



**Mental Health Law Centre
AGM**

Address

by

**The Honourable Wayne Martin AC
Chief Justice of Western Australia**

Perth
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I would like to commence by acknowledging the traditional owners of the lands on which we meet, the Whadjuk people who form part of the great Noongar clan of south-western Australia and pay my respects to their Elders past and present and acknowledge their continuing stewardship of these lands.

It is a great honour for me to have been given the opportunity to once again address the annual general meeting of the Mental Health Law Centre. It is impossible to overstate the significance of mental health issues to the justice system. By mental health issues I mean mental illness and cognitive or intellectual disability. I will use "mental health issues" to embrace both of those important conditions during the course of these short remarks.

Everyone here would be aware of the general history of public policy in relation to mental illness and mental health in Australia over the last 30 years. During the 1980s, a policy of de-institutionalisation was embarked upon in almost all jurisdictions on the basis that the large institutions which existed in those jurisdictions would be closed down in favour of community-based support and assistance provided to those who needed mental health treatment and support. Those policies did not work nearly as well as they should have, largely because of the failure to provide the broad range of community-based support and treatment that was required to deal with all the people who were, effectively, left to their own, or their families', devices as a result of the closure of the large institutions. Over time, the consequences of these policies led to the re-institutionalisation of those with mental

health issues, but on this occasion the institutions into which the mentally ill and cognitively disabled were placed were prisons rather than hospitals. That observation has been made by others, including Professor Bryant Stokes AM in the course of his review of the mental health system in 2012. He and others have observed that the largest institutional provider of mental health services in the State of Western Australia is the WA prison system by a significant margin.

There are various sources of data on the extent to which people who intersect with the justice system are affected by mental health issues. Professor Bryant Stokes suggested that 85% of the people who attended court had some prior contact with mental health services. That figure, frankly, seems a little at odds with other figures, including the survey that was conducted at the time consideration was being given to the creation of a Mental Health Court at the Magistrates Court in Perth which revealed that about 20% of those who attended the latter court in the course of one week were either in receipt of or had a prior history of involvement with the mental health system.

The former Children's Commissioner, Ms Michelle Scott, estimated that 50% of the children engaging with the criminal justice system at its most serious end, specifically those who are put into detention, experienced some form of mental health issue. But that may even be an under-estimate for the most serious juvenile offenders. When the Auditor General conducted an inquiry into the juvenile justice system in Western Australia in 2008, he identified 15 children who had had more than 20 contacts with police over the last five years. The

Auditor General was able to review the files of seven of those 15 children and just from those seven he found that five suffered from significant physical or mental health issues; six had abused substances; three had been neglected or maltreated and one had an intellectual disability. So in all probability all of the children who had had a high degree of contact with the justice system (and whose records were able to be reviewed) suffered from one or more of those conditions.

The incidence of mentally affected offenders tends to vary with age so that those who suffer from mental health issues are over-represented amongst children. They are also over-represented amongst older prisoners as well as amongst women in the prison system. In his 2012 report, Professor Stokes referred to evidence that 10% of the prisoners in Acacia prison were actively psychotic at any one time. Given that Acacia prison now holds far in excess of 1000 prisoners, that means that on any given day there are well over 100 prisoners in Acacia who are actively psychotic.

The prevalence of mental health issues obviously has a number of implications for those working within the justice system, including, of course, the courts. We have a specialty court in relation to mental health in the Perth Magistrates Court but it has limited capacity and resources. On the numbers that I have given, many of the people who have mental health issues who are coming before our courts will be dealt with in mainstream courts rather than a specialty court. It follows that people responsible for the operation of our courts,

including in particular the judges and magistrates, must be alive to mental health issues and must be supported by people who are similarly alive to those mental health issues, including legal practitioners.

The prevalence of mental health issues within the criminal justice system also has implications for police, who need training in dealing with those issues. They also need support from appropriately qualified specialist and professional resources. I believe there are some promising developments that have either taken place or are shortly to take place in this area. I believe that psychiatric nurses will be placed at some police stations and be given special powers in order to provide assistance to police who are dealing with cases that might benefit from such assistance.

It also occurs to me that the current prominence of domestic violence as an issue engaging public attention provides good opportunities to not only try to secure the necessary mental health resources for the victims but also to provide therapeutic intervention, including mental health supports where relevant, at an early stage in the life cycle of those and other cases more generally. One thing I think we can say confidently in the area of domestic violence is that the punitive approach that has characterised our response to those situations in the past has not been very effective and that a varied approach, tailored to the circumstances of each particular case, is likely to have better outcomes. In appropriate cases, a more therapeutic and preventative approach might encourage the increasing of reporting of incidents of

domestic violence. We know that some victims of domestic violence are discouraged from reporting because of fear that a punitive response will break up the family. While there are opportunities for a more therapeutic and preventative approach for dealing with domestic violence, that is, of course, not to say that serious cases of domestic violence are to be swept under the carpet or to suggest that anything other than a punishment that is appropriate for the crime committed should be applied in such cases. My point, however, is that at least in the early stages, greater acceptance of a therapeutic and preventative rather than punitive approach in appropriate cases could be beneficial not only to the victims and community more generally but also to many who become involved in the criminal justice system, including the significant number with mental health issues.

As everyone here would be aware, mental health issues very seldom appear in isolation. Very often they are associated with other aspects of disadvantage including particularly substance abuse and homelessness. It is sometimes difficult in such cases to unscramble the omelette to see which came first, whether it was the mental health issue that caused the substance abuse, or the substance abuse that caused the mental health issue, or which of them contributed to making the person homeless. But we often see that terrible trifecta which makes an effective response all the more difficult. Those people who might have mental health issues, who are abusing substances and who have no roof above their head are, of course, amongst the most marginalised people within our community.

The Mental Health Law Centre exists to serve and assist people who are least equipped to help themselves. It is impossible to overstate the value of the services which the Centre provides. That is why I am very pleased to provide my support for this organisation, and to wish all involved in its endeavours every success.

I am particularly interested to have been briefed on some initiatives that the Centre hopes to implement, including the provision of telephone advice. This will enable the range of those seeking its assistance to increase not only locally but by making services accessible in the regions of this State using modern technology.

In conclusion I would like to again express my best wishes to all involved in this Centre. The Centre does very, very important work for people who really need, and merit, every assistance they can get.