the administrative processes that have developed in the Court, which includes the practice of directing defendants to undertake programs of intervention (diversion). The Bill provides a legal framework with which the courts may direct eligible defendants into whatever suitable programs exist at the time and take account of their progress.

The MCDP has been a part of an evaluation strategy undertaken by the Office of Crime Statistics and Research since the programs inception in 1999. Consultation with those involved found that the program was well supported by a wide range of stakeholders, who saw the program as a mechanism for improving the management of mentally impaired offenders within the criminal justice system. It was viewed as an innovative approach in terms of its focus on therapeutic outcomes within the traditional justice framework. A further study of post program offending 12 months after participants have completed the Program suggests that it is having a positive influence in reducing the incidence and nature of offending amongst its client group.

South Australia has an example, in the Magistrates Court Diversion Program, of a strategy that assists those individuals who are, for whatever reasons failing to engage in service provision. The program uses the interface with the Court as a catalyst for change. Participants are being successfully diverted away from long term involvement with the Criminal Justice System by introducing or re-establishing links with treatment and support services while highlighting both the mental impairment and criminogenic needs of participants referred by the Court.