

Integration and Collaboration:

Building capacity and engagement for the provision of criminal justice services to Tasmania's mentally ill

Final Report

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The Tasmanian Institute of Law Enforcement Studies (TILES)

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Chapter 1 – Background

This section of the report provides the background for this community engagement project. It outlines a brief description of the Mental Health Diversion List in Tasmania and its governance, aims and objectives. The Section describes the methodology employed by TILES researchers for the purposes of this project.

The Tasmanian Mental Health Diversion List

The Mental Health Diversion List (MHDL¹) has been in operation since 2007 in two registrars of the Tasmanian Magistrates Court in Hobart (2007) and Launceston (2010). The MHDL was implemented without a specific budget or any additional human or other resources. The Court continues to rely on existing funding to maintain the program. The MHDL is an example of the Court revising its processes to deliver better services to its clients and to an increasing number of offenders/defendants suffering from a range of mental illnesses appearing before the Court.

The introduction of the scheme was a response to the ‘well-documented problems associated with dealing with defendants who suffer from mental illnesses in the general criminal justice system and court processes’ (Newitt and Stojcevski, 2009, p8). Initially implemented as a pilot program in Hobart, the MHDL attempts to incorporate a ‘more therapeutic approach to criminal justice in a Magistrates Court setting’, and to address ‘*the reasons for the offending behaviour*, rather than simply addressing and sanctioning the said behaviour’ of defendants living with a mental illness (and whose offending is related to their condition) appearing regularly before the courts (Newitt and Stojcevski, 2009, p8). The success of the pilot program (documented in its 2009 evaluation – Newitt and Stojcevski, 2009) persuaded the Hobart Court to make the List a permanent feature of its operations. In March 2010 the List was extended to Launceston.

The repeat offenders targeted by the MHDL consist of a specific group who have a medically recognised condition that may have played its part in the commission of an offence. Furthermore, offences under consideration are usually not serious enough (summary offences such as shoplifting, disorderly conduct for example) for gaol or community service orders (Magistrates Court of Tasmania, 2010). Prior to the existence of the MHDL, many of these offenders went through the criminal justice system in the same way as any other offender. As demonstrated in Chapter 2, this practice has been denounced worldwide and many magistrates have embraced the practice of fully contextualising the

¹ A full list of acronyms used in this report is featured in Appendix A.

commission of a criminal act, as opposed to considering offences in an expeditious and formalised manner (Bartkowiak-Théron and Jaccoud, 2008).

An average of 500 Hobart defendants are referred by the Court to Forensic Mental Health Court Liaison Officers (FMHCLO) each year for assessment. As of April 2011, 231 individuals had been referred onto the List in Hobart since its 2007 implementation. Eligibility for participation in the MHDL is currently limited to adult defendants with impaired intellectual or mental functioning as a result of a mental illness (as defined in the *Mental Health Act 1996*). However, as this report notes, the Court is currently considering a possible extension of the program to young offenders with mental health issues (see below).

Referrals to the MHDL may come from the defendants themselves, family members, magistrates, and/or lawyers acting for the defendant. Participation in the MHDL program is strictly voluntary and is only available where the defendant is charged with a summary offence, or where an indictable offence is tried summarily. It excludes sexual offences and offences involving actual and/or serious bodily harm. Referral to the MHDL is an open process² but more often it is made by FMHCLO, lawyers or magistrates. Eligibility criteria are as follows:

- Defendants must be of a minimum age of 18 years;
- Charges must be for low level offences, e.g. summary offences and indictable offences (excluding sexual offences and those of actual or serious bodily harm);
- Individuals must be diagnosed with a mental illness (s4 *Mental Health Act 1996* (Tas))³ and be assessed as suitable for the List⁴;
- Participation is at all times voluntary;
- There needs to be a discernible link between the offending and the mental illness; and
- A guilty plea is required.

Special procedures apply in the MHDL program. They involve:

- a referral for initial assessment by forensic mental health psychiatric nurses at the Court
- a detailed Treatment Plan for the offender involving therapy in the community, and
- regular supervision of the offender by the Court whilst undertaking further assessment and treatment in the mental health sector.

² For example, self-nomination, family or friends, lawyer, police or magistrate may refer someone to the MHDL.

³ This means that persons with a primary diagnosis of intellectual disability are not eligible for the MHDL in Tasmania.

⁴ The FMHCLO provide the eligibility assessment, including identifying individuals that have grounds for an insanity defence under s16 of the *Criminal Code*, or an argument in relation to an individual's fitness to plead under the *Criminal Justice (Mental Impairment) Act 1999*.

Court supervision of offenders occurs approximately once a month. The Magistrate, the prosecutor, defence lawyers, the offender, forensic mental health officers, and other treatment providers attend court sessions as required. The MHDL adopts a multi-disciplinary strategy that includes a range of activities relating to offender behaviour, health (medication), housing, and employment in a bid to break the cycle of offending behaviour.

A range of community based services and programs are engaged by the MHDL, including general practitioners, psychiatrists, psychologists, carers, well-being courses, and rehabilitation programs⁵. After the initial screening assessment, individuals or agencies that may be involved in providing information for inclusion in the defendant's Treatment Plan include:

- medical practitioners (GPs), psychologists and counsellors
- family members
- Mental Health and Disability Services, Hospital and Ambulance Services, Alcohol and Drug Services (DHHS)
- police, justice and correctional agencies
- the Mental Health Tribunal, and
- the Guardianship Board.

MHDL Governance, Aims and Objectives

The MHDL is overseen and supported by a Steering Committee and a Project Team. The former comprises representatives from the Court, Department of Justice, Mental Health Services, the University of Tasmania Law Faculty, and the Tasmanian Department of Police and Emergency Management. The project team has representatives from the Court, police prosecution, FMHCLO, the Legal Aid Commission and the Law Society Criminal Committee (Newitt and Stojcevski, 2009, p14). The MHDL has a dedicated prosecutor. This has been identified as important to the process to ensure continuity and consistency (Saint John Mental Health Court, 2004).

The aim of the list is to 'adopt a problem solving approach to the delivery of justice. It incorporates therapeutic jurisprudence concepts when dealing with offenders with mental illnesses' (Newitt and Stojcevski, 2009, p14).

The Court website states:

The Court has decided to change its way of dealing with people with mental health issues by providing separate Lists or sittings for them with dedicated magistrates and teams that focus on treatment and support. By focusing on treatment and support the court

⁵ For example: rehabilitation programs provided by *Holyoake* Tasmania.

aims to provide an opportunity for eligible individuals to voluntarily address their mental health and/or disability needs associated with their offending behaviour.

With the focus on treatment and support, the express aims of the MHDL are to:

- assist people to address the mental health needs related to their breaking of the law
- improve community safety and reduce re-offending by people on the List
- improve the psychological and general well-being of people on the List, and
- reduce the use of criminal justice punishments for health related behaviours.

The MHDL in Tasmania is not subject to any unique legislation. Rather, it operates under the provisions of the Tasmania *Bail Act 1994* and *Sentencing Act 1997* in conjunction with the *Mental Health Act 1996*. The MHDL relies on a collaborative team approach, operates informal hearings including direct interaction between the Magistrate and the defendant, and provides court supervision of the offender through the FMHCLO. Discontinuation of a defendant's placement on the MHDL may be for a number of reasons such as non-compliance with bail conditions or withdrawal of personal consent⁶.

The MHDL: 2010 update

In 2010, researchers from the Tasmanian Institute for Law Enforcement Studies (TILES) initiated discussions with the Hobart Magistrates Court about the MHDL and its future. While the MHDL had undergone a review a few years earlier (Magistrates Court of Tasmania, 2009), the report had raised issues that continued to remain unanswered, required further investigation and/or needed action. These issues were brought to light following conversations with volunteers working in the Magistrates Court on the MHDL and subsequently with the administrator of the Court and Chief Magistrate, Michael Hill. These conversations and the networking process that followed in late 2010 - early 2011 were particularly timely in the light of several problems identified by both the courts and Police in the operation of the List since its implementation in 2007.

The problems identified in regards to the administration of the List were as follows:

- According to an internal evaluation of the MHDL, while police officers in Tasmania are aware of the existence of the List, there is lingering confusion amongst police ranks as to its operation and the role of police in its administration. A brief introduction to the MHDL is currently taught at the Police Academy in the recruit course, but not in a sufficient manner for police officers to be fully aware of its process and procedures and in many cases, the benefits of diversion for the mentally ill, such as reduced recidivism and improved mental health of offenders.

⁶ A list of MHDL information resources is featured in Appendix B.

- The list of individuals who are going/have gone through the MHDL process is currently not accessible to police, neither are the conditions under which individuals are released (curfews, no association, for example) into the community. This may result in unnecessary police procedures: repeat arrest of individuals already placed on bail conditions for similar behaviour (repeat begging, repeat shoplifting, for example) and who, instead may have received a warning or caution.
- Police checks for individuals registered on the List currently feature a 'no conviction recorded', while matters under s7 (f) and s7 (h) of the *Sentencing Act* can be dismissed by the Mental Health Tribunal. This is problematic for individuals when they apply for jobs or voluntary work, and constitutes a considerable discrepancy in the administration of the criminal justice system (the law states that these individuals should not appear as having a police record). While the Mental Health Tribunal does not have power under the Act, this is a significant procedural matter that may have a significant impact on defendants' circumstances afterwards.
- There is currently no systemic database used within the MHDL. Current data are recorded on a spreadsheet, which does not allow for cross-referencing, any recording of individuals' bail circumstances and release conditions, any follow up of individuals and comprehensive transfer of data to relevant practitioners. The spreadsheet is currently maintained with the help of a volunteer at the Magistrates Court.
- The MHDL relies on bail powers to facilitate *diversion*. Cases are adjourned and the Tasmanian *Bail Act 1994* is used to attach appropriate conditions. A key concern that was identified is that this approach changes the purpose of bail, which has traditionally been to 'ensure attendance in court, not to facilitate treatment' (Richardson, 2008, p18, citing Freiberg and Morgan, 2004, 220-236). Freiberg and Morgan argue that the non-traditional use of bail such as treatment conditions or the imposition of long periods of bail, blur the line between guilt, conviction and sentence. Another bail-related issue that has been noted in the Launceston and Hobart data is that there are different approaches adopted in the use of curfews and exclusion conditions. It is an example of an inconsistency of approach that may become important in certain instances.

Upon consideration of these issues, it was agreed that such problems would benefit from a structured problem-solving, networking and discussion process. TILES staff agreed to organise a consultation process and to arrange a workshop that would bring together key stakeholders from Tasmania and elsewhere, and others associated with the MHDL process with a view to identifying the challenges and potential barriers to the continuing success of the MHDL. Another benefit to

such consultation would be the interaction and sharing of information and practice between all stakeholders involved in the provision of services to defendants with a mental illness in Tasmania.

