

Appendices



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Appendix A: List of proposals

General

PROPOSAL 1.1 [page 12]

Inquiry into a family violence division of the Magistrates Court of Western Australia

That the Attorney General of Western Australia conduct an inquiry into whether Western Australia should establish a specialist family violence division of the magistrates court to deal with all matters related to family violence in the court system.

PROPOSAL 1.2 [page 15]

Inquiry into sexual offences in the Western Australian court system

That the Attorney General of Western Australia conduct an inquiry into the way that courts in Western Australia deal with sexual offences, including whether a specialist division or court should be established.

Drug and alcohol court intervention programs

PROPOSAL 2.1 [page 61]

Drug Court target group

- That the Perth Drug Court and the Children's Court Drug Court only accept offenders who are facing a term of immediate imprisonment or detention.
- That the Drug Court Regime program be abolished.
- That the Supervised Treatment Intervention Regime program be available for offenders who are facing non-custodial sentences.

PROPOSAL 2.2 [page 62]

Eligibility criteria

That offenders who were subject to a suspended sentence of imprisonment at the time of the current offence(s) not be automatically excluded from the operation of the Perth Drug Court.

PROPOSAL 2.3 [page 70]

Appointment of a drug court coordinator

That the Western Australian government provide funding for the appointment of a full-time coordinator for the Perth Drug Court.

PROPOSAL 2.4 [pages 77–78]

Drug Treatment Order

That the *Sentencing Act 1995* (WA) be amended to create a new pre-sentence Drug Treatment Order to provide, among other things:

- for the primary objectives of a Drug Treatment Order; that is, to rehabilitate offenders by providing judicially supervised drug treatment; to reduce drug-dependency and to reduce drug-related crime;
- that a Drug Treatment Order can only be imposed by a prescribed court (and initially the only prescribed courts are to be the Perth Drug Court, the Supreme Court and the District Court);
- that any court can refer an offender to the Perth Drug Court for assessment and determination of the offender's eligibility and suitability for a Drug Treatment Order;

- that if an offender has been charged with a superior court matter, the Perth Drug Court is to determine if the offender is suitable for a Drug Treatment Order; however, the final decision as to whether a Drug Treatment Order should be imposed is to be made by the applicable superior court;
- that if a superior court imposes a Drug Treatment Order, the Perth Drug Court is to supervise and monitor the offender's progress on the order and can vary the order at any time, but only the superior court that imposes the order can cancel the order.
- that in order to be eligible for a Drug Treatment Order it must be highly likely that the offender would otherwise be sentenced to a term of immediate imprisonment;
- that an offender subject to a suspended sentence of imprisonment at the time of the current offence(s) is eligible for a Drug Treatment Order;
- that in order to be eligible for a Drug Treatment Order the offender must have an illicit drug-dependency;
- that a Drug Treatment Order cannot be made without the consent of the offender and the offender cannot consent unless he or she has first been fully informed of the consequences of non-compliance and the requirements of the program and been given the opportunity for legal advice;
- that before the offender consents, the prescribed court must indicate to the offender the penalty that would be imposed if he or she does not agree to the making of the order or does not comply with the requirements of the order;
- that sentencing can be deferred until the Drug Treatment Order is completed or cancelled and that sentencing cannot occur later than two years after the Drug Treatment Order is made;
- for clearly defined roles for each member of the case management team including reference to professional obligations and responsibilities;
- for the various conditions that can be imposed when making a Drug Treatment Order (eg, a requirement to report any change of address; a requirement to seek permission to leave the state; a condition to reside at a particular address; a condition to undergo residential drug treatment; a condition to undergo drug treatment or counselling; a condition to attend an educational or training program; a condition to submit urine samples for analysis; a condition to abide by a curfew; a condition to report to a case-worker; and a condition to attend court);
- that if a prescribed court makes a Drug Treatment Order it can grant the offender bail;
- that a Drug Treatment Order can be extended provided that the maximum duration is two years;
- for a non-exhaustive list of rewards that can be given by the prescribed court if satisfied on the balance of probabilities that an offender has complied or is complying with the conditions of the Drug Treatment Order;
- for a non-exhaustive list of sanctions that can be imposed by the prescribed court if satisfied on the balance of probabilities that an offender has not complied or is not complying with the conditions of the Drug Treatment Order;
- that the list of sanctions include the power to order that the offender be imprisoned for a set maximum number of days and further, that an offender has the right to appeal against the imposition of any period of imprisonment;
- for the criteria to be established before a Drug Treatment Order can be cancelled;
- that a Drug Treatment Order can be varied or amended at any time by the Perth Drug Court provided that all parties have had a reasonable opportunity to be heard;
- that when the Drug Treatment Order is cancelled (either because it has been completed or terminated) the court must, when sentencing the offender, take into account anything done by the offender in compliance with the order but it must not take into account failure to comply with the order;
- that the final sentence imposed at the end of the Drug Treatment Order must not be greater than the indicated sentence;
- that when sentencing the offender the court has discretion to take into account any custody sanctions served in prison during the order;
- that the final sentence can be appealed in the same way as any other sentence or order imposed as a consequence of conviction; and
- that after two years, the effectiveness of the new Drug Treatment Order is to be independently evaluated.

