Criminal Law (Mental Impairment) Act 2023: Early Learnings

Thanks to Tim Aldous, Coordinator, and to Louahna Lloyd, Clinical Nurse Specialist, at the State Forensic Mental Health Service - Criminal Law Mental Impairment (CLMI) Coordination Team, North Metropolitan Health Service (NMHS) and to Nathalie Heenan, State Manager CLMI Services, Corrective Services, Department of Justice.

In this session we hear about learnings since the commencement of the Criminal Law (Mental Impairment) Act 2023 in September 2024, what it means for consumers and clinicians in practice, and where to get guidance.

Dr. Emma Crampin (Deputy Chief Psychiatrist):

'The CLMI Act 2023 marks a major shift in supporting individuals with mental impairment in the justice system, placing recovery, fairness, and dignity at the heart of legal and clinical practice. The Office of the Chief Psychiatrist (OCP) collaborates with State Forensic Mental Health Services (SFMHS) and the Department of Justice to help clinicians understand and apply the Act, with the Approved Mental Health Practitioner (AMHP) and Prescribed Medical Practitioners (PMP) training promoting high standards of care for supervised mental health consumers.

These reforms introduce a contemporary, therapeutic, and rights-based approach that is already reshaping responses to mental impairment in the justice system.'

Key Messages –

- **CLMI has not caused increased demand on community mental health services -** Most consumers under the CLMI Act 2023 were already with mental health services & may have historically been subject to alternate legal orders**.**
- **The new Act seeks to remove indefinite detention -** Includes limiting terms for most offences, Community Supervision Orders (CSOs) and expanded Mental Impairment Review Tribunal powers to support recovery.
- **Delays in access to fitness assessments** have limited the number of CSOs granted so far.
- **Clinicians and treating teams must report 'reasonable suspicion' of non-compliance to Supervising Officers.**
- **The SFMHS provide a consultation liaison service to guide care coordinators through the CLMI Act process.** They provide introductory emails for new orders, education, tailored case management tools, forensic risk assessment & case management advice. They can also attend case conferences to support health services.
- **The Chief Psychiatrist oversees standards for CLMI-supervised individuals in authorised hospitals & community.**
- **Over half (3 out of 5) of Community Supervision Orders have been, in rural areas - unexpected by SFMHS, although somewhat anticipated by WACHS clinicians.** This highlights the value of the consultation liaison role in adapting processes with WA Country Health Service staff**.**
- **No people subject to CSOs have re-offended or been reincarcerated to date** – a positive reflection of the therapeutic legal framework and interagency collaboration.

Fitness to Stand Trial Process:

This process is managed by the Department of Justice (DoJ) including court processes, and assessments**.** Fitness assessments are conducted by psychiatrists, clinical psychologists, neuropsychologists with relevant expertise.

The SFMHS CLMI Coordination team assist with collating information for this process and liaise with case managing mental health services.

The lawyer decides the legal pathway. The clinical team may advocate, although, they are unable to direct the legal proceedings down the CLMI pathway. Lawyers may decide not to use the CLMI Act & opt for a Sentencing Act pathway, even if there are fitness concerns by the treating team. This decision must be respected in maintaining impartiality to the legal proceedings.

Clinical Resources – FAQs, report templates and risk assessment Criminal Law (Mental Impairment) Act 2023

Hospital Orders in Practice- The courts may use a Hospital Order where they think an accused person requires assessment/ treatment. However, only just over a quarter (27%, n17) of adults who received a Hospital Order went to hospital (Sept 1st2024 - August 31st2025). Persons subject to Hospital Orders can be admitted to civil mental health wards (which has occurred – particularly for youth). The operational challenges of this are acknowledged.

Q: Can you tell us about the process and support provided for the rural CSOs in the last year?

1. **Dept. of Justice notification** - Sent to SFMHS within days of the order. The consumer is usually known to the mental health service or has had a predisposition report completed by the SFMHS.
2. **Treating team notification** - SFMHS emails team with CSO details, limiting term, and introduces the supervising officer.
3. **Follow-up email** - Sent after first Mental Impairment Review Tribunal (post-MIRT) hearing (within 5 days). Includes next hearing date, required reports, templates, and guidance for report quality and consistency.
4. **Attendance to first case conference -** SFMHS will attend the case conference to support the case manager and provide guidance on the health service's obligations in supporting the consumer under supervision.

1. Can the CLMI Act and MHA 2014 apply at the same time?

✅ **Yes**, but with **exceptions**.

- A Hospital Order (CLMI Act) must not be made if the person is already under an Inpatient Treatment Order under the MHA 2014 (CLMI Act s 19(7)).
- If a Hospital Order is made while the person is detained under a Form 1A (MHA 2014), the 1A should be revoked. Why? Both the Hospital Order and Form 1A allow detention for psychiatric examination.

2. Can treatment be enforced under the CLMI Act?

❌ **No** – treatment can **only** be enforced under the **MHA 2014** as follows**:**

- If a person is subject to a Hospital Order involuntary inpatient treatment can be provided under an Inpatient Treatment Order (Form 6A MHA 2014)
- If the person is subject to a Custody Order AND is in an authorised hospital, MHA 2014 ss.177-178 allow treatment to be provided without informed consent (no additional MHA 2014 orders required)
- If a person is on a Community Supervision Order (CLMI Act), involuntary treatment can only be provided in the community under a Community Treatment Order (CTO) under the MHA 2014 (s18 CLMI Act). Alternatively, the CTO can be revoked to initiate the inpatient treatment pathway using the Inpatient Treatment Order (Form 6A MHA 2014)

Q: **Is GPS monitoring being commonly used with CSOs?**

- **A:** No, it's not permissible for youth on a CSO (CLMI Act s 55(4)(b)). It's use for adults requires delegation, assessment, and a suitability report for the Commissioner. So far, it's only been considered to support reintegration into the community for persons being assessed for an extended order. *Nathalie Heenan (DoJ)*

Q: Information Sharing - Can the expert witness reports for court be shared with the treating team?

- **A:** Yes, usually to support community management. However, during extended order proceedings, sharing is restricted until a court decision is made. The courts have ordered DoJ to release information as needed. Information sharing is now mandated in legislation. Clinicians are protected if sharing was in good faith. A list of documents has been agreed to be shared, between Health and DoJ - CLMI risk and management plans.

Q: What if a consumer discloses a crime?

- **A:** Contact SFMHS for advice. With consent, we can access offence details and support court advocacy. Use the eCourts Portal to check hearing records. If under a CLMI Order, any reasonable suspicion of reoffending must be reported to the Supervising Officer.

Q: What supports exist for Aboriginal consumers?

- **A:** We are collecting data on ethnicity to guide future resourcing & culturally appropriate care and at least 2 Aboriginal Mental Health Workers are being recruited to join the SFMHS. Section 158 requires culturally appropriate supports, and MIRT must include a member with local Aboriginal cultural knowledge.