Methodology

A dual explanatory/exploratory approach was adopted for this study. The purpose of exploratory/explanatory research is to investigate little-understood phenomena, identify, or discover important matters relating to the topic or issue under scrutiny and to generate hypothesis for further research (Marshall and Rossman, 1999). This approach seeks to explain patterns and discover possible elements that influence the matters under consideration. In an applied setting (in this case the criminal justice system and related professions), the consultation was intended to create opportunities for stakeholders to actively engage with the problem-solving exercise and to be an integral part of the solution.

The consultation, as agreed with the Chief Magistrate was two-fold. TILES researchers would conduct focus groups across the Hobart and Launceston registrars of the MHDL to allow stakeholders to voice their thoughts and concerns about the MHDL process. Feedback from the focus groups would provide context and discussion points for a professional workshop to be held in Hobart later in the year.

Focus Groups

Semi structured focus groups (Noaks and Wincup, 2006) conducted with the key stakeholders involved in the administration and implementation of the MHDL were held in February and March 2011 in Hobart and Launceston. Participant selection consisted of the purposive sampling of participants from both Hobart and Launceston Magistrates' Courts who were involved in the diversion process of mentally ill offenders. The current spread of MHDLs throughout Tasmania (there are only two - one in Hobart and one in Launceston) restricted the number of potential participants who could be involved. It was therefore important to 'locate 'excellent' participants to obtain [rich] data' (Charmaz, quoted in Flick 2009) that would allow for the exploration of specific administrative and procedural issues dealt with by the MHDL and related processes and an identification of what works and what doesn't work in this complex environment. Participants included local magistrates, administrators, local forensic mental health practitioners allocated to the Magistrates Court and the MHDL in particular, and senior police officers in charge of mental health issues. A total of 12 individuals participated in the focus groups.

The purpose of the focus groups was to flesh out the concerns raised not only in the 2009 report, but to provide an opportunity to reflect on the current status of the MHDL in both registrars and to identify challenges (attitudinal, policy related, procedural) and potential pathways for solutions. Participants were encouraged to express their views about the future of the MHDL, which was

considering expansion to other registrars in Tasmania, as well as broadening the scope of the MHDL to young people (see below). Participants were also invited to advise on the topics they would like to raise at the workshop. All data was anonymously collated. No names were collected or recorded during the focus groups.

Workshop

An inter-state, inter-agency workshop gathering of 48 representatives from the criminal justice system and support services for the mentally ill was organised by TILES in April 2011 at the University of Tasmania. Participants attended the workshop with a view to facilitating collaboration and interaction between agencies, raise awareness of community issues, and allow for the productive exchange of knowledge around mental health issues in the Australian criminal justice system. The specific purpose of the workshop was to discuss issues relating to the diversion of persons living with a mental illness from the criminal justice system, highlight examples of best practice, and begin a problem-solving process for the issues and challenges raised by key stakeholders and specifically the focus groups.

Workshop participants consisted of the aforementioned focus group participants, and others associated with the MHDL in Tasmania, such as, the Tasmania Mental Health Tribunal, the Mental Health Council of Tasmania, consumer representatives, and advocates. Other participants included those involved in the delivery of police and justice services to mentally ill offenders, academics, post-graduate students and invited guests from Adelaide, South Australia and Melbourne, Victoria. The particulars of the workshop are discussed in Chapter 4.

Chapter 2 – Literature review

This section of the report consists of a brief discussion of the literature on the criminal justice system as it impacts on those living with a mental health issue, diversionary schemes for those defendants, problem-solving courts generally with a focus on mental health courts and ‘mental health diversion lists’.

Mental health, Mental illness and offending

The increased involvement of criminal justice stakeholders (police, courts, legal aid, for example) with those living with a mental illness stems from socio-politic and economic developments in the 1960s (Bittner, 1971; Deane et al, 1999) and the deinstitutionalisation movement and resultant increase in the number of mentally ill people receiving care in the community (Panzarella et al, 1997; Perkins et al, 1999). Professional carers and services that were intended to provide community based mental health treatment were not always resourced to provide effective services (Gist, 2000) and in the past, the mentally ill have often been left un-catered for. The absence of proper continuing care and the way mental illness can manifest itself when left untreated, has meant that those living with a mental illness, often attract the attention of the criminal justice system (Greenberg, 2001 – see also Herrington and Bartkowiak-Théron, 2008). Academic commentators, those involved in the criminal justice system and mental health practitioners have reflected at length about how the criminal justice system has addressed, and should address, the congruence of mental health and offending, with good, evidence-based practices. At the core of those preoccupations, practitioners usually consider the possibility of enhancing therapeutic jurisprudence and diversion schemes, to limit the over-representation of people living with a mental illness in prisons, and ensure that the needs of the mentally ill are empathetically considered in the process.

Problem-solving justice

Problem-solving justice is a therapeutic approach aimed at addressing issues for a particular group of offenders with a primary focus on an individual’s well-being. ‘Therapeutic jurisprudence’ addresses the impact of the law and legal process ‘on emotional and psychological well-being’ (Wexler, n.d).

A summary of the aims and purpose of problem-solving courts can be found in the introduction to the ‘Problem-Solving Justice Toolkit’ (Casey et al, 2007, p4):

The problem-solving court approach focuses on defendants and litigants whose underlying medical and social problems (e.g., homelessness, mental illness, substance abuse) have contributed to recurring contacts with the justice system. The approach seeks to reduce recidivism and improve outcomes for individuals, families, and communities using methods that involve ongoing judicial leadership; the integration of

treatment and/or social services with judicial case processing; close monitoring of and immediate response to behaviour; multidisciplinary involvement; and collaboration with community-based and government organizations.

The problem-specific approach is not without its critics. Helen Syme, the Deputy Chief Magistrate in New South Wales, was 'wary of embracing the idea of a Mental Health Court due to the potential stigma that attaches to the offender by being dealt with by such a court' (Richardson, 2008, p17). Her preferred approach was that all *generic* courts be equipped to deal with individuals with mental illness or intellectual disability and improved communication between courts, police, and government departments (Richardson, 2008, p17).

There are various models of problem-solving courts and diversion programs. The main difference between them is that the problem-solving court comprises a dedicated court and the diversion program is a program or court list run within the court system. Common to both is their generally problem-specific nature. Globally, Drug Courts and Family Violence Courts are the most prevalent example of problem-solving courts. According to the Australian Institute of Judicial Administration (www.aija.org.au), the key aspects that distinguish problem-solving courts from mainstream courts are:

- seeking to address all the underlying issues rather than simply focusing on the legal problem; judicial case management;
- a multi-disciplinary court team;
- a collaborative approach with participants;
- the involvement of government and community agencies in the development and running of the project; and
- the use of therapeutic legal processes by the court and team members.

Diversion programs

Diversion programs, diversion courts, and diversion lists are also problem-specific with their focus on groups of offenders in 'special circumstances' (Richardson, 2008, p20). Their overall aims are to address the underlying issues of offending (such as age, mental illness, socio-economic status, homelessness), and to ensure that individuals in special circumstances who commit summary offences are placed on bail, kept out of the criminal justice system (that is, not incarcerated) and helped on the path of rehabilitation and reintegration in the community⁷. Commonly, diversion

⁷ A recent comprehensive publication by the Department of Justice in Victoria (*Diversion and support of offenders with a mental illness: Guidelines for best practice*, August 2010) has been designed to 'provide a resource for different jurisdictions to devise policy positions and programs that are relevant to the particular issues that concern their jurisdiction' (p2). It covers topics such as mental illness in the criminal justice system

programs involve the adjournment of a matter that is before the court while the defendant undergoes treatment or rehabilitation. This is the current model in Tasmania. Different programs operate across Australia and elsewhere (see Appendix C), and target a number of populations deemed 'vulnerable' by law.

Offenders living with a mental illness are a group whose 'special circumstances' have been recognised to benefit from therapeutic diversion. It has been reported that, 'the majority of mentally ill defendants typically offend in a 'nuisance-type' manner such as: shoplifting, disorderly conduct or the commission of other minor public order offences' (Senate Select Committee on Mental Health, 2006, p9). A common feature of this group is the 'revolving door' problem (Magistrates Court of Tasmania, Explanatory Article), that is, a tendency for repeat offending with consequences for failing to appear at a court hearing (Magistrates Court of Tasmania, 2009, Evaluation Report, p10). Because of such complex repeat problems, it is usual for organisations to approach the problem of mental illness and offending from a whole of government approach, with several specialised agencies working together to address the needs of offenders living with a mental illness. Such inter-agency collaboration is documented as good, evidence-based practice internationally (Bakht and Bentley, n.d; Victoria Department of Justice, 2006).

Collaboration of justice agencies to address complex issues

In line with public sector practice in most western industrialized countries, criminal justice organizations increasingly engage in inter-organizational partnerships to address complex 'wicked' issues. Such issues (for example: alcohol and drug abuse, mental illness and anti-social behaviour) span policy arenas and institutional jurisdictions (Fleming 2009, p29). Developing and monitoring partnerships to enhance service delivery in these policy areas is a central plank of the Australasian Policing Strategy (Fleming and O'Reilly 2007, p214).

State-based, multi-agency and other partnership permutations are now commonplace across Australian criminal justice organizations. Many of them are an integral part of either a whole-of government approach to complex issues, or of the community policing paradigm supported by state and federal governments. Even though these partnerships are not mandated (as they are for instance in the United States and the United Kingdom) collaborative work is now part of the Australian justice industry organisational schema (Fleming and O'Reilly, 2008). Partnerships and collaborative networks in regards to the policing and monitoring of 'at risk' or 'vulnerable' populations are now common place throughout Australia (Fleming and Wood, 2006). For example, justice and police institutions have long established strong partnerships with Departments of Education and individual local schools

and dealing with offenders with complex needs. We direct readers to this document for useful examples and further reading references.

to address youth-related issues. These partnerships have resulted in the design of specific initiatives Australia-wide intended to build relationships between authorities and young people, participate in crime prevention activities, and promote diversionary processes for young non-repeat, summary offenders (see, for example, the New South Wales School Liaison Police initiative – NSWPF, 2007; for a complete list of collaborative schemes on the topic of vulnerable populations, see Bartkowiak-Théron and Corbo Crehan, 2010). In another area of vulnerability, police, courts, and organisations specialising in addressing domestic violence and child abuse problems tend to partner with community groups in Australia to provide civic education and cultural awareness for all parties (Fraser, 2011).