Mental impairment court intervention programs

PROPOSAL 3.1 [pages 114–15]

Establish a mental impairment court intervention program

That there should be a mental impairment court intervention program established in Western Australia at the earliest opportunity to service all metropolitan courts dealing with adults, with the following features:

- The program should have psychiatric diagnostic criteria that includes mental illness, personality disorder and dual diagnosis substance use disorder, but excludes intellectually disabled and cognitively impaired offenders (who may apply for referral to the Intellectual Disability Diversion Program).
- The program should be available, in principle, to offenders in all of the state's adult court jurisdictions, but be monitored by the Magistrates Court pursuant to Proposals 6.4 and 6.12.
- There should be no formal requirement to plead guilty to an offence to be accepted onto the program; however, the objective facts of the offence should not be in dispute or contested.
- An offender should not be barred from participating in the program for a particular offence simply because he or she has pleaded not guilty to, or disputes the facts of, another offence, whether related or unrelated.
- An applicant that has been referred to, but is assessed as ineligible to participate in, the program should be returned to the general court list to be dealt with at the earliest opportunity.
- An offender who has been returned to the general court list or who withdraws from the program before completion and who has simply indicated no contest to the objective facts of the offence should retain the option to plead the defence of insanity under s 27 of the *Criminal Code* (WA).
- Participation in the program must be on a voluntary basis and the offender's written consent to sharing of information among the court, relevant government departments and external service providers should be obtained.
- Anything done by the offender in compliance with the program should be taken into account during sentencing and all sentencing options (including the option to impose no sentence) after successful completion of a program should be available to the magistrate. Unsuccessful participation in the program should not be taken into account during sentencing.
- The program should be established as a justice initiative with joint resource responsibility from the Departments of the Attorney General, Health and Corrective Services.
- The program should be sufficiently resourced to purchase services from relevant non-government service providers on behalf of participants.
- The program should begin as a two-year pilot program in the Perth Magistrates Court taking referrals from all metropolitan courts with the aim of extending its operation, subject to independent evaluation, to as many metropolitan courts as possible.
- The program should be assigned a designated magistrate who has an appropriate understanding of issues faced by mentally impaired offenders and an interest in improving outcomes for mentally impaired offenders. Other magistrates should be appropriately trained as relief magistrates.

PROPOSAL 3.2 [page 115]

Expand Intellectual Disability Diversion Program

- That the Intellectual Disability Diversion Program remain a specialist list, but that it be expanded and adequately resourced to service the outer-metropolitan courts and to include offenders with all types of cognitive impairment including acquired or organic brain injury, intellectual disability, dementia and other degenerative brain disorders.
- That the program should formally be made available, in principle, to offenders in all of the state's adult court jurisdictions, but be monitored by the Magistrates Court pursuant to Proposals 6.4 and 6.12.
- That an offender who has been returned to the general court list or who withdraws from the program before completion and who has simply indicated no contest to the objective facts of the offence should retain the option to plead the defence of insanity under s 27 of the *Criminal Code* (WA).

Establish general court intervention programs to service mentally impaired offenders in regional areas

- That mentally impaired offenders be eligible for referral to general court intervention programs in regional areas pursuant to Proposal 5.1.
- That regional courts running general court intervention programs be trained by and, where necessary, take advice from coordinators of specialist programs including the proposed mental impairment court intervention program and the Intellectual Disability Diversion Program.

Family violence court intervention programs

Specialist prosecutors

That the Western Australia Police be funded for the appointment of specialist police prosecutors to appear in each family violence court and to participate in case management meetings.

Program information

- That the Department of the Attorney General website contain detailed information about how the family violence courts operate, including specific information for victims and offenders.
- That the Department of the Attorney General prepare written brochures about the family violence courts with relevant information about the operation of the courts and any important contact details that may assist offenders and victims.

General court intervention programs

Establish a general court intervention program

That a general court intervention program be established in Western Australia at the earliest opportunity with the following features:

- The program be initially established as a pilot program in the Central Law Courts; in a regional magistrates court; and in the Perth Children's Court with the aim of extending its operation, subject to independent evaluation, to as many Western Australian courts as possible.
- The program be established as a justice initiative with joint resource responsibility from the Departments of the Attorney General, Health and Corrective Services.
- The program be sufficiently and independently resourced to purchase services from relevant non-government service providers on behalf of participants.
- The program be available, in principle, to any offender appearing in the applicable court. For those offenders facing charges that must be dealt with in the District or Supreme Court, participation in the program and judicial monitoring may continue until the first appearance in the relevant superior court pursuant to Proposal 6.4.
- The program eligibility criteria be broad, targeting a wide range of underlying problems including drug and alcohol abuse; physical and mental health issues; family and domestic violence; homelessness; and other social, economic or family problems.
- The program be available both pre-plea and post-plea.
- Participation in the program be on a voluntary basis and written consent to sharing of information among the court, relevant government departments and external service providers be obtained from the offender.
- Program participants be subject to judicial monitoring by way of regular court reviews and where possible the monitoring of each offender be undertaken by the same judicial officer.
- Anything done by the offender in compliance with the program be taken into account during sentencing and after successful completion of the program all sentencing options (including the option to impose no sentence) be available to the court. Unsuccessful participation in the program cannot be taken into account during sentencing.

