

5 December 2025

Ombudsman Western Australia
Level 2, 469 Wellington Street
Perth WA 6000

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

Dear Acting Deputy Ombudsman,

Written Submission Regarding the Protected Entertainment Precincts Scheme

1. Background

- 1.1. The WA Justice Association (**WAJA**) is a student-led organisation dedicated to reducing incarceration rates and improving outcomes for people coming in contact with Western Australia's criminal justice system. This submission responds to an invitation from the Western Australian Ombudsman (the **Ombudsman**) to provide feedback on the operation of the Protected Entertainment Precincts (**PEP**) Scheme.

2. Executive summary

- 2.1. This submission addresses three questions posed by the Ombudsman in its invitation to provide feedback on the operations of the PEP Scheme:
 - a) Has the PEP scheme enhanced public safety and confidence in PEP areas?
 - b) Is the PEP Scheme being administered fairly and appropriately?
 - c) Has any group in the community has been particularly affected by the PEP Scheme?
- 2.2. Through our own analysis of the PEP Scheme and consultation with relevant community organisations, WAJA has found that:
 - a) **The PEP Scheme has not increased public safety and confidence in PEP areas.** Instead, it has decreased confidence among many community members due to fears of increased contact with police and expanded police powers. Organisations consulted also reported little need for the PEP Scheme, as antisocial behaviour can be adequately addressed within the existing legal framework.
 - b) **The PEP Scheme is not being administered fairly and appropriately,** owing to a lack of transparency, inadequate judicial oversight, and limited avenues for appeal. Public release of police guidelines governing the enforcement of the PEP Scheme is necessary to adequately evaluate its operation.
 - c) **The PEP Scheme has negatively affected several vulnerable groups in our community.** Individuals experiencing mental health challenges are one such group. In addition to being hesitant to enter PEP areas, mental health crises or distress may be misinterpreted as antisocial behaviour and met with punitive action under the PEP Scheme rather than appropriate support. Individuals experiencing homelessness are also particularly affected and may be restricted from accessing important services or personal belongings in PEP areas. Other groups particularly impacted include young people, Aboriginal and Torres Strait Islander peoples, and

people with drug and alcohol dependencies, disabilities, or from culturally and linguistically diverse backgrounds.

- d) **The PEP Scheme is influencing bail conditions.** Judges have begun using the geographic boundaries defined in the PEP Scheme in drafting bail conditions. The impacts of this unintended consequence of the Scheme should be subject to further investigation.

2.3. These findings are discussed in further detail below, including recommendations as to how these issues could be addressed.

3. The PEP Scheme has not increased public safety and confidence in PEP areas

- 3.1. WAJA has not seen any evidence that the PEP Scheme has improved public safety or confidence in PEP areas. Instead, for many community members (such as those experiencing mental health challenges, disability, or homelessness), the PEP Scheme has actually reduced public safety and confidence in PEP areas due to fears of increased contact with police and expanded police powers.¹
- 3.2. In many cases, these fears have resulted in individuals avoiding PEP areas altogether despite not having received a PEP exclusion order.² This has exacerbated social isolation (particularly among highly vulnerable groups) and restricted access to legal, health, food relief, and other services (noting that many such services are intentionally located in PEP areas to maximise ease of access).³
- 3.3. WAJA has also not seen any evidence that PEP exclusion orders have been effective in managing antisocial behaviour where a pre-existing measure (such as a move-on order or a prohibition order) would not have had the same effect. Organisations consulted reported little need for the PEP Scheme, as antisocial behaviour can be adequately addressed within the existing legal framework.⁴

Recommendation 1: In order to increase public safety and confidence in PEP areas, WAJA recommends repealing the PEP Scheme. In its place, police officers should be given additional training. This training should be on the effective use of pre-existing measures (such as move-on orders and prohibition orders) in effectively managing antisocial behaviour, and on the appropriate, effective responses to those experiencing mental health challenges or homelessness.

¹ Consultation with Street Law Centre WA, Community Legal WA and Shelter WA, November 2025; written response to WAJA from Vinnies WA, November 2025; Consultation with Consumers of Mental Health WA, November 2025.