Categories of population deemed as ‘at risk’ or ‘vulnerable’ now feature in legislation across states and territories (see, for example, the NSW *Law Enforcement (Powers and Responsibilities) Regulation 2005* or the Tasmania *Criminal Law (Detention and Interrogation) Act 1995*). ‘At risk’ populations are usually identified, in Australia, as youth, the elderly, the mentally ill, the disabled, non-English speaking background individuals, the homeless, victims of crime, Aboriginal and Torres Strait Islanders, for example. Sociological and criminological literature on these populations is extensive, as these groups have been the focus of legislative changes (particularly in the area of human rights), political and media scrutiny and policy making since the 1960s (Bartkowiak-Théron and Corbo Crehan, 2010).

As noted above, those living with a mental illness have been the focus of academic and policy consideration, since the first de-institutionalisation initiatives of the 1960s (Lamb and Bachrach, 2001). Following the ‘replacement of long-stay psychiatric hospitals with smaller, less isolated community-based alternatives’ (Lamb and Bachrach, 2001, p1039), social commentators began considering ‘the lack of treatment facilities and community support systems for deinstitutionalised individuals ... the cumulative effect of increasing the presence and visibility of the mentally ill ... and concomitantly, of increasing the frequency of police encounters with this population’ (Wachholz and Mullaly, 1993, p287).

The historical increase in police interaction with mentally ill offenders also contributed, early on, to a disproportionate representation of the mentally ill in the criminal justice system, particularly in terms of incarceration rates (Ogloff et al, 2007). Research into mental health and offending behaviour has essentially been the subject of therapeutic jurisprudence research. According to Toni Makkai (cited in Ogloff et al, 2007, p1):

[A]lthough mental illness is widely recognised as a problem in modern society, it presents particular challenges for the criminal justice system. Research has shown that offenders have higher rates of mental illness than the general community.

It is estimated that the rates of major mental illness, such as schizophrenia and depression, within the offender populations is between three and five times that of the general population (Ogloff et al, 2007, p1).

Research conducted by White and Whiteford (2006) in Australia indicated an 80% prevalence of prisoners exhibiting a psychiatric disorder, as opposed to 31% in the general community; 7% against 0.7% in the case of psychosis; 23% as opposed to 9% in relation to affective disorders and 43% compared with 9% in the area of personality disorders. In addition to this, heightened costs for the criminal justice systems and advocacy by human rights groups were the trigger for a discussion around better police practices in relation to mentally ill offenders and their diversion from the criminal justice system.

The involvement of the criminal justice system in what is arguably a health-related issue has caused widespread concern. The occasional harsh confrontation of mental health consumers with police has led to calls for the evaluation of official responses to mental health consumers, and the development of specialised responses, training, policies and operational procedures (for example, Burgess 2005, 2006; Freeman, 1998; Herrington and Bartkowiak-Théron, 2008; Lurigio and Watson 2010; Panzarella and Alicea 1997; Perkins et al, 1999; Teller et al, 2006). Therefore, in line with community-oriented practices, and with a view to promoting partnership initiatives in dealing with society's vulnerable populations (Wells, and Schafer, 2006), many programs designed to assist the criminal justice system in dealing with mental health crisis events have involved the development of networks of cooperation between law enforcement agencies and health services (Lamb and Bachrach 2001).

Police are now, at recruit and corporate levels, educated in recognising the signs of mental illness. Protocols for handling encounters with mental health consumers have been developed (de-escalation techniques, dual presence of police and ambulance/health personnel) in most jurisdictions. Furthermore, memoranda of understanding between police and health agencies, and the development of crisis intervention teams (for example in the United States: crisis intervention teams (Fisher and Grudzinskas, 2010; Doulas and Lurigio, 2010), comprehensive advanced response teams, joint teams or mobile crisis teams (Reuland and Margolis, 2003) Mental Health Intervention Teams in New South Wales (Herrington and Bartkowiak-Théron, 2008), have had considerable success.

As this section shows, a lot of work has, so far, revolved around police encounters with the mentally ill, and partnerships between police and mental health agencies. Most initiatives and research projects are concerned with the gate-keeping stages of the criminal justice system or at the community level in the areas of service provision and support and diversion schemes. Little empirical research has been conducted to date around the articulation of police and courts processes for mentally ill individuals who have gone, or are going through, the criminal justice process and are placed on bail conditions. As a result, little is known about how courts and police collaborate or share

information in relation to the monitoring of offenders placed on bail and released in the community. Even less is known about vulnerable offenders placed on bail and the specific bail conditions that apply to them, the factors that impact on bail considerations by magistrates and the impact of such bail decisions on the work of police monitoring mentally ill defendants. Our research is the first step, in Australia, to look at an initiative that intends to enhance processes and collaboration between tribunals and police in relation to mentally ill defendants going through a diversion scheme.

Mental Health and Offending in Tasmania

In September 2009, the Tasmanian Statewide and Mental Health Services released a Policy Framework entitled, *'Building the Foundations for Mental Health and Wellbeing'*. As part of this framework, the Tasmanian Government formerly acknowledged the daily complexities faced by people living with a mental illness. It also recognised that mental illness can lead to increasing levels of human burden such as 'financial difficulties, discrimination and marginalisation' and estimated that around '60,000 Tasmanians each year will experience mental ill health with contributing issues such as alcohol or substance use' (Statewide and Mental Health Services, 2009, p4).

As part of this Framework, Lara Giddings's 'Message from the Minister for Health and Deputy Premier' highlighted the need for high quality care services, but also the need to promote mental health and well-being, and develop ways to intervene early to help people stay well. The Tasmanian MHDL is built on that precept.

Chapter 3 – The Tasmanian Mental Health Diversion List: Lessons from the Field

In this section we summarise and provide some analysis of the discussions that were held during the focus groups in Hobart and Launceston. The focus groups were part of the preliminary consultative process and were intended to provide researchers and participants with a broader and deeper understanding of the MHDL, its challenges and to initiate the problem-solving process. Questions such as, what works and what is more challenging are discussed in this section. The issue of expanding the MHDL to include other vulnerable populations is also canvassed.

Perspectives on a database and data collection

Data management

Data management was identified in the focus groups as the single most important issue for the Tasmanian Magistrates Court. This is because data management and data collection potentially impact on resource and funding opportunities. As well, an effective data base allows practitioners to see impact ‘at a glance’. The more detailed the database, the more useful it can be to the courts and other key stakeholders. Currently, the MHDL data management system functions within the limited resources of the MHDL. It consists of an Excel spreadsheet maintained by the Courts, with the help of volunteers (students on placement from the UTAS Faculty of Law). The spreadsheet is updated on a regular basis (weekly or fortnightly) and consists of the main logistical details for defendants (such as the nature of offence, court appearance, the brief treatment plan summary and court review sessions). The List operates under password protected access, and access is limited.

The size of the MHDL and current database are at a stage where mechanical counting is becoming, if not unsustainable, at the very least not practical. All focus group participants argued for a more robust and comprehensive mode of data collection, whilst acknowledging that the current data collection system, despite limitations, is better than not having anything at all.

There is currently a state-wide Excel spreadsheet in which you can find details about diagnosis, number of appearance at court and outcomes. Focus Group 1

Data collection was not done at all, until we decided to step back and see what we had achieved a couple of years after the List was implemented. Focus Group 3

Administrators of the courts or FMHCLOs consult and analyse on a needs basis, however, the limitations of the database are starting to surface as clear obstacles when ‘complex’ questions are asked about the impact of the MHDL on issues such as re-offending, re-appearance rates and compliance with treatment plans. The Excel spreadsheet, currently located in each registrar has, so

far, been sufficient considering the limited number of defendants placed on the List. Staff members interact with defendants on a sufficiently regular basis to remember their details and anecdotal evidence has (to date) sufficed to indicate success and potential impact on individual cases. However, court data trends indicate that MHDL defendant numbers are incrementally rising. This growth is not surprising, if we appreciate the slow, yet visible awareness of the MHDL amongst criminal justice professionals. However, it now needs to be better managed for administrative and management purposes.

We need to think of a better database or tracking system in order to measure success. It's important to talk about that. The current system can probably allow us to check reappearance on the List, but to see if the person has other items to his credit, then we would need to interrogate the [the Criminal Registry Information Management and Enquiry System] CRIMES database to see how the MHDL is reaching its targets... We could also ask Tasmania Police about their data. They would have an idea of reoffending patterns. But this remains a manual system for checks. We need a better system.

Focus Group 2

The immediate need for a better data capturing system was a primary concern for the focus groups. In the project's initial consultation phase, some participants indicated that they thought the recidivism rate had gone down, as people placed on the List had not reoffended since they appeared, with the exception of one defendant. However, the same participants indicated that they were unsure as to whether defendants might have appeared at court *outside* the List, and were unable to provide documentation of reoffending patterns (other than by way of manually going through each database) since the creation of the List in 2007:

Collating is difficult, and to check something, one has to go into the CRIME system manually. Then we would ask additional details to our health persons. But there is no cross-listing, not much evidence about impact on anti-social or criminal behaviour. Not mentioning recidivism rates. Ours numbers remain relatively small though, although numbers cannot and shouldn't be extrapolated. So yes, we need a bigger, better data management system.

Focus Group 3

Another significant issue identified in the current data management system is that a number of descriptive data are currently owned and hosted in different agencies, the key ones being police and the Department of Health and Human Services (DHHS) (they are the agencies owning the 'richest qualitative data' – (Focus Group 3)) even though courts remain the hub of data management.

Some participants were of the opinion that it was important to have one single national (state-wide) data collection system, as opposed to smaller, clustered ones (per registrar, for example). A Tasmania wide system would be preferable, in order to observe the:

- adequacy of service provision in regional areas;
- sharing of data throughout the State and amongst other services;

- current listing agreements being maintained;
- demands, case loads, services ‘at a glance’.

Many participants were of the opinion that the MHDL is at a stage where decisions need to be made to facilitate future report deadlines, such as a 10 year evaluation report. Should there also be a wish for an in-depth report by a government agency, then the magistrates and both registrars would have to demonstrate what the MHDL has achieved. An effective data management system would allow for relevant information to be garnered in order for the MHDL to ‘prove its worth’⁸, via mainstream auditing and program evaluation processes.

Data sharing and access

Data collection and management issues are complex and transcend the boundaries of organisational management. Focus group participants gave particular thought to data *collection, sharing* and institutional *maintenance*.