General legislative framework for adult offenders: *Criminal Procedure Act 2004* (WA)

That a new division headed 'Court Intervention Programs' be inserted into Part 5 of the *Criminal Procedure Act 2004* (WA). This division should:

- Define a 'court intervention program' as a program prescribed under the *Criminal Procedure Regulations 2005* (WA). The following current programs should be prescribed: Perth Drug Court; Joondalup Family Violence Court; Rockingham Family Violence Court; Fremantle Family Violence Court; Midland Family Violence Court; Barndinalgu Court; Kalgoorlie-Boulder Aboriginal Community Court; Norseman Aboriginal Community Court; Geraldton Alternative Sentencing Regime; Supervised Treatment Intervention Regime (STIR); and Intellectual Disability Diversion Program (IDDP). Other court intervention programs, such as any pilot program proposed in this Paper, should also be prescribed before the program commences operation.
- Set out that the object of the Division is to provide a framework for the recognition and operation of court intervention programs.
- Provide that the principal objectives of court intervention programs are to protect the community, reduce reoffending, and rehabilitate offenders by facilitating participation in *court* supervised treatment and rehabilitation programs.
- Provide that nothing in this Division affects or limits the operation of other diversionary, rehabilitation or treatment programs.
- Provide that court intervention programs be available at various stages of the criminal justice process. Specifically, it should be provided that:
 - An offender may be eligible to voluntarily participate in a prescribed court intervention program before a plea of guilty is entered. If an offender has already been released on unconditional bail by a court or if a court has determined that bail can be dispensed with the offender may participate in a prescribed court intervention program if eligible and assessed as suitable for participation. Failure to comply with the requirements of the program may result in termination from the program and if this occurs the offences will be dealt with in the usual manner.
 - An offender may be eligible to participate in a prescribed court intervention program before a plea of guilty is entered and participation in the program may be a condition of bail.
 - An offender may be eligible to participate in a prescribed court intervention program after a plea of guilty has been entered but before sentencing for any period up to a maximum of 12 months. Participation in the program may be a condition of bail.
 - An offender may be eligible to participate in a prescribed court intervention program if subject to a Pre-Sentence Order under s 33G of the *Sentencing Act 1995* (WA).
 - An offender may be eligible to participate in the Perth Drug Court if subject to the proposed Drug Treatment Order under the *Sentencing Act 1995* (WA).
- Provide that, for the purpose of determining the offender's eligibility and suitability for participation in a prescribed court intervention program, a judicial officer may order that the offender reappear in court at a particular time and place.
- Provide that for the purpose of determining whether the offender is complying with or has complied with the requirements of a prescribed court intervention program, a judicial officer may order that the offender reappear in court at a particular time and place.
- Provide that assessment for and participation in any prescribed court intervention program be undertaken with the offender's informed consent.
- Provide that regulations in relation to the provision of reports and the sharing of information between agencies and individuals working in prescribed court intervention programs may be made, if necessary, under the *Criminal Procedure Regulations 2005* (WA).
- Provide that in relation to an offender who has been committed to the District Court or the Supreme Court, a magistrate may order that the offender reappear in the Magistrates Court before the first appearance in the District Court or the Supreme Court for the purpose of determining if the offender is complying with a prescribed court intervention program.

Court Intervention Programs Unit

- That the Department of the Attorney General establish a Court Intervention Programs Unit within the Court and Tribunal Services Division.
- That a Director be appointed to be responsible for all administrative and policy matters within the Court Intervention Programs Unit.
- That a coordinator may be appointed for each prescribed court intervention program or, if appropriate, a coordinator may be appointed for a number of similar court intervention programs.
- That staff from relevant government departments and agencies (eg, the Department of Corrective Services, the Department of Health, the Department of Housing and Works, the Department for Indigenous Affairs, the Department for Child Protection; the Department for Communities, the Department of Education and Training, the Disability Services Commission, the Alcohol and Drug Office, the Office of Crime Prevention, the Western Australia Police, the Office of the Director of Public Prosecutions) be seconded to the Court Intervention Programs Unit.
- That the Court Intervention Programs Unit be allocated funding to secure seconded positions from relevant non-government agencies.
- That the Court Intervention Programs Unit allocate specific funding to Legal Aid (WA), the Aboriginal Legal Service (WA) and other community legal services to ensure that offenders participating in court intervention programs have adequate and effective legal assistance.
- That staff seconded to the Court Intervention Programs Unit be co-located in one central office to facilitate collaboration and effective service provision.
- That staff seconded to the Court Intervention Programs Unit be required to provide their services and be available to individual court intervention program staff who are not located in the same office.
- That the program coordinators of specialist programs (eg, Family Violence Courts, Aboriginal Courts, and the Perth Drug Court) provide training and other assistance to program staff working in any general court intervention programs.

