



# Children's Court of Western Australia

## Information Note

### Establishment of dedicated CLMI Court and new court practices and procedures under the *Criminal Law (Mental Impairment) Act 2023*

This Information Note relates to new court practices and procedures that are being established in response to the *Criminal Law (Mental Impairment) Act 2023 (the Act)*, which will commence operation on 1 September 2024.

#### 1. Introduction

- 1.1 From 1 September 2024, the Children's Court will establish a dedicated **CLMI Court** in Perth Children's Court. CLMI Court is being implemented for young people who are accused, where fitness has been raised pursuant to the Act.
- 1.2 Except as provided in this Information Note, Practice Direction 4 of 2023 *Criminal Proceedings* continues to apply including in respect of timeframes for finalisation.
- 1.3 Except as set out below, this Information Note applies to matters listed in Perth and metropolitan Children's Courts and does not apply to matters listed regionally.

#### 2. Court structure

- 2.1 CLMI Court will sit on every Thursday and Friday in Perth Children's Court. Thursday morning will be utilised for CLMI mentions, with the balance of the time being available for hearing special proceedings and other related hearings that may be required from time to time.
- 2.2 Ordinarily, CLMI Court will be constituted by a magistrate.
- 2.3 CLMI Court should be conducted with as little formality as possible. Where possible, language used in court should be understandable by the young person.

- 2.4 Parties to the proceeding are encouraged to address the court on the child-specific considerations under s 10 of the Act at an early stage.
- 2.5 For CLMI mentions, the presiding magistrate will sit on the same level as the parties and young person and there is no requirement to stand when addressing the court.
- 2.6 While in-person attendance remains preferred, the court will endeavour to accommodate (where possible and appropriate) any requests for alternative methods of appearances for the young person to support and encourage their participation.

### **3. CLMI mention list**

- 3.1 The CLMI mention list will commence at 11am each Thursday.
- 3.2 Commencing at 9.30am, before each CLMI mention list, there will be a pre-court team meeting. The CLMI team meeting will be attended by:
  - The presiding magistrate
  - A prosecutor
  - The legal representatives for the young people appearing in the list;
  - Officers from Youth Justice CLMI team. This may include associated staff from Department of Communities (Disability Services) and Department of Health (Child and Adolescent Forensic Service);
  - A representative of the Department of Communities, where the young person is a child in the care of the CEO of the Department of Communities; and
  - Any other person at the discretion of the presiding magistrate.
- 3.3 The pre-court meeting will not be recorded and will be focussed on the needs of the young person. Any matters that are in dispute will be discussed in CLMI mention hearing, rather than the pre-court meeting.

### **4. Raising the question of fitness**

- 4.1 Once fitness has been identified as an issue, it should be raised in court as soon as practical. If a trial is already listed, the matter should be early listed for fitness to be raised.

- 4.2 Once raised in court, the presiding magistrate will make appropriate directions to list the matter for a CLMI mention. In the usual course, the CLMI mention will be listed on the first available date not less than a week from the date of referral.
- 4.3 Prior to the first CLMI mention, Youth Justice will review what reports/assessments are already in existence for the young person. Prior reports/assessments are to be re-lodged with the court. Subject to the provisions as to confidentiality below, the court will circulate a copy to the prosecution and to defence counsel.
- 4.4 At the first CLMI mention, the court will consider any existing reports/assessments and determine what additional reports/assessments may be necessary to determine fitness. The matter will be adjourned to a subsequent CLMI mention to allow for the preparation of reports/assessments. In the usual course, this will be for a period not exceeding 6 weeks.
- 4.5 At the subsequent CLMI mention, once any reports/assessments that have been ordered are available, the court will make a determination as to fitness. In the usual course, this will occur after considering the material before the court and hearing submissions from the parties.
- 4.6 In appropriate cases, the court may consider whether any steps should be taken, or supports put in place, prior to the ordering of reports/assessments and prior to a determination as to fitness.

## **5. Finding of fitness (with or without support)**

- 5.1 Upon finding that the young person is fit, the young person will be listed in an appropriate non-CLMI court list, consistent with Practice Direction 4 of 2023.
- 5.2 For trial matters where fitness is borderline, the court may consider listing a CLMI mention in the leadup to a trial to ensure that fitness issues remain stable.

## **6. Adjourned to become fit**

- 6.1 If the court adjourns the proceedings in accordance with s 35 of the Act, the court may consider imposing bail conditions requiring the young person to comply with any directions made by Youth Justice to attend programs or intervention for the purpose of developing fitness.

- 6.2 In appropriate cases, the court may consider listing CLMI mentions at intervals during the adjournment period, with a view to monitoring the progress of the young person.
- 6.3 The timeframe for finalising proceedings set out in Practice Direction 4 of 2023 does not apply to cases where a s 35 adjournment has been ordered.