Focus group participants indicated that the MHDL data management system needs to become more robust. For the administrators of the courts in particular, data collection and analysis must meet the requirements of most agencies involved in the administration of the List. Several models of data collection were considered. A system that would allow ‘at a glance’ cases would be useful for magistrates who want to consider holistic approaches to an offender’s case. On the other hand, at an administrative level, there is also a perceived need for a system that would allow a generic ‘trends’ outlook on all or similar cases.

Because the monitoring of mentally ill offenders spans the realms of several agencies, the question of who to share data with was also discussed. Access to case details may be of operational importance for health services as well as frontline police. Police officers may wish to access cases while on patrol, from their car computer system or communications centre. Support workers, case workers, or health practitioners could also use the data to ensure that the holistic health needs of individuals are well provided for, and that no particular detail slips through the gaps of multi-agency coordination.

Apart from the ideal situation where the database serves the need of all agencies involved in the administration and monitoring of offenders living with a mental illness, there remains the question of

⁸ The importance of good data gathering and evaluations is highlighted in the Problem-solving Justice Toolkit as ‘an essential component of any new program’. There are a range of reasons for conducting an evaluation, including monitoring to assess whether the program is meeting needs and intended objectives, and to guide how the program may need to evolve. However, evaluation of problem-solving courts is no easy task (Casey et al, 2007, p23).

where this data system should 'sit', as well as the rules of access and confidentiality. Discussions did not indicate whether a better system would reside in the form of specific institutional ownership (as in a conglomerate system) or that of a data 'hub' (data centralised by one lead agency).

Research participants indicated that confidentiality issues might not be problematic, as agreements in place between public stakeholders are set by policy and follow the guidelines set in the *Personal Information Protection Act*. This being the case, while sharing information between public sector agencies may not be a problem, the issue of accessing data owned by private services needs to be considered. As one participant noted:

Our data system is not well integrated in the Justice system nor is it in the Health system.
Focus Group 3

It was also noted that it is a good time to think about proposed changes to the data collection system, as the current court data management system is about to change. It was suggested that in the first instance, terms of reference be drafted for the purpose of sharing information between all agency partners involved in the monitoring of mentally ill offenders placed on the List.

The implementation of a stronger data management system would necessitate additional human resources dedicated to the running of the database. Current parameters for the management of the Excel database are relatively loose. The current size and mode of operation allows for a student on placement to come once a week and update the Excel spreadsheet. Such a mode of operation would need revisiting. During focus groups, court administrators indicated that should there be a need to do so, it would be possible to consider a full time administrator (although this is a matter of decision for the Steering Committee). TILES further recommendations on this particular point have to be realistic, and need to be embedded in the broader framework of Tasmania public policy. We address this point in our recommendations at the end of the report.

Quality Assurance Process

The development of a more structured data management system was discussed not only in terms of overall management for the List, but also in terms of immediate utility of such data collection mechanisms. While there is currently no formal quality assurance process, support workers and FMHCLOs systematically follow up on defendants, (for example, they follow their treatment plan). Support workers indicated an interest in having systematic exit surveys for all defendants and their carers. These exit surveys could be part of the data management system, but could also be part of an overall quality assurance process for the List. It could include, for example, satisfaction rates on the way in which the List is managed and the appropriateness of the health treatment plan for example.

Expansion of the MHDL to other clients

The idea of expanding the MHDL portfolio to youth, as a specialised branch of the MHDL, was strongly supported throughout the focus groups by magistrates and support workers alike, although cases involving young mentally ill offenders have been small in numbers and details have been anecdotal until now. Young offenders (minors) are a small proportion of all offenders dealt with at the moment via the List, and so far, young offenders have simply been integrated into current MHDL processes easily.

The broadening of the MHDL remit did not solely consider youth. The inclusion of individuals living with an intellectual disability was also discussed, along with a broadening of the definition of ‘mental illness’, in order to include more forms of mental illnesses on the List (such as depression, for example). Also mentioned in the focus groups was the idea of having people with acquired brain injury placed on the List. Both cohorts were referred to as ‘types of clients’ included on similar Lists in other Australian jurisdictions⁹.

Some of the focus group participants, though, indicated that whilst the idea of furthering the scope of the MHDL might be a good idea, the registrars need to be aware that ‘not everyone needs to be placed on the List’ (*Focus Group 1*), and that some defendants might use mental health as an excuse to evade gaol. It was noted that some defendants had attempted to be placed on the List due to the emotional state they were in when an offence was allegedly committed. However, participants indicated that the **Mental Health** [their emphasis] Diversion List, should really be about ‘medically diagnosed *illnesses*’, as opposed to sporadic and non-recurrent states of mind:

I know we are called a ‘mental Health’ Diversion List, but it’s really about people living with a mental illness. People shouldn’t be allowed to be placed on a List for minor, un-diagnosed issues, and for the purpose of avoiding sentencing.... Mental illness should be the primary criterion for our clientele. People simply feeling a bit unwell shouldn’t be allowed to go the Section 16 avenue.

Focus Group 3

In hindsight, the efficient functioning of the List and proper selection of candidates has to be credited to the thorough background work done by the forensic mental health staff working in the courts. There therefore exists a form of gate-keeping role that rests with the FMHCLOs. Regardless of which way the MHDL broadens its scope, focus group participants were mindful of the need to strengthen

⁹ Through legislation, the South Australian approach is broader, covering ‘mental impairment’ rather than illness. Western Australia has an Intellectual Disability Diversion Program available through the Perth Magistrates Court. In Tasmania, significant legislative change would be required to include persons with other morbidity or disability. A broadening of accessibility would also have implications for the current model which relies on the expertise of FMHSLs in mental health care, not intellectual disability.

parts of the eligibility criteria and iterated several times that MHDL defendants should be selected with caution.

The geographical landscape of Tasmania also warrants attention in relation to the expansion of the MHDL, and to the provision of mental health and justice services to rural and remote areas of the state. Due to the State's geography and population spread, there are three central regions in Tasmania, with large rural areas in between. As a result, there are gaps in the availability of some services (e.g. the provision of forensic mental health services, psychological and psychiatric care, and community rehabilitation programs) in some areas. This has implications for extending the MHDL to the north-west coast. Whilst the current registrars are exploring options to expand the List to Burnie and Devonport, these plans were not discussed in any detail in the focus groups or in the workshop, and are outside the remit of this report.

The MHDL as a practice model

The question of the expansion of the List has wider ranging implications, as it also raises questions as to which 'model' should be adopted for the List (that of a specialised List or a broader encompassing 'problem-solving' court as discussed above), or whether the List and its current structure should be established as a practice model in itself. Various models were proposed as exemplars¹⁰. Mention was made of the strong collaboration between Forensic Mental Health in Tasmania and the State's Court Mandated Diversion (CMD¹¹) program, which focuses on drug addiction, as a good practice model for the MHDL. The CMD is part of Tasmania's response to the National Illicit Drug Diversion Initiative. It is available to all offenders after a plea of guilt for drug-related offences. Offenders are assessed according to their drug habit, health, welfare, and criminogenic needs. Individual treatment plans are then agreed upon between offenders and justice and health stakeholders, and guide the delivery of an integrated intervention through a case management approach (Magistrates Court of Tasmania, 2008).

While this model was deemed successful by an independent evaluation (Magistrates Court of Tasmania, 2008), focus group participants were of the opinion that it could be even more successful given the strong links between the Court and forensic mental health services. However, focus group participants remained split on the topic of how the CMD model could contribute to enhancing MHDL practices, with models such as a CMD seen by some participants as being too prescriptive and/or rigid in terms of eligibility criteria and mandatory processes (Focus Group 3).

¹⁰ A list of Australian and international models is featured in Appendix C

¹¹ See <http://www.magistratescourt.tas.gov.au>

Those opposed to the 'adopt a model' option indicated that in their view, there was a lack of strategy in 'picking up people with different disorders' from either courts or the CMD program. Advocates for an MHDL model observed that the CMD and specialised courts (such as the Youth Court) deal with their own specialty and cohorts, and that there could be more cross-court collaboration between cohort-specific models.

Also mentioned was the Court Integrated Services Program (CISP) model from Victoria¹², which allows magistrates and the courts to deal with broader issues. CISP was established in 2006 by the Department of Justice and the Magistrates Court of Victoria. Aiming at reducing re-offending rates, the program is intended to guarantee support services to defendants. It considers offences holistically, taking into account the social circumstances of defendants, their health, along with their education and economic background. It then provides individual and tailored assistance to defendants by a case by case management plan, which framed by a multi-disciplinary, team-based approach and works along the lines of referrals to relevant agencies (specialised health organisations, Aboriginal support associations, for example).

Building on current successes of the MHDL

The current MHDL data shows that it has grown significantly since its implementation in 2007. When encouraged to explain the MHDL success, respondents suggested a range of reasons, which essentially revolved around strong collaboration, the specific characteristics of the List in some registrars (for example, in Launceston: the conference format, which encourages a more relaxed and supportive environment and the preference for 'closed' courts, and more intimate gatherings), professional development and the flexibility of these activities. We start with the latter.

Flexibility

Mental illness does not affect individuals in the same way. Focus group participants were strong advocates of how flexible the List allows them to be, in terms of assessment, determination of bail conditions, treatment plans and review processes¹³. This flexibility extends to candidate selection (criteria for selection can be slightly stretched and suitability of candidates is also considered along the lines of what would be best for defendants to not aggravate situations), community engagement and creativity in relation to the (often multiple) medical and personal needs of the defendants.

¹²

<http://www.magistratescourt.vic.gov.au/wps/wcm/connect/justlib/magistrates+court/home/court+support+services/magistrates+-+assessment+and+referral+court+list> or the program evaluation from the University of Melbourne, which may be found at http://www.justice.vic.gov.au/wps/wcm/connect/justlib/DOJ+Internet/resources/2/0/2084020043311c7c82f6df4f501887b2/CISP_Evaluation_Report.pdf

¹³ It was made clear during the focus groups that bail conditions are quite different from the treatment plans for defendants. While bail is strictly driven by magistrates and the nature of the individual's offence, the treatment plan concerns the individual's health needs, and what he/she needs in relation to medication and support.

Flexibility, in the case of the MHDL, is [the] key to a better approach and to the MHDL success. It's great to engage families in the process too. Focus Group 2

If you were to ask me what is a 'typical defendant for the List', I would say that it's actually very difficult to set specific criteria for a 'typical candidate' to be placed on the List. It's very important, then, to not categorise them and to assess them individually. Focus Group 1

What is important, in the whole process, is that the List encourages defendants to get back into their treatment regimes. We aim very high in the area of therapeutic jurisprudence, after all. Focus Group 2

This flexibility also allows for the complexity of needs to be taken into account during clients' assessment. As such, magistrates consider themselves as 'problem-solving magistrates'.