Bail conditions

- That Schedule 1, Part D, clause 2 of the *Bail Act 1982* (WA) be amended to provide that a judicial officer may impose a condition that an accused comply with the requirements of a prescribed court intervention program (including a condition that the accused comply with any requirements necessary to enable an assessment to be made in relation to the accused's suitability to participate in the prescribed court intervention program) provided that such a condition is desirable to ensure that the accused:
 - appears in court in accordance with his bail undertaking;
 - does not, while on bail, commit an offence; or
 - does not endanger the safety, welfare or property of any person.
- That Schedule 1, Part D, clause 2 of the *Bail Act 1982* (WA) be amended to provide that a condition that an accused comply with the requirements of a prescribed court intervention program (as set out above) cannot be imposed before conviction in relation to an offence if the accused has already been released on unconditional bail by a court or if a court has determined that bail can be dispensed with.

Superior court matters: committal for sentence

That the *Bail Act 1982* (WA) be amended to provide that when committing an offender for sentence to a superior court a magistrate may order that the offender appear before the Magistrates Court for the purpose of considering if the offender is complying with a prescribed court intervention program at any time before the offender's first appearance in the superior court.

Sentencing purposes

- That the *Sentencing Act 1995* (WA) be amended to provide that the purposes of sentencing are:
 - to impose punishment;
 - to protect the community;
 - to rehabilitate the offender;
 - to deter the offender and others from committing offences;
 - to denounce the conduct of the offender;
 - to prevent the offender from committing further offences;
 - to make the offender accountable for his or her conduct; and
 - to recognise the harm done to the victim and the community.
- That the *Sentencing Act 1995* (WA) provide that the order in which these purposes are listed does not indicate that one purpose is more or less important than another.

Sentencing factors

- That the *Sentencing Act 1995* (WA) be amended to provide for a non-exhaustive list of relevant sentencing factors.
- That the statutory list of sentencing factors includes anything done by the offender in compliance with a prescribed court intervention program.
- That the *Sentencing Act 1995* (WA) be amended to expressly provide that failure to participate in (whether by choice or lack of opportunity) or failure to successfully complete a prescribed court intervention program is not a relevant sentencing factor.

Recording of sentencing outcome

That when a court sentences an offender who has successfully completed a prescribed court intervention program, the court must record as part of the sentencing outcome the name and length of the program.

Deferral of sentencing

- That s 16(1) of the *Sentencing Act 1995* (WA) be amended to provide that a court may adjourn the sentencing of an offender to allow an offender to be assessed for and participate in a prescribed court intervention program.
- That s 16(2) of the *Sentencing Act 1995* (WA) be amended to provide that the sentencing of an offender must not be adjourned for more than 12 months after the offender is convicted.

Pre-sentence orders

That all references to a 'speciality court' in Part 3A of the *Sentencing Act 1995* (WA) be deleted and replaced with the phrase 'a court administering a prescribed court intervention program'.

Amending a PSO

- That s 33M of the *Sentencing Act 1995* (WA) be amended to provide that a court administering a prescribed court intervention program can amend the requirements of a Pre-Sentence Order at any time provided that all parties have been given an opportunity to be heard; and
- That s 33N of the *Sentencing Act 1995* (WA) be amended to provide that a court administering a court intervention program can amend the requirements of a Pre-Sentence Order if satisfied that the amendment is necessary for the effective rehabilitation of the offender or to reduce the risk that the offender reoffends during his or her participation in the prescribed court intervention program.

PROPOSAL 6.11 ————— [page 201]

Breaching a PSO

That s 330 of the *Sentencing Act 1995* (WA) be amended to provide that if a court administering a prescribed court intervention program is satisfied that the offender has been, is, or is likely to be in breach of any requirement of the pre-sentence order, the court may amend or cancel the Pre-Sentence Order.

PROPOSAL 6.12 ————— [page 202]

Pre-sentence orders imposed by a superior court

- That s 33C of the *Sentencing Act 1995* (WA) be amended to provide that if a superior court imposes a Pre-Sentence Order on an offender who has been or is participating in a prescribed court intervention program, the superior court *may* order that the offender reappear in the magistrates court that is administering the court intervention program so that that court can ascertain whether the offender is complying with the order.
- That s 33P of the *Sentencing Act 1995* (WA) be amended to provide that a court administering a prescribed court intervention program may commit an offender to the superior court that imposed the Pre-Sentence Order if satisfied that the offender has been, is, or is likely to be, in breach of any requirement of the order.

PROPOSAL 6.13 ————— [page 202]

Eligibility for a Pre-Sentence Order

That s 33A(2a)(b) of the *Sentencing Act 1995* (WA) be repealed to enable an offender who was subject to a suspended sentence of imprisonment at the time of committing the current offence(s) to be eligible for a Pre-Sentence Order.

PROPOSAL 6.14 ————— [page 202]

Taking into account compliance with a PSO at sentencing

That s 33K of the *Sentencing Act 1995* (WA) be amended to provide that a court sentencing an offender who has been subject to a PSO must take into account anything done in compliance with the requirements of the PSO.

