

6 November 2025

Ms Alison Cameron
Acting Deputy Ombudsman

Via email: pepsubmissions@ombudsman.wa.gov.au

Dear Ms Cameron

THE PROTECTED ENTERTAINMENT PRECINCTS SCHEME

Thank you for your letter dated 20 October 2025 inviting a submission on the above.

1. Has the PEP Scheme enhanced public safety and confidence in PEP areas?

While the aim of the PEP Scheme is to improve safety in entertainment precincts, there is little evidence that exclusion orders have made these areas safer or increased public confidence. The Scheme mainly focuses on keeping people out after an incident, rather than preventing problems or providing support or rehabilitation.

For people living with mental illness or cognitive impairment, the Scheme may increase risks rather than reduce them. Exclusion orders can push vulnerable people away from places where they access important supports and services, such as outreach programs, food relief, or health care. This can lead to more instability, distress, and conflict with authorities.

2. Is the PEP Scheme being administered fairly and appropriately?

The way the Scheme is being run raises serious concerns about fairness, especially for people with mental impairment. Many people with serious mental illness, intellectual disability, or brain injury do not have the capacity to fully understand or follow PEP exclusion orders. Without clear communication, legal help, or case management, breaches may happen by mistake.

The Scheme focuses too much on punishment of the individual instead of providing support or treatment. People who need mental health care, housing assistance, or community support are being given exclusion orders that make their situation worse.

When people breach PEP orders, the penalties can quickly escalate. For those with mental impairment, this could lead to a cycle of repeated breaches, arrests, and time in custody.

We see clients who accumulate many breaches of an exclusion order. These breaches can be during the day. These breaches can relate to the person being outside a community support centre such as St Pats in Fremantle. A person may be breached even though no anti-social behaviour is said to be present. The PEP order should have a time operation say from 6pm to 6am so people subject to an order can attend Centrelink or other services that are in the central area of a place such as Fremantle.

Many people with psychiatric illness come before the court on minor charges while they are unwell, unmedicated, and homeless.

A Magistrate may make a hospital order that the person be assessed by a psychiatrist but due to limited resources the person often ends up in Hakea Prison while awaiting psychiatric assessment. We have had a number of clients who receive multiple hospital orders for psychiatric assessment where no psychiatric assessment occurs. Such accused with mental impairment often spend long periods in custody without being seen by a psychiatrist. Prisons are not authorised or equipped to provide involuntary psychiatric care, which means the mental health of these accused often gets worse while they wait for their cases to be resolved. There are more resources for people with mental illness in the community than there are in prison.

Another issue identified is that excluded offenders, those automatically excluded for five years upon conviction, do not receive notification of changes to a PEP, and must instead check a website themselves to stay informed.

3. Has any group in the community been particularly affected by the PEP Scheme?

People with mental impairment, including those living with mental illness, cognitive disability, or brain injury, are disproportionately and negatively affected by the PEP Scheme. Other groups that are also impacted include people who are homeless, First Nations people, young people and those with substance use issues.

The mix of homelessness, mental illness, and exclusion orders often means that some people are barred from the only places where they can find safety, social contact, or access to essential services. For these individuals, the Scheme has increased social exclusion and involvement with the criminal justice system.

Restricting access by already marginalised people to essential health, welfare, or housing services within Northbridge and Fremantle creates further disadvantage. The PEP restrictions are not well communicated to socially marginalised people, resulting in the risk of unnecessary charges, court burdens, and over-policing, and highlighting the

need for WAPOL to collaborate with local service providers to ensure fair and informed awareness as to how PEP operates.

There should be a requirement to consider a person's mental health and cognitive capacity before a PEP exclusion order is made or enforced.

People should be given access to mental health assessment and support as early as possible, including through court diversion or community treatment programs.

The focus should shift away from punishment and towards support, with more therapeutic approaches such as outreach, case management, and housing assistance.

Psychiatric services should be resourced to provide psychiatric assessment when a hospital order is made rather than people with mental illness being warehoused in Hakea Prison without treatment for very long periods of time. Remand practices should be reviewed to make sure that people with serious mental illness are not kept in prison simply because they cannot get treatment in the community. Data should also be collected and publicly reported on how the PEP Scheme affects vulnerable groups, including people with mental impairment, Aboriginal people, young people and people experiencing homelessness.

Charges should only be laid when a breach directly relates to the purpose of the Scheme, which is to make entertainment areas safer and more enjoyable for the public.

The offence provision could be amended to make the charge one of disorderly conduct while subject to a PEP order, so that an individual is only charged when there is behaviour that warrants the intervention of police.

Thank you for considering this submission.

Yours sincerely

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Helen DeBrito
Director, Legal Aid WA