The fact is that mental illness is not the only issue our clients often have to deal with. More to the point, mental illness is the only issue that has legislative backing. But in this, we also need to consider factors like co-morbidity, homelessness, and so on. Focus Group 3

Ideally, our MHDL problem-solving process should become normal practice in court. As a case management approach, the MHDL needs to be seen as a broader problem-solving structure than traditional courts. Focus Group 3

Collaboration

The strong collaboration between police, legal aid, the courts, and forensic health was unanimously praised as one of the factors contributing to the success of the MHDL. However, now that the MHDL functions relatively well, the question remains as to how this collaborative, therapeutic, and problem-solving philosophy could be further picked up and embedded in operational practices. Raised in the context of the expansion of the MHDL, there were concerns amongst participants that the strong and positive relationship between agencies might get lost in the growing complexity of the needs of defendants and by the obvious need for participation from additional specialised support agencies.

Professional Development

Early in the implementation of the MHDL, professional development sessions were organised by the Magistrates Court for magistrates and support workers. These sessions were considered informative and focus group participants were actively supportive of ongoing professional development sessions for those involved in the administration of the List.

Magistrates could receive further awareness training on mental illnesses or even acquired brain injury, but also on international models of good practice. Psychologists or psychiatrists could be involved in this professional development program. The whole premise would be to find ways to enhance how we deal with things in court, how to be supportive of defendants. It would be interesting to know more about practical strategies to include parents, carers, etc a bit more in the process. Focus Group 1

Challenges Identified

Despite the success of the List, initial discussions with volunteers taking part in the administration of the List and with the administration of the Courts indicated that some issues raised in the 2009 report still needed to be addressed. Participants in the focus groups were encouraged to talk about such issues. The following section details these problems and participants' thoughts on how to resolve them.

Waiting times

From an immediate and pragmatic perspective, the List suffers from its success. Anecdotally, we know that there are unavoidable (at this stage) waiting times for defendants on the List and their support persons. Waiting times when the List sits are an issue that needs to be looked at, and staff in both registrars have begun to look into possible solutions:

The List is currently sitting from 1.30pm or 2pm, and runs until 5pm. We cannot have defendants sit around in the waiting room for 3 hours. So we could have more Lists each month, but this is unlikely to be a good use of resources. We could also have the List sit all day and allocate time slots to all defendants.

Focus Group 1

We could probably stagger List sittings or defendants. Indeed waiting times are a bit of a problem.

Focus Group 2

Staffing

As the List evolves with time, and as the executives are thinking of not only expanding the List to other parts of Tasmania, but also expanding the scope of the MHDL to other defendants, such as youth, then access to administrative staff needs to be reassessed. For example, there might be a short term need for more support persons to come and help administer the Lists, support workers and case managers for example. A long term solution would require more permanent funding arrangements.

If we had more support workers within the MHDL framework, we could have better follow up strategies for defendants in between court reviews.

Focus Group 1

Case workers could better collaborate with the Courts in the creation of risk management strategies. And they could also attend court sessions on a more regular basis. At the moment, some case workers have such a heavy workload that they simply cannot afford to attend review sessions with their clients.

Focus Group 2

The expansion of the List highlights the fact that the current two mental health officers dedicated to the List are the first ports of call for everyone, and that an expansion of the scope of the MHDL

(either geographically or in terms of client-base) will require additional resources in relation to gate-keeping and assessment of potential clients:

Our health persons help people go through the proper referral process. They act as real facilitators and they strongly contribute to the success of the List as it stands. They do a lot of background work and prevent scattering of offenders throughout the whole pool of magistrates. But there needs to be a stop to them being the gatekeeper of the process. There is just so much work either of them is able to do in one day or one week.

Focus Group 3

Community involvement and collaboration

Whilst the List seems to be fairly well known in the judicial arena, efforts still need to be made in the area of community engagement with professionals about the List and in the diversion process, according to some participants:

We need to encourage professional carers and support workers to come and attend the List with defendants. I know some case workers who go as far as simply driving the offender to court, and then they drop them and drive to their next job. They don't stay. And they are very surprised when we ask them if they would attend the hearing, but we are working with mental health services to see what we can do about this. But usually, people are surprised at being invited to participate, at our attempts to create a relaxed environment. Most of them are also very surprised that we invite them to contribute and that the magistrates consider that they have something of value to help assist in the process.

...out of all the support workers for defendants, maybe 1 out of 10 show up when the List is in sitting

Focus Group 2

Magistrates are currently working with heads of support agencies to help authorise or fund support workers to allocate time in their schedules for court sessions. Another solution to this systemic issue would be to shift some responsibility into the hands of family members and/or significant others:

There are 'support layers' that we could consider here. The first layer consists of family and friends. They are those who have the most contact with our defendants. Then come associations and volunteers, as a second layer, and the third layer is that of professional agencies and assessors.

Focus Group 2

The complexity of issues associated with mental illness and offending highlights the difficulties around partnerships. There are currently mechanisms in place to reach out to NGOs, for example in the area of housing to provide additional support to mentally ill offenders. However, there are concerns about how to build stronger collaborative processes, and ways to 'jump in the pool of services that are needed' (Focus Group 3). Whilst some agreements are in place, for example with the DHHS and Tasmania Police, there was uncertainty as to:

- how to encourage the signature of MOUs (and with whom), acknowledging that MOUs could ‘contribute to the chain of accountability’ (Focus Group 3), and
- how any kind of formalisation (like the signing of an MOU) might encourage services into participating to the List, whilst at the same time potentially impacting on flexibility (Focus Group 2).

Participants have also found that external partnering agencies are sometimes reluctant to get involved with some individuals until the courts are also involved, suggesting that courts are often perceived as the legitimating point for action/course of action.

Workshop themes

Participants expressed different ideas as to what they thought the workshop could help them achieve. Some suggestions were as follows.

On the issue of data management

The Court registry uses the internal database (CRIMES) to collate data on defendants, sentencing, and reappearance at court. However, this program is not designed, and is not equipped, with data analysis functions. The 2009 MHDL evaluation process involved the collection, collation and analysis of qualitative and quantitative data. Whilst the report contains useful tables and data summaries and provides a snapshot of the MHDL activities from 2007 to 2009¹⁴, it does not provide comparative or comparable statistics (Newitt and Stjcevski, 2009) (such as progression from year to year or changes in patterns for example).

In the 2009 report, the authors had noted that data collection was an issue requiring urgent attention. Once the evaluation was completed however, the Courts were not in a position financially, to address the report’s comments on designing a better, comprehensive, and integrated data gathering system. Subsequently however, with the assistance of volunteer research interns¹⁵ who attend the fortnightly hearings, the Court has managed to continue the qualitative and quantitative data collection¹⁶. This co-ordinated system has its limitations though¹⁷, because it is dependent on

¹⁴ For example:

- a. Participant data (age, gender, clinical diagnosis), sources of referral to the List, reasons for discontinuation, rates of legal representation, and types of offences and charge rates (pp 45-53)
- b. Tables of finalisation data include: summarising the number of appearances and non-appearances of participants, the duration that they were on the List and sentencing outcomes (pp 64-67)
- c. Results on participants’ re-offending outcomes (pp74-77)
- d. Treatment services and programs (p78)

¹⁵ Undergraduates from the UTAS Law Faculty: Aneita Browning (2010-2011) and Kelly Dewey (2011).

¹⁶ In 2010 the Forensic Mental Health Court Liaison Officers in Launceston and Hobart started to maintain a spreadsheet of participant data for Court use during hearings.

¹⁷ Compared with the system in South Australia where data is captured at the time of hearing. Statistics are readily available to use for example in the *Court Administration Authority Annual Report 2009-2010*.

volunteers and is not part of the court process. The spreadsheet used to collate the data is manual, rudimentary, and analysis is time consuming. However, the consistent data collection has enabled the Court to maintain up to date statistics, such as intake information (age, gender, offence and charges, diagnosis), numbers of participants on the List, finalisation rates, bail conditions, and sentencing outcomes. A more court integrated data collection system would provide efficiency, continuity and accuracy in data collection, and make data sharing easier too.

It was this need for formal and continuing data collection that participants raised as one of primary importance for the workshop and for the MHDL itself. Whilst the urgency lay in establishing a clearer, more immediate management and quality assurance process for the purpose of monitoring offenders placed on the List, participants also had in mind the long term idea of strengthening the Court's data gathering capacity, for the purpose of sustainability and allocation of resources (both human and financial). Specifically, focus group participants indicated that workshop discussion on a better data management system should:

- Help *define* issues (systemic and organisational) in the view of developing a better data management system.
- Advise on issues relating to external agency input in, and access to, the data collection system.
- Advise on what would best suit a research-oriented and researcher-friendly system (for the purpose of cross-disciplinary and longitudinal evidence gathering).
- Advise on what information to include in such a system
- Define what 'robust data' consists of, for the purpose of communication, funding and sustainability.

An interest was expressed for TILES (or another research centre) to become a partner in the reporting of data in exchange for full access to the data system. The Court would grant full access to all data, with a view to a mutually beneficial relationship. Furthermore, the research centre could be a hub for the fostering of good relationships and the facilitating of data-sharing between agencies.

On the issue of running the MHDL

Current discussions about the expansion of the MHDL remit meant that the need was felt for 'a clarification of MHDL issues'. Stakeholders all had an idea of where the List should go, but it was not clear how this should be done, and whether it was advisable to expand, particularly from a sustainability point of view. It was felt that a better definition of problems (attitudinal, systemic) in the administration of the List and a clearer mapping of the List (who the List is for, how it is progressing and how much professional awareness of the List there is) was required. The current

status of the MHDL, and the need for clear data and benchmarking were linked to the List's future prospects and deemed crucial for a plan of action for further support, participation and funding. Focus group participants indicated that in addition to the 2009 report, there was a need to:

- determine external agency participation in the running of the MHDL
- provide results, knowledge and research/awareness for the broader community about MHDL in order to help achieve better outcomes
- discuss the broadening of the remit of the List, and to
- advise on the streamlining of administrative, monitoring and data gathering processes.

All these issues were discussed at length during the focus groups. The conversations indicated how staff conceive issues within the MHDL, the limitations on their work and service provision for defendants. Because of the importance placed on these issues by participants, and because of the sense of urgency conveyed in the focus groups, these themes were at the foreground of debate during workshop discussions.

Chapter 4 – Integration and Collaboration: Workshopping good practice examples

This section discusses themes that were discussed at the workshop. Focus group discussions were the starting point for the workshop debates.