PROPOSAL 6.15 ————— [page 205]

No sentence

That s 46 of the *Sentencing Act 1995* (WA) be amended to provide that a court sentencing an offender may impose no sentence if it considers that

- the circumstances of the offence are trivial or technical; or the offender has successfully completed a prescribed court intervention program; and
- having regard to —
 - the offender’s character, antecedents, age, health and mental condition; and
 - any other matter that the court thinks is proper to consider,
- that it is not just to impose any other sentencing option.

PROPOSAL 6.16 ————— [page 206]

Conditional Suspended Imprisonment

That all references to a ‘speciality court’ in Part 12 of the *Sentencing Act 1995* (WA) be repealed.

Spent convictions

That s 45(1) of the *Sentencing Act 1995* (WA) be amended to provide that under s 39(2), a court sentencing an offender is not to make a spent conviction order unless —

- it considers that the offender is unlikely to commit such an offence again; and
- having regard to —
 - the fact that the offence is trivial;
 - the previous good character of the offender; or
 - the fact that the offender has successfully completed a prescribed court intervention program
- it considers the offender should be relieved immediately of the adverse effect that the conviction might have on the offender.

Appendix B: Consultation questions

General

CONSULTATION QUESTION 1.1 [page 29]

Information sharing

The Commission invites submissions about whether any legislative reform is required in relation to the sharing or disclosure of information between the various agencies and individuals (other than legal practitioners) involved in court intervention programs.

CONSULTATION QUESTION 1.2 [page 32]

Determining treatment and program needs

The Commission invites submissions as to whether legislation should provide that an offender participating in a court intervention program can only be ordered to undergo a particular treatment if a qualified person has recommended that the offender undergo such treatment.

Drug and alcohol court intervention programs

CONSULTATION QUESTION 2.1 [page 65]

Case reviews

The Commission invites submissions about the best way to facilitate a collaborative team-based approach in the Drug Court but, at the same time, ensure that the rights of offenders are protected. In particular, the Commission seeks submissions as to the following matters:

- whether the offender should be entitled to be present during case review meetings;
- whether the matters that can be discussed during a case review meeting should be expressly limited; and
- whether the matters discussed in case review meetings should be formally recorded.

CONSULTATION QUESTION 2.2 [page 69]

Protection against self-incrimination

The Commission invites submissions as to the following matters:

- whether offenders should be provided with legislative protection against the use of admissions made during referral to, assessment for, or participation in the Drug Court;
- if so, what is the appropriate scope of such a protection – in particular, should the protection relate only to admissions made about drug use and drug possession or should it extend to other offences; and
- whether legislation should provide that Drug Court program or treatment staff may disclose information for the protection of any person or the property of any person.

CONSULTATION QUESTION 2.3 [page 76]

Custodial drug treatment options

The Commission invites submissions about the following matters:

- whether a compulsory drug treatment correctional facility should be established in Western Australia and, if so, whether the *Sentencing Act 1995* (WA) should provide for a compulsory drug treatment order for those serious drug-dependent offenders who are ineligible for the Perth Drug Court because they must be sentenced to imprisonment; and

- whether there should be a dedicated custodial unit or facility for Drug Court participants who require detoxification in a secure setting, who have been remanded in custody during the assessment stage of the program or for the serving of custodial sanctions during the program.

CONSULTATION QUESTION 2.4 _____ [page 78]

Drug Treatment Orders

The Commission invites submissions as to whether there are any other matters that should be included within the proposed Drug Treatment Order.

CONSULTATION QUESTION 2.5 _____ [page 87]

Eligibility criteria

The Commission invites submissions as to whether it is appropriate to enable participation in the Supervised Treatment Intervention Regime before a plea of guilty has been entered.

CONSULTATION QUESTION 2.6 _____ [page 87]

Court intervention programs addressing alcohol-dependency

The Commission invites submissions about the following matters:

- what is the most appropriate way to increase the availability of court intervention programs for alcohol-dependent offenders; and
- whether Western Australia should establish a specific alcohol court intervention program for Aboriginal offenders.

Family violence court intervention programs

CONSULTATION QUESTION 4.1 _____ [page 142]

Acceptance of statement of material facts

The Commission invites submissions about the following matters:

- Whether offenders being dealt with in the family violence courts should be eligible to be assessed for suitability to participate in the perpetrator program if they indicate that a plea of guilty will be entered or, alternatively, that they are willing to plead guilty to the offence charged (but they dispute some aspect of the statement of material facts).
- Whether removing the requirement to offer a formal plea of guilty or the requirement for a full admission of the statement of material facts would demand any changes to the eligibility criteria to ensure that participation in perpetrator programs is targeted to appropriate offenders (for example, should an offender be required to admit that he or she has previously been violent or abusive to a family member).

CONSULTATION QUESTION 4.2 _____ [page 143]

Superior court matters

The Commission invites submissions about whether family violence courts should be extended to enable offenders who plead guilty to superior court family violence related offences to participate in perpetrator programs in the family violence courts. If so, are there any offences that should be excluded or that are inappropriate for existing perpetrator programs?