## **7. Finding of being unfit**

- 7.1 If the court finds that the young person is unfit, the court will decide whether to discharge the young person or list a special proceeding.
- 7.2 In appropriate cases, the court may consider whether any steps should be taken, or supports put in place, prior to deciding whether to discharge the young person or to list a special proceeding.
- 7.3 If the court determines that a special proceeding is appropriate, the court will hear any submissions as to the way the special proceeding should be conducted and make any necessary directions.
- 7.4 If, following a special proceeding, the court finds that the young person committed the offence (or an alternative offence) or that the young person is not guilty by reason of mental impairment, the court will order a pre-disposition report and list the matter for a further CLMI mention for hearing as to disposition.
- 7.5 Upon receiving a pre-disposition report, the court will consider an appropriate disposition under s 46 of the Act. In the usual course, this will be dealt with in the CLMI mention list. The court may consider listing complex matters separately.

## **8. Judges' jurisdiction**

- 8.1 Consistent with the jurisdictional limits on magistrates imposed by the *Young Offenders Act 1994* and the *Children's Court of Western Australia Act 1988*, the court (constituted by a magistrate) will consider listing the matter before a Judge if it considers that that a custody order or community supervision order of longer than 12 months may be appropriate.
- 8.2 Submissions about whether to refer a matter to a Judge, and the timing of any such referral, can be made at any stage.
- 8.3 For matters proceeding before a Judge, paragraph 13 of Practice Direction 4 of 2023 applies as if the disposition hearing were a sentencing hearing.

## **9. Breach Matters**

- 9.1 Breach matters will be listed to the CLMI mention list on the first available listing after the lodgment of the breach action.
- 9.2 If a warrant has been executed, and the young person brought before the court on a day when CLMI Court is not sitting, the matter will be listed in the combined list, and:
- The matter will be adjourned to the next available CLMI hearing; and
  - The presiding magistrate will consider bail, in accordance with s 15 of the Act.

## **10. Capacity**

- 10.1 CLMI Court will also be available for cases where there are capacity issues, pursuant to s 29 of the *Criminal Code*, that require case management.
- 10.2 A referral to CLMI Court is NOT appropriate when the capacity issues can be dealt with in the usual course of a trial.
- 10.3 Matters suitable for referral to CLMI Court include:
- Matters where there is an identified need to manage the way capacity evidence is gathered and dealt with; and/or
  - Matters where there is an identified need to determine the admissibility of evidence as to capacity prior to a trial.
- 10.4 When complex capacity issues are identified, a party to the proceeding may seek that the matter be referred to the CLMI Court for case management. At first instance, the matter will be listed for CLMI mention, to review issues which include:
- what evidence will be relied on in respect of capacity;
  - how evidence as to capacity will be sought, including the appropriateness of any summons proposed to be issued;
  - whether there are any questions as to admissibility that should be determined before a trial;
  - whether there can be a narrowing of the issues.

- 10.5 While there can be more than one CLMI mention to address these issues, the court maintains its aim to conclude proceedings within 9 months of lodgment, as per Practice Direction 4 of 2023.
- 10.6 Any hearings as to admissibility that are deemed appropriate to list prior to trial will be listed to a Thursday afternoon or a Friday, subject to court availability.
- 10.7 Once pre-trial capacity issues have been resolved, the matter will be listed for trial in the usual manner, consistent with Practice Direction 4 of 2023.

## **11. Regional CLMI matters**

- 11.1 Regional magistrates may determine, in the exercise of their discretion, that a matter should be transferred to CLMI Court for consideration and management of fitness or capacity issues. Whether a matter is accepted for management in CLMI Court will be decided by the presiding CLMI magistrate after hearing from the parties to the proceeding. If a matter is not accepted to CLMI Court it will be adjourned back to the regional court.
- 11.2 If a matter is transferred from a regional court to CLMI Court, the adjournment period must be for no less than 2 weeks and no more than 4 weeks, to allow the DPP time to review the matter. The adjournment should be directly to the Thursday CLMI case management list.
- 11.3 Amongst other matters, the availability of methods of remote participation that are suitable to the young person (such as video link arrangements) should be considered by the regional magistrate in determining suitability for CLMI Court.

## **12. Confidentiality/disclosure**

- 12.1 Where reports/assessments are provided to the parties in accordance with this Information Note, it is on the basis that the recipient agrees as follows:
- to print one copy only;
  - to maintain confidentiality of the report;
  - not to circulate, copy or publish the report without further leave of the court.
- 12.2 At a CLMI mention, the court can consider whether (and on what terms) reports/assessments should be provided to any third parties or service providers assisting the young person.

### **13. Transitional & Review**

- 13.1 Any matters currently before the court where fitness has already been raised or determined (prior to 1 September 2024) should be referred to the first available CLMI mention. The referral to CLMI Court can be requested by a party to the prosecution at the next-listed court event (provided the next-listed court event is not a trial) or by way of correspondence to the Perth Children's Court registry.
- 13.2 CLMI Court will be reviewed after 6 months. The court will consider whether a Practice Direction may be appropriate at that time.



Judge Hylton Quail

**President of the Children's Court of Western Australia**

20 August 2024