The Integration and Collaboration workshop was held on 8 April 2011. There were 48 participants. The workshop was divided into two parts. The morning session was dedicated to keynote presentations from prominent members of the criminal justice system and diversion schemes for the mentally ill. Participants heard from Sue King on South Australia’s Magistrate’s Court Diversion Program which was the first mental health diversion program established in Australia in 1999. John Lesser from the Melbourne Magistrates Court discussed the Assessment and Referral Court List and Victoria’s Pilot (2009-2013) of a Mental Health Court Model. From Tasmania, Chief Magistrate, Michael Hill discussed the State’s Forensic Mental Health Diversion List, Deputy Police Commissioner Scott Tilyard and Michael Stephens, Deputy Secretary of the Department of Justice provided law enforcement and justice perspectives and Marita O’Connell, Court Liaison Officer from Forensic Mental Health Services addressed the issue of therapeutic jurisprudence.

A more focused conversation guided by conference facilitators was the aim of the workshop’s afternoon session. The two sessions are discussed below.

The functioning of similar schemes in other parts of Australia

Those who spoke on Diversion schemes were quite clear in their overall purpose and intent, in that such schemes are intended to ‘reduce offending and assist with recovery’. Importantly, the issue is to ‘find the link between the illness and the offence’. Whilst there are slight differences in the phrasing and scope of aims and objectives for each Diversion List or program, their overall intent remains the same.

In the case of the Adelaide Magistrates Court Diversion Program, the aims were:

- *To provide assistance to the court in the identification and management of defendants with mental impairment.*
- *To prevent further offending behaviour by ensuring effective interventions and treatment that address the offending behaviour, and mental health or disability needs of defendants.*
- *To provide an alternative to the CLCA part 8A defence in the Magistrates Court.*
Sue King - Adelaide

In Victoria, the Assessment and Referral Court List (ARC) was informed by a number of similar models (such as the interstate models in South Australia, the North American Mental Health Courts, and the CISP from Victoria). The objectives of the ARC List are to:

- *Reduce the risk of harm to the community by addressing the underlying factors that contribute to the offending behaviour of individuals with a mental impairment.*
- *Improve the health and wellbeing of individuals 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 individuals with a mental impairment.*
- *Reduce the number of offenders with a mental impairment received into the prison system.*

John Lesser – Melbourne

Isabelle Bartkowiak-Théron presented the focus group findings to the workshop participants. The presentation identified the themes and trends of the participants' discussions and highlighted some the challenges associated with maintaining a successful MHD List.

The themes of collaboration and cooperation were extensively discussed throughout the day. All participants acknowledged how essential both were to the success of diversion schemes.

Diversion schemes and in particular, mental health diversion schemes or lists, rely on the legal and medical paradigms converging to achieve an outcome in the best interests of the person with mental illness. This convergence requires a level of cooperation and understanding not normally evident nor necessarily naturally occurring. It is true that doctors and lawyers think differently, and that police and defence counsel are not normally seen as natural allies. However, if a mental health diversion list is to succeed in achieving its aim, it requires the focus of all parties, regardless of their training, in needs to guarantee access of treatment and support for the person with an illness.

Debra Rigby – Tasmania

Afternoon Discussions: Working together to enhance the Tasmanian Mental Health Diversion List

Throughout the day, workshop participants were arranged in round tables. The research team designed 'table plans' to make sure that (as far as possible) each table had a representative of each service represented at the workshop (police, health, courts, housing, for example). The overall aim of this placement was to have a variety of different stakeholders at each table – 'getting to know each other' throughout the day and by the afternoon participants were feeling sufficiently comfortable to openly brainstorm and debate options, examples and suggestions.

Demonstrating results and sharing data

In the afternoon, the workshop audience was asked to brainstorm the topics the research team had identified from the focus groups and the issues the speakers had outlined in the morning sessions. The audience was asked two questions. The first question put to the workshop participants was as follows:



QUESTION 1



*Hypothetical – we have the opportunity to set up a **central data base** in each jurisdiction to collect longitudinal data relating to MHDs or the equivalent...*

1. Discuss and identify types of data that could be collected and used constructively
2. Each person around the table needs to identify what their particular agency/workplace could contribute to a central data base
3. Information sharing is a challenge – how might the various stakeholders address this potential barrier to sharing data?

A robust discussion occurred when the facilitators directed the workshop to exchange ideas as to what kind of data should be considered to create a better managed and shared database. Indicators of impact and types of data that were identified as being useful or essential for the management of schemes such as the Mental Health Diversion List were listed. We have clustered them into categories in Table 1.

In the long term, it is hoped that such data gathering could contribute to a cost-benefit analysis in reduced police time, hospitalisation, incarceration, court days and length of disposal. Such cost-benefit analysis should be inclusive of time spent on administration and quality improvement, as well as the time and money it takes to conduct a formal, well structured evaluation – the importance of which cannot be under-estimated (Richardson and McSherry 2010).

Table 1: What Kind of Data?

Demographics	<p>Family and Relationship status Age Housing status Postcode Employment Gender Ethnicity and culture Quality of life indicators Qualitative/anecdotal motivations for being on the List</p>
Justice related data	<p>Recidivism rates Offence type Prior convictions Arrests and police contacts Nature and seriousness of offending Offence disposal and sentencing Court outcomes Number of adjournments Number of exit / breaches</p>
Quality assurance	<p>Qualitative interviews/feedback about the perceived procedural justice and ethical fairness on the part of the defenders with a mental illness</p>
Staffing and resource data	<p>Forensic mental health hours Legal aid hours Judicial sitting hours</p>
Case maintenance details	<p>Number of pre-court meetings / case reviews Number of assessments conducted and type of assessment (psychiatric, neurological, bio-psycho-social) Number of referrals Cross-referrals to CMD</p>
Health and other data related to condition	<p>Comparison between, mental health, intellectual deficit, acquired brain injury Type and status of diagnosis Rates of physical co-morbidity Medication compliance Substance use status and rates of co-morbidity (assessment data, urinalysis data)</p>
Broader scope data	<p>Types of intervention offered to defendants and the evidence base supporting their efficacy Numbers of practitioners attending directly related professional development and training for lawyers, police and health Number of ancillary services from government and the community sector Number of 'non-eligible' people seeking to enter the MHDL, and reasons for ineligibility Comparison North / South; Hobart / Launceston Number of graduations Length of duration on List Number of return defendants Comparative data with mainstream Lists Long terms recovery and recidivism Outcomes of graduates Cost benefit analysis in: Reduced Police time, reduced hospitalisation, reduced incarceration, reduced court days and length of disposal</p>

However, the challenges of information sharing are numerous, and all, either separately or jointly, may impact on an agency's capacity to demonstrate efficiency and results. The elements seen as the most prominent in relation to information sharing were discussed as follows:

- Legal issues in relation to informed consent, client privacy rights and interdisciplinary differences
- Lack of a common language and terminology
- Use of different assessment and screening tools
- Different intervention approaches and service philosophy
- Name changes and aliases
- Lack of information technology, infrastructures and resources for improved centralised data
- The problem of stakeholders accessing information in a timely fashion

All workshop participants indicated their preference for a well designed data system to be entered into a central database, to ensure that defendants that were entered on the database had all their needs catered for and attended to. However, privacy issues are a concern, as is the cost of developing such a system. The overall question of who will be able and/or authorised to have access to the database (and at which point in time) remains open to consideration.

The case of South Australia discussed at the workshop by Sue King has illustrated that to persuade the public and government agencies that initiatives need funding, data is instrumental in demonstrating how resource intensive such programs can be. To demonstrate good practice and indicate critical mass in terms of clientele, data related to hours, resources, recidivism (especially clinical data, although in the example of South Australia, such clinical specifics are more relevant to specialist policy bodies as opposed to more main stream types of funding bodies) is crucial. Such data is also useful to allocate funding, taking account of comparisons between regions (or registrars if need be), and to document cost-benefit analysis exercises.

A clear outcome from the workshop is that all stakeholders ***agreed*** unanimously on the need for a better database and data gathering system. Whilst the urgency for a better mechanism to emerge was not discussed, the ways and means to do so were debated extensively. Specifically, participants discussed the need to employ an administrative person to input the data and outsource the analysis exercise at the end of the year to an independent body – as a form of audit.

The level of interface needed to keep sharing data in the best possible way was discussed at length, and especially how time consuming data collection is likely to be. Participants were unsure of the way to obtain baseline data for assessment and report purposes.

Another way to envisage a possible database was to look at it from the pragmatic perspectives of those *whom the database would serve*. As such, some participants indicated that the database could


be useful for specific stakeholders, in the pursuit of their daily activities and interaction with people placed on the List. We compiled participants' thoughts about possible operational functions for a database in Table 2.

Table 2: Who Needs What?

Stakeholders	Might need the database for information relating to	Type of data therefore needed	Intended outcome
Magistrates	Bail conditions	Types of bail granted for individuals	Coherence in conditions granted
	Compliance / success	Outcomes and recidivism data (across Lists and courts) Court or Police contact	Evidence building
	Referrals to existing networks	Clients providing the access to data permission when they engage the List	Avoiding multiplication of services provision
	Defendants' first appearance on the List	Diagnosis Type of offence Service needed Contact persons in the system	First, comprehensive documentation of case file
Police	Whether a person is on the MH List and how to approach a person and neighbours/friends	Name of defendants placed on the List, mental health condition and bail status / conditions	Avoiding process redundancy
	Condition and likelihood of aggravation	Illness indicators, Medication, Previous arrest/police contact, Offence-outcomes, Interventions from other services Charge figures (inclusive of re-convictions, suspended charges, etc)	Avoiding multiple, consecutive arrest Statistical decline in recidivism numbers Good practice in Therapeutic jurisprudence Reduced offending figures
Court officers	Outcomes after treatment plan is agreed upon	Monitoring data 3 months after completion to the client	Follow up process Evidence building
	Defendants who do not succeed or go back to the general List	Common identifiers	Ease of follow up through the system
	Multiple reappearance on the List	Aliases	when they use a wrong name
Legal Aid	Resources needed to allocate case workers / representation	Risk tools and defendants profiles	Ensuring legal representation and legal aid resources needed to support defendants
All	New types of disorders appearing in the criminal justice system, as medical science progress	Name of diagnosed illness	Identify professional development for those involved


Broadening of client base

The second question asked of the participants related to the expansion of the List to other jurisdictions and clients.



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QUESTION 2



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One of the strengths of the MHDL is its process flexibility. This is largely due to the fact that numbers are small and referrals are limited to those with mental illness. It has been suggested, though, that eligibility criteria be broadened in two ways:

- A. to expand the court significantly, to include for example, the disabled, young people, co-morbidity cases and adopt a more structured and formalised approach to the Court system, or
- B. to retain the flexibility of smaller numbers and develop a series of specialised courts that addressed the various needs of specified groups.