CONSULTATION QUESTION 4.3 _____ [page 144]

Bail variations

The Commission invites submissions about the following matters:

- the best way to ensure that the court is aware of the victim's views about any application by the offender to vary protective bail conditions in a family or domestic violence court; and
- whether an application to vary protective bail conditions should only be heard after a sufficient period of notice has been given and/or after the case management team has had an opportunity to discuss the application and provide a report to the court.

CONSULTATION QUESTION 4.4 [page 145]

Protective bail conditions and violence restraining orders

The Commission invites submissions about the following matters:

- whether clause 2(2a) of Schedule 1 Part D of the *Bail Act 1982* (WA) should be repealed or amended; and
- whether s 63 of the *Restraining Orders Act 1997* (WA) should be amended to enable a judicial officer hearing a bail application to make an interim, rather than a final, violence restraining order.

CONSULTATION QUESTION 4.5 [page 145]

Victim input in the family violence courts

The Commission invites submissions about the input of the victim at the time of sentencing in the family violence courts, in particular:

- how the victim's views about the offender's behaviour while on the perpetrator program can be best communicated to the magistrate; and
- whether any changes to the operating procedures in relation to the provision of information from victims are required.

CONSULTATION QUESTION 4.6 [page 146]

Victim support workers

The Commission invites submissions as to how the victim support worker should provide information to the magistrate during court proceedings.

CONSULTATION QUESTION 4.7 [page 147]

A specific 'family violence order'

The Commission invites submissions as to whether a specific 'family violence order' under the *Sentencing Act 1995* (WA) is necessary. If so, what specific powers should be available to courts imposing such an order?

CONSULTATION QUESTION 4.8 [page 147]

Post-sentencing options

The Commission invites submissions as to whether any changes are required to the current post-sentencing options available under the *Sentencing Act 1995* (WA) to assist in the operation of the family violence courts. In particular, how would a general power to recall offenders to court for a post-sentencing review operate in the family violence courts context (see Consultation Question 6.5)?

CONSULTATION QUESTION 4.9 [page 149]

Case management

The Commission invites submissions about the following matters:

- the best way to encourage interagency cooperation in the family violence courts but, at the same time, ensure that the rights of offenders are protected; and
- the structure of case management teams and which agencies are essential to the process.

CONSULTATION QUESTION 4.10 [page 149]

Policing

The Commission invites submissions as to:

- whether a specialist police officer or unit should be attached to each of the family violence courts; and
- whether any changes can be made to police policies or practices to improve the operation of family violence courts.

CONSULTATION QUESTION 4.11 _____ [page 150]

Duty lawyers

The Commission invites submissions as to whether specialist Legal Aid duty lawyers should be assigned to each family violence court and, if not, the best way of ensuring that general duty lawyers and other defence lawyers are sufficiently informed about the objectives and the operation of the family violence courts.

CONSULTATION QUESTION 4.12 _____ [page 151]

Programs for respondents to violence restraining orders

The Commission invites submissions about the following matters:

- whether respondents to violence restraining orders should have the opportunity for court-referred counselling programs;
- whether participation by respondents to violence restraining orders in court-referred counselling programs should be voluntary or ordered by the court;
- how the respondents' participation in a court-ordered counselling program could be monitored or enforced; and
- whether the existing perpetrator programs could accommodate respondents to violence restraining orders.

CONSULTATION QUESTION 4.13 _____ [page 152]

Aboriginal participation in family violence courts

The Commission invites submissions about how the family violence courts can better meet the needs of Aboriginal victims and offenders.

CONSULTATION QUESTION 4.14 _____ [page 153]

Participation in family violence courts by vulnerable groups

The Commission invites submissions about what measures can be put in place to ensure that the needs of particularly vulnerable groups in the community are met in the family violence courts.

CONSULTATION QUESTION 4.15 _____ [page 153]

Family and domestic violence court intervention programs in regional courts

The Commission invites submissions about:

- whether a general court intervention program (as proposed in Chapter Five) could accommodate family and domestic violence offending; and
- the best way to facilitate access to family and domestic violence court intervention in regional areas.

General court intervention programs

CONSULTATION QUESTION 5.1 _____ [page 167]

Training

The Commission invites submissions about the following matters:

- what type of training would be required for judicial officers, lawyers and police prosecutors if general court intervention programs were established in Western Australia; and
- which agencies or individuals should be involved in this training.

CONSULTATION QUESTION 5.2 [page 176]

Establish a pilot community court

The Commission invites submissions as to whether a pilot community court (similar to the Neighbourhood Justice Centre) should be established in Western Australia. Further, the Commission invites submissions about

- the most appropriate location for the court;
- the appropriate jurisdiction for the court;
- the eligibility criteria for the court including whether eligibility should be determined by reference to residence and/or where the offence was committed;
- the range of services that should be available on-site;
- whether the centre should have control over its own budget; and
- the most appropriate way to establish court intervention programs or strategies within the court.

Legal and policy issues

CONSULTATION QUESTION 6.1 [page 182]

Prescribed court intervention programs

The Commission invites submissions as to whether there are any other current court intervention programs operating in Western Australia that should be prescribed.

CONSULTATION QUESTION 6.2 [page 192]

Post-conviction participation in court intervention programs

The Commission invites submissions about whether any amendments to the *Bail Act 1982* (WA) are required to enable participation in court intervention programs post-conviction but before sentencing.

CONSULTATION QUESTION 6.3 [page 199]

Deferral of sentencing

The Commission invites submissions as to whether a court should have the power to adjourn sentencing for the purpose of enabling participation in a prescribed court intervention program under s 16 of the *Sentencing Act 1995* (WA) for longer than 12 months and, if so, in what circumstances.

CONSULTATION QUESTION 6.4 [page 202]

Eligibility for a Pre-Sentence Order

The Commission invites submissions as to whether any other changes are required to the current eligibility criteria for Pre-Sentence Orders as set out in s 33A of the *Sentencing Act 1995* (WA).

CONSULTATION QUESTION 6.5 [page 204]

Judicial monitoring post-sentence

The Commission seeks submissions about whether it would be appropriate for the *Sentencing Act 1995* (WA) to be amended to provide that if a court sentences an offender to a Conditional Release Order, a Community Based Order, an Intensive Supervision Order, Suspended Imprisonment or Conditional Suspended Imprisonment the court *may* order that the offender reappear in court at a particular date and time so that the court can ascertain whether the offender has complied or is complying with the order.

CONSULTATION QUESTION 6.6 [page 210]

Court intervention programs and young offenders

The Commission invites submissions as to the following matters:

- Whether the *Young Offenders Act 1994* (WA) should provide for a general framework for court intervention programs based upon the Commission's proposal for adults under the *Criminal Procedure Act 2004* (WA).
- Whether any further legislative reform in relation to young offenders is required to facilitate the use of court intervention programs in the Children's Court for appropriate cases.
- Whether any specific court intervention programs, other than the general court intervention program proposed by the Commission in Chapter Five, be established to deal with serious young offenders.

Appendix C: List of people consulted

Anderton, Christine – Operational Services and Management, Department of Corrective Services (WA)
Auty, Kate – Magistrate, Magistrates Court (WA)
Barklay, Madeline – Psychologist, Magistrates Court Diversion Program (SA)
Barone, Mara – Aboriginal Legal Service (WA)
Beckett, Jo – Manager, Court Integrated Services Program (Vic)
Benn, Gregory – Magistrate, Magistrates Court (WA)
Blackburn, Amanda – Criminal Lawyers Association (WA)
Bowra, Guy – Manager, Specialist Jurisdictions, Department of the Attorney General (WA)
Burns, Beverly – Aboriginal Justice Officer, Kalgoorlie-Boulder Aboriginal Court (WA)
Cannon, Dr Andrew – Deputy Chief Magistrate, Magistrates Court (SA)
Caporn, Fiona – Department of Corrective Services (WA)
Childs, David – Wickham Chambers (WA)
Cossins, Annie – National Child Sexual Assault Reform Committee (NSW)
Davis, Kate – Women’s Legal Service (WA)
de Graaf, Adrian – Statistics, Strategic and Executive Services, Department of Corrective Services (WA)
Delany, Marita – Manager, SART, Neighbourhood Justice Centre (Vic)
Donaldson, Ian – Manager, Community Justice Services, Department of Corrective Services (WA)
Fanning, David – Magistrate, Neighbourhood Justice Centre (Vic)
Flaherty, Bruce – Criminal Justice Interventions Unit, Attorney General’s Department (NSW)
Flynn, Martin – Magistrate, Magistrates Court (WA)
Ford, Steve – Geraldton Magistrates Court (WA)
Foster, Julie – Sergeant, Western Australia Police (WA)
Glenndining, Hildreth – Family Violence Service (WA)
Gluestein, Brian – Magistrate, Magistrates Court (WA)
Gobby, Ernie – Clerk of the Courts, Mandurah Magistrates Court (WA)
Halden, Kathy – Clerk of the Courts, Rockingham Magistrates Court (WA)
Harring, Samantha – Department of Corrective Services (WA)
Heath, Steven – Chief Magistrate, Magistrates Court (WA)
Hicks, Paula – Department of Community Protection (WA)
Ho, Karen – Director, Policy, Department of the Attorney General (WA)
Hogan, Pam – Magistrate, Magistrates Court (WA)
Holder, Francine – Disability Services Commission (WA)
Hovane, Michael – Legal Aid Commission (WA)
Hyde, Paula – Department of Corrective Services (WA)
Jordens, Jay – Neighbourhood Justice Officer, Neighbourhood Justice Centre (Vic)
King, Sue – Manager, Specialist Courts (SA)
King-Macskasy, Evan – Family Violence Service (WA)
Kristal, Kedy – Pat Giles Centre (WA)
Lawrence, Robert – Magistrate, Magistrates Court (WA)
Lawrence, Geoff – Magistrate, Magistrates Court (WA)
Lim, Heing – Project Manager Restorative Justice Project, Neighbourhood Justice Centre (Vic)
MacDonald, Scott – Deputy Registrar, Drug Court (Vic)
Macey, Philip – Homeless Persons Court Liaison Officer, Brisbane Magistrates Court (Qld)
Marshall, Andrew – Department of the Attorney General (WA)
Matthews, Andrew – Aboriginal Legal Service (WA)
McLean, Debra – Relationships Australia (WA)
Mitchell, Sherilee – Department for Communities (WA)
Mohan, Bruce – Manager Business Intelligence, Court Technology Group, Department of the Attorney General (WA)
Moore, Hazel – Department of Corrective Services (WA)
Muslim, Amy – Center for Court Innovation (New York)
O’Connell, Marita – Forensic Mental Health Court Liaison Officer, Hobart Magistrates Court (Tas)