1. Do you think either of these options are a good idea?
2. Identify one of these options and discuss what this option would mean potentially for: the MHDL (in any jurisdiction), Police officers, Forensic mental health personnel, The legal profession, Service Providers, Non-government organisations, Others.

Participants spent a considerable amount of time discussing whether, or how, the Mental Health Diversion List should (or could) broaden its scope, by including those with an intellectual disability or young offenders, or both. This particular discussion also brought to light other vulnerable populations who may need to be the target of diversionary schemes.

Given the disproportionate representation of all minority groups in our prison system, could it not be argued that homelessness, unemployment, social displacement, etc are problems that need to be solved for all those who appear before the courts, not just those with a mental illness?

Workshop Participant

The Mental Health Diversion scheme, which started in Adelaide in 1999, was recently closed and replaced by the 'Treatment Intervention Program' (TIP). The scheme was made available because of changes to the *Bail Act* in 2006-2007. Offenders who meet specific criteria agree and volunteer to be placed on this diversion scheme are placed on the TIP. The TIP recognises the need for a holistic, as opposed to siloed, approach to the problem of offenders living with a mental illness, and recognises the need for better treatment solutions in case of co-morbidity. As such, the TIP allows for a merging of mental health and drug and alcohol treatment programs. Individual case plans and court

supervision are tailored to optimise outcomes. Processes can include drug testing, referrals to pharmacotherapy and to psychiatric and general medical care and may involve brokerage to purchase services. The more complex the case, the more case reviews are organised. For example: initially every two weeks, then every month and every two months. Such reviews allow for more vigorous assessment and management of complex cases, especially where there is drug and/or alcohol addiction.

Much of the discussion on this topic revolved around two key issues:

- The sustainability of small courts for defendants with special needs
- How to prevent a 'catch all' or 'net widening' effect

While the idea of making sure that the criminal justice system caters for all vulnerable offenders, and therefore is an idea worthy of consideration, such consideration needs to be pragmatic and take into account the day to day reality of mental illness. Defendants may be suffering a wide range of impairments, either separately or within co-morbidity patterns. Therefore, clear diagnosis guidelines and timelines need to be drafted, to avoid defendants 'falling through the cracks'.

The question, though, is whether the MHDL should expand to become a larger, broader problem-solving court, or whether there should be a series of smaller, specialised courts in Tasmania. On the latter point it was agreed that young people suffering a mental illness are such a specific group that they should be kept separate (but then, why not make it a sub-branch of the Youth Court?). Any process can build on the existence and proficiency of Early Intervention Officers and other processes that already keep young people away from adult offenders. The problem with this, though, is that a precedent in structural 'particularism' or structural 'pluralism' will imply that other sub-groups are also taken into account. For example, specific structures might also be considered for Aboriginal and Torres Strait Islanders, refugees, the homeless, and other identified vulnerable populations. If such structures should emerge, then proficiency in special issues would need attention. For example, professional development programs similar to the one that magistrates attended on the topic of mental illness would have to be organised on topics that have not been addressed yet (such as for example, acquired brain injury, disability). It will be important to enhance justice professionals' skill base on such issues. Also of importance would be the need to create new assessors for referrals. If FMHCLOs specialise in mental health, then other referral specialists will have to be found for the placement of other defendants on the diversion program/s.

Overall, the idea of expanding the MHDL portfolio triggered questions about its sustainability, or the sustainability of related initiatives. If the broadening of eligibility criteria is a desirable outcome for the MHDL, is there an actual, documented *need* for such an expansion? Are there identifiable gaps

that this expansion will address? And is this expansion achievable? One workshop group raised the all important question: What funding would be available for this expansion? Criteria for the MHDL are currently broad, and no data has been provided to justify an expansion of the scheme. An invalid justification for the expansion would be the broadening of the MHDL on the simple grounds that it 'works well'. Furthermore, any expansion plan will need to be matched with support services in the community, for defendants to be diverted to meaningful, properly resourced systems. One workshop group indicated the need to document where potential 'clients' would come from (and how many), before any decision was made on how and where to broaden the current scheme. The financial and service delivery situation being what it currently is in Tasmania, some were of the opinion that there might not be sufficient services to divert people to. Additionally, an expansion would have a likely impact on the various professions, especially on those dealing with complex needs.

While it was agreed that compartmentalisation of systems and resources was not advisable, and not the best option for the MHDL, workshop participants pointed out that there are examples of diversion programs that already cater for the needs of people living with an intellectual disability, on the grounds that they are part of similar state legislation. The question of broadening the jurisdiction of the MHDL and shifting to a problem-solving court would mean that what works well in the MHDL is kept and reproduced for other cohorts. Whilst the large number of vulnerable categories would need careful consideration at a later stage, a first step into the expansion of the MHDL into a problem-solving court could be the progressive addition of those diagnosed with acquired brain injury, intellectual disability, drug and alcohol, and co-morbidity issues. These criteria were identified by experienced magistrates attending the workshop as the main issues coming to the courts on a regular basis. Incremental expansion and the adoption of a problem-solving court model were seen as a potential solution to the problem of 'spreading butter too thinly' across specialised areas.

Following focus group discussions, workshop presentations and conversations, the research team reconvened to decide how we could build on participants' views and experience. As per the research brief, the point of this research was for the research team to consider a path forward for the MHDL and formulate recommendations for the Courts and its administrators. Taking into account the richness of the data garnered from focus groups and the workshop round tables, it was agreed that recommendations needed to focus primarily on the points of urgency raised by participants: essentially those areas relating to the administrative and data challenges associated with the List, its future plans for expansion, and sustainability issues. The following chapter introduces such recommendations for the consideration of the Magistrates Court.

Chapter 5 – Concluding remarks and recommendations

This section features recommendations for the future of the List, which primarily derive from focus group and workshop discussions.

The overall purpose of this project was for TILES researchers to engage with the criminal justice profession, and bring stakeholders together in a problem-solving, networking exercise, around the functioning and enhancement of the Tasmanian Mental Health Diversion List. It is hoped that the professional practice of the participants benefited from the brainstorming that occurred during the preparatory discussions, focus groups and the well-attended workshop. The enhanced awareness of problems raised during all phases of this research has allowed for:

- An initiation of problem-solving processes in the administration of the MHDL.
- The opportunity for individuals to network with counterparts from other jurisdictions and to share expertise.

The MHDL presents an evidence-practice model that warrants further documentation and analysis. At this stage of the research, a series of recommendations that relate to the topics discussed during the workshop have been drafted. Essentially, these recommendations are intended to document issues, assist reform, and encourage further discussion. All decisions in relation to the MHDL will be made by the Magistrates Court of Tasmania, and we anticipate that the information and recommendations in this section will assist this decision-making process.

Recommendation 1: data gathering and database

A better data management system was the crux of discussions in both the focus groups and the workshop. It was seen as a matter of urgency that the MHDL collate better evidence on a regular basis in relation to its current work, for quality assurance purposes, as well as the longer term goal of institutional sustainability. It is therefore fitting that we start with a data management recommendation. Whilst many obstacles were raised in relation to data sharing and access, defendants' circumstances and case details clearly need to be centralised and formalised.

If they agree to make informed decisions, senior officials within the Department of Justice, who currently rely on other types of data for decision-making purposes, need to have a better understanding of the extent to which mental health consumers come to the attention of justice personnel. Furthermore, an increase in resources is likely to be required for the compilation of data analysis from the MHDL, the Mental Health Tribunal, and the CMD for example. It is not clear, at this stage, whether such data convergence currently occurs at strategic levels. If there is no data convergence, it would explain why figures relating to offences committed by persons living with a

mental illness advanced by the Department of Justice at the workshop were so low. Through better documenting processes, inputs and outcomes, it is likely that the courts will persuade those who have financial authority to provide resources to the MHDL or to whichever model the courts decide on in the future. Such evidence gathering has proven effective inter-state, with the South Australian model subsequently benefiting from considerable financial support from the State government.

For the purposes of this report we have formulated three options for the courts, in relation to data gathering and maintenance: a full-fledged database, an extension of the CRIMES database and/or a client data-base shared between the MHDL and DHSS. We base these options on three specific premises:

- any data base should allow for statistics to be accessed swiftly and efficiently;
- data management should allow for all users to find the detail or information that they need easily, and comprehensiveness of data should be of primary importance in the design of the database; the database should allow for not only 'at a glance' capture of specific details, but should also contribute to strong audit, reporting and evaluation processes.

Option 1 - A comprehensive database should be made available for perusal by main stakeholders of the criminal justice systems and those involved in the day to day management of defendants (first) and the administration of the List itself (second). This does not mean administrators should be preoccupied with the design of a brand new database, however. Integrated customer models have been designed elsewhere to cater for the needs of specialised agencies, and they can be reproduced here. For example, the Queensland Integrated Client Management System has been developed to garner all relevant client particulars in a 'hub' that compiles all data relating to housing, health, and treatment for example. Such an example could be used to build a database for Tasmania (although only a 'modified' version of this would be needed). While the Queensland design and creation was expensive and denounced as such by government agencies at the time, the fact that it now exists means that courts from other jurisdictions can benefit from its design and reproduce such a system at a reduced cost.

Option 2- Discussions with the Department of Justice suggest that they are split on the issue of determining whether CRIMES is currently a good platform to build a better data management system for the MHDL. Some individuals have indicated that the CRIMES database is not practical in terms of long term data, as it is 'purged' on a regular basis. All 'dormant' data are archived, which does not allow for 'at a glance' longitudinal perspectives. However, other stakeholders have indicated that the extraction of data is a relatively easy exercise, with requests for information processed within 24 hours. The current Tasmanian Department of Justice model (CRIMES) can be expanded so that MHDL data are accessible via the Justice database, (in its current form, for example, the database allows

Victim Support Services to have access to all offender and victim data – such a process could be duplicated for the MHDL), and data gathering processes can be duplicated. In the same way, the MHDL system could be adapted to fit the CRIMES system, and include a new category of defendants, with regular hearings and bail and health plans embedded in computerised information.

Option 3 - A shared database between the MHDL and DHHS provides a potentially good option for the MHDL to centralise data processing. This option, however, would need to go through formalised processes and agreements for: creating a centralised 'hub', determining who has carriage of data gathering (or, alternatively, how data gathering is shared between agencies), and deciding on appropriate access to such data. A shared database would consist of a modernised version of the current spreadsheet, with an ability to cross-reference between the specialised courts. This option is likely to be costly and time-consuming with resources directed at designing a system, time spent on designing 'macros' or 'formulas' for crosspollination of information, and the hiring of a specialised administrator for data entry and cross-listing.

Recommendation 2: the creation of a Youth Mental Health Court

It was agreed that a Youth Mental Health Court was a good proposition and current administrators of the Court have raised a proposal to start a Youth Mental Health Court in Hobart and pilot it over 12 months. It is important that when (and if) this initiative begins, effective data gathering processes are in place, to avoid current MHDL evidence gathering problems being reproduced for the 'youth' version of the MHDL. If administrators are to demonstrate the success (or otherwise) of such a List they will need the data to support their claims. It is also important to ensure that appropriate diagnosis and support services are in place before referring young people to a specialised List.

Recommendation 3: broadening of eligibility criteria

The broadening of eligibility criteria needs to come with two specific guarantees. First, these criteria must be clearly defined by the courts and justice stakeholders. Specific impairments, illnesses, and disabilities have to be strictly delineated to avoid a possible 'net-widening' effect. This can be done either by following legal definitions as per the *Mental Health or Guardianship and Administration Act*, or by agreed Terms of Reference by all partnering agencies. Second, appropriate expertise must be available to confirm that defendants fit these criteria.

As noted above, the MHDL is currently considering the inclusion of minors in the process; systemic and administrative problem-solving therefore needs to occur prior to the enlargement of the MHDL jurisdiction.

Recommendation 4: resources and sustainability

The MHDL has worked without resources since its inception in 2007. This situation cannot endure, and specified resources need to be allocated to facilitate the functioning of the List, through appropriate staffing and effective data gathering. The idea of obtaining brokerage funds was proposed at the workshop. However, more detailed evidence needs to be gathered to strengthen the claim for additional funding. Additionally, a number of coordination positions need to be created and funded to make the scheme operational long term. We suggest that two positions are created, and one position restructured, as follows¹⁸:

- an additional 0.5 Full Time Equivalent (FTE) FMHCLO is created in collaboration with DHHS to relieve the workload of the current two staff dedicated to the courts in Hobart and Launceston; the position description should include forensic mental health assessment for defendants to be placed on the List, plus follow up of cases. Should this be an impractical suggestion, we suggest that a 0.2FTE court-based administrative position be created to relieve FMHCLOs of some administrative duties, allowing them to focus on the clinical aspect of their work. This 0.2 FTE can be adjoined to the 0.3FTE position described below;
- one additional 0.3 FTE administrator for data gathering, strictly dedicated to developing (initially, and then compiling evidence via the data management system); and
- that the position currently held by FMHCLO Marita O’Connell, is restructured to include a part-time supervisory role for FMHCLOs dedicated to the courts and the MHDL.

Recommendation 5: utility for police

The idea of Tasmania Police officers using List data in real time to avoid process redundancies (as documented in Chapter 1) has not been discussed in detail. However, stakeholders need to be reminded that any kind of real-time information relayed, in any form to frontline officers, has the potential to cut costs and improve economic efficiency. We therefore strongly recommend that visibility and information sharing with Tasmania Police is enhanced.

Police may benefit from further information sharing with the police prosecutor or the courts when defendants are referred onto the List, or when police prosecutors and the court administrators of the List use police information that an MHDL person has again come to police notice. In regional/rural areas (where individuals are more likely to be known to police), it would be beneficial for police to be notified when defendants join the List.

¹⁸ Please note that this particular recommendation assumes that the MHDL will continue to function as it currently is, without major restructuring. Should Recommendations 1, 2 and/or 3 be taken up, then a restructuring of Recommendation 4 should be as follows: a 1 FTE FMHCLO + a 0.4FTE administrator for the database.

Recommendation 6: the multiplication of small courts

The multiplication of small, specialised courts is an unlikely and unsustainable prospect for Tasmanian Magistrates Court. It is unlikely that the multiplication of structures to cater for multiple, combined ailments will attract the necessary resources to function for long periods of time. Nor will they be sufficiently resourced to cater for defendants' needs. Furthermore, the likely small size of such structures will fail to attract sufficient visibility for targeted clients to be made aware of their existence. We therefore suggest that the Courts opt for a broader, more encompassing problem-solving court model, with specialised services, referral processes, and professional development attached to the expansion of eligibility criteria and jurisdiction.

Recommendation 7: visibility of the List

The source of referrals remains confined to magistrates or specialised agencies aware of the existence of the List. We recommend that the MHDL enhances its visibility by adopting a strong communication strategy regarding its service and taking every opportunity to publicise its existence and activities to relevant stakeholders.

Recommendation 8: standardisation of practice

Research participants overall, have highlighted that one contributing factor to the success of the List is its flexibility in process, from one defendant to another, and also between registrars. While flexibility is important, it is also necessary that such flexibility is controlled if the MHDL is to be established as a practice model in itself. Standardisation of practice is important if data is to be at all meaningful.

The Tasmania MHDL is at a crossroads. Many decisions now need to be made to ensure the continuing resourcing and sustainability of the administration of mentally ill offenders throughout the state. The MHDL has already distinguished itself through practice and by building on evidence-based models that exist elsewhere. However, such good practice has inevitably contributed to the growing number of defendants placed on the List since its implementation in 2007, and the MHDL is now arguably the victim of its own operational success. This suggests that personnel within the courts need to consider key operational and administration matters such as, for example, data management, location of Lists throughout the State and eligibility criteria for defendants.

The Tasmanian MHDL is an initiative that is praised by many in the professional justice community. Evaluation and research to date has demonstrated its efficacy and general success. If that success is to continue, the monitoring of its activities and outcomes should ideally continue through strict evaluation and constant renewal of ideas and practice. This collaborative research has demonstrated

that such activity can be achieved through research partnerships and productive community engagement.

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APPENDIX A – List of Acronyms

ARC	Assessment Referral Court List
CISP	Court Integrated Services Program
CMD	Court Mandated Diversion
CRIMES	Criminal Registry Information Management and Enquiry System
DHHS	Department of Health and Human Services
FMHCLO	Forensic Mental Health Court Liaison Officer
FTE	Full Time Equivalent
MHDL	Mental Health Diversion List
MOU	Memorandum of Understanding
TILES	Tasmanian Institute of Law Enforcement Studies
TIP	Treatment Intervention Plan
UTAS	University of Tasmania

APPENDIX B – MHDL resources

The Magistrates Court of Tasmania has a range of resources about the MHDL available online, as outlined below. This report is also available online and has been included in this list.

Website: <http://www.magistratescourt.tas.gov.au>

The website contains general information about the MHDL with links to other materials (Explanatory Article, Pamphlet, Procedure Manual, etc) for use by defendants, the court and others involved or interested in the diversion program. (2011)

Explanatory article

Magistrates Court of Tasmania. (22 April 2010) Mental Health Diversion List Explanatory Article.

http://www.magistratescourt.tas.gov.au/divisions/criminal_and_general/mental_health_diversion/Mental_Health_Diversion_List

This is a basic summary of the history, procedures, eligibility requirements and applicable legislation.

Pamphlet

Magistrates Court of Tasmania. (n.d) Information and Guidance Mental Health Diversion List. Hobart, Tas: Magistrates Court of Tasmania.

http://www.magistratescourt.tas.gov.au/_data/assets/pdf_file/0009/79767/Mental_Health_Diversion_List_Pamphlet.pdf

The two page 'Information and Guidance' pamphlet outlines the goals of the MHDL, the eligibility criteria for participants, referral methods, assessment, the diversion process, sentencing information and court contact details. It is of general use and not targeted to a particular audience.

Procedure manual

Magistrates Court of Tasmania (2010) *Mental Health Diversion List Procedural Manual*. Hobart: MCT. # 1.2.

The 'Mental Health Diversion List Procedure Manual', dated April 2010 is a comprehensive document that provides background information on the MHDL, lists its seven main objectives and three principles outcomes, and details the legislative framework, referral process and the eligibility and compliance requirements including grounds for exclusion. Appendices included are MHDL Consent Form, MHDL Flowchart, and Sample Bail Conditions. There is no introduction to clarify who the manual is aimed at, but it would be useful for legal professionals and police.

'Tasmania's Magistrates Court Mental Health List'

Hill, M. R. (n.d) *Tasmania's Magistrates Court Mental Health List*. (18 March). Hobart, Tas: Magistrates Court of Tasmania.

http://www.magistratescourt.tas.gov.au/divisions/criminal_and_general/mental_health_diversion

This PowerPoint presentation by Chief Magistrate Hill provides an overview of the development of the List, procedures, role of key players, statistics about participation rates and diagnosis (figures for May 2007 to Dec 2009). This document also provides quotes from participants and case studies.

2009 Evaluation Report

Newitt, E., and Stojcevski, V. (2009) *Mental Health Diversion List: Evaluation Report*. Hobart: MCT.

This Report was prepared in May 2009 by Esther Newitt and Victor Stojcevski. This independent evaluation and review is a comprehensive report about the MHDL.

2011 Report

Bartkowiak-Théron, I., and Fleming, J. (2011) *Integration and Collaboration: Building capacity and engagement for the provision of criminal justice services to Tasmania's mentally ill - Final Report*, TILES, University of Tasmania, <http://www.utas.edu.au/tiles/>

APPENDIX C – Other Models

Other diversion programs exist in other Australian states. What follows is a resource list about diversion programs in other Australian and overseas jurisdictions.

South Australia

- CAA Annual Report available on the Court website, http://www.courts.sa.gov.au/courts/magistrates/court_diversion.html
- The website carries a comprehensive overview of the program.
- Richardson E, Mental health courts and diversion programs for mentally ill offenders: the Australian context, Conference paper 14 July 2008, IAFMHS.

Victoria

- The *Diversion and support of offenders with a mental illness: Guidelines for best practice* is mentioned above. (Department of Justice, 2010)
- ‘The *Criminal Justice Diversion Program* in Victoria’ October 2008 by Geoff Fisher, is published by the Sentencing Advisory Council. It provides an overview of the CJD, statistics and a summary.
- www.magistratescourt.vic.gov.au

Western Australia

- Magistrates Court of Western Australia have a Mental Health List in the Central Law Courts, http://www.magistratescourt.wa.gov.au/M/mental_health_list.aspx?uid=1798-2813-8239-9839
- There is also an Intellectual Disability Diversion Program (IDDP), http://www.magistratescourt.wa.gov.au/I/intellectual_disability_diversion_program_iddp.aspx?uid=7942-2328-8603-7948

Canada

- Toronto Mental Health Court in Canada
- Annual Report of the Saint John Mental Health Court, New Brunswick, <http://www.mentalhealthcourt-sj.com/annualreport1.html>

USA

- The *Problem-solving Justice Toolkit* provides a useful link to Mental Health Court Programs in various American states.