Panaia, Laurie – Western Australia Police (WA)
Parker, Andrew – Legal Aid Commission (WA)
Parsons, Catie – Legal Aid Commission (WA)
Perlinski, Amanda – Coordinator, Intellectual Disability Diversion Program (WA)
Piggott, Lynton – Project Manager, Courts Drug Diversion Program, Department of the Attorney General (WA)
Pontifex, Michelle – Magistrate, Magistrates Court (WA)
Port Adelaide Magistrates Court Clinical Liaison Team, Magistrates Court Diversion Program (SA)
Preston-Samson, Amy – Department of the Attorney General (WA)
Putnam, Richard – Salvation Army (SA)
Raph, Nadezhda – Manager, Justice Program, Mosaic Community Care Inc (WA)
Reason, Maria – Family Violence Service (WA)
Ridgeway, Lynne – Family Violence Service (WA)
Sarra, Zachary – Magistrate, Magistrates Court (Old)
Sharratt, Stephen – Magistrate, Magistrates Court (WA)
Speldewinde, Don – Clinical Nurse Specialist, CHANGES Program, Royal Perth Hospital (WA)
Steen, Lauren – Department of Corrective Services (WA)
Steinhausser, Cornelia – Salvation Army (SA)
Stevenson, Richard – Regional Manager, Kalgoorlie Magistrates Court (WA)
Stewart, Vicki – Magistrate, Magistrates Court (WA)
Sutton, Kenny – Aboriginal Legal Service (WA)
Sztrajt, Serge – Legal Aid (Vic)
Tan, Yean – Kinway (WA)
Thatcher, Valerie – Court Assessment and Treatment Services (WA)
Toohey, Noreen – Magistrate, Magistrates Court (Vic)
Vose, Stephen – Magistrate, Children’s Court (WA)
Walker, Joe – Melbourne Magistrates Court (Vic)
Walker, Kerry – Director, Neighbourhood Justice Centre (Vic)
Walsh, Andrea – Department of the Attorney General (WA)
Ward, Holden – A/Team Leader, Clinical Liaison, Magistrates Court Diversion Program (SA)
Watson, Rochelle – Family Violence Service (WA)
Watt, Tanya – Office of the Director of Public Prosecutions (WA)
West, Rebecca – Western Australia Police
Woodhead, Maggie – Department of Corrective Services (WA)
Work, Lesley – Acting Manager, Specialist Courts (SA)

Appendix D: Abbreviations used

AADS	Aboriginal Alcohol and Drug Service
AAMA	American Association of Mental Retardation
ABS	Australian Bureau of Statistics
AIHW	Australian Institute of Health and Welfare
ALRC	Australian Law Reform Commission
BSP	Bail Support Program
CATS	Court Assessment and Treatment Service
CBO	Community Based Order
CCTV	Closed circuit television
CDS	Western Australia Court Diversion Service
CDTCC	Compulsory Drug Treatment Correctional Centre
CDTO	Compulsory Drug Treatment Order
CHANGES	Challenging Habitual Attitudes by Nurturing Growth, Education and Self-Responsibility
CISP	Court Integrated Services Program
CREDIT	Court Referral and Evaluation for Drug Intervention and Treatment
CRO	Conditional Release Order
CSI	Conditional Suspended Imprisonment
DPP	Office of the Director of Public Prosecutions
DSC	Disability Services Commission
DCR	Drug Court Regime
DUCO	Drug Use Careers of Offenders
GASR	Geraldton Alternative Sentencing Regime
IDDI	Illicit Drug Diversion Initiative
IDDP	Intellectual Disability Diversion Program
IQ	intelligence quotient
ISO	Intensive Supervision Order
LRCWA	Law Reform Commission of Western Australia
MCDP	Magistrates Court Diversion Program
MERIT	Magistrates Early Referral into Treatment Program
MHDL	Mental Health Diversion List
NGOs	Non-government Organisations
NJC	Neighbourhood Justice Centre
NSWLRC	New South Wales Law Reform Commission
PSO	Pre-Sentence Order
QIADP	Queensland Indigenous Alcohol Diversion Program
QMERIT	Queensland Magistrates Early Referral into Treatment Program
SART	Screening, Assessment and Referral Team
STIR	Supervised Treatment Intervention Regime
TM	Transcendental Meditation
VLRC	Victorian Law Reform Commission
WANADA	Western Australia Network of Alcohol and Other Drug Agencies
WACOSS	Western Australian Council of Social Service Incorporated