² Consultation with Street Law Centre WA, Community Legal WA and Shelter WA, November 2025; written response to WAJA from Vinnies WA, November 2025; Consultation with Consumers of Mental Health WA, November 2025.

³ Written response to WAJA from Vinnies WA, November 2025.

⁴ Consultation with Street Law Centre WA, Community Legal WA and Shelter WA, November 2025.

4. The PEP Scheme is not being administered fairly and appropriately

- 4.1. The fair and appropriate administration of the PEP Scheme is significantly undermined by the scheme's marked lack of adequate judicial oversight, transparency, and avenues for appeal.
- 4.2. There is no appropriate judicial oversight of decisions made under the PEP Scheme. Appeals made against PEP exclusion orders and applications by the Commissioner of Police for extended PEP exclusion orders are both overseen by the Liquor Commission (or the Director of Liquor Licensing). Given the significant impacts PEP exclusion orders, this level of oversight is inappropriate and insufficient. The Liquor Licensing Commission lacks the resources, expertise, and authority for decisions of this kind, which already deal with similar matters. The ability of the Scheme to be fair is heavily limited when there is no appropriate legal avenue for appeal or oversight.

Recommendation 2: If the PEP Scheme is not repealed, WAJA recommends amending the Scheme to ensure decisions are made with appropriate judicial oversight, such as through the courts and/or the State Administrative Tribunal.

- 4.3. Transparency is further hindered by the non-publication of police guidelines governing the exercise of discretion under the Scheme. Guidelines set by the Commissioner of Police guide the exercise of police discretion under the Scheme, including behaviour leading to a PEP exclusion order and the manner in which an order is issued. However, these guidelines have not been made public, severely limiting the ability of the public, stakeholders, service providers and organisations to understand whether the Scheme has been administered fairly and appropriately.
- 4.4. Additionally, information required to fully evaluate the fairness and effectiveness of the Scheme is not available to the public, further undermining the integrity of the Scheme.

Recommendation 3: So that the administration of the PEP Scheme can be properly evaluated, WAJA recommends that the following information data/should be made publicly available for review/comment:

- a) the PEP Scheme guidelines set by the Commissioner of Police;
- b) data on the reasons why PEP exclusion orders were used by police in favour of pre-existing measures (such as move-on orders and prohibition orders); and
- c) demographic data on the recipients of PEP exclusion orders (including the proportion of recipients who were experiencing homeless and/or of Aboriginal and Torres Strait Islander descent).

5. The PEP Scheme has negatively affected several vulnerable groups in our community

- 5.1. The Scheme disproportionately and negatively impacts groups experiencing a wide range of vulnerabilities, including mental health challenges, homelessness, and various others that were repeatedly highlighted during our consultations.

Individuals experiencing mental health challenges

- 5.2. Individuals experiencing mental health challenges were identified as being particularly affected by the Scheme. Mental health crises or distress can often be misinterpreted as

antisocial behaviour.⁵ Because of this, police are often the first people called when people are experiencing these issues.⁶ Individuals experiencing mental health challenges require specialised, supportive interventions and de-escalation, but police are typically ill-suited and insufficiently trained to deal with these situations in ways that are trauma-informed and medically appropriate.⁷ This lack of alternative appropriate crisis care can mean police are forced to admit these individuals to hospital, even where this may not be necessary.⁸

- 5.3. Police responses to mental health crises are regularly characterised by excessive use of force and restraint, dismissal, and assumptions that the people experiencing crisis are dangerous or aggressive.⁹ People are hesitant to ask for help in case they are viewed as the problem.¹⁰ An increased police presence can make people experiencing mental health challenges feel unsafe and can cause distress in itself.
- 5.4. In the context of the Scheme, receiving a PEP exclusion order can also compound these impacts by preventing these individuals from accessing medical or treatment services within PEP boundaries.

Recommendation 4: To reduce harmful impacts of the PEP Scheme on individuals experiencing mental health challenges, WAJA recommends increased investment into alternative options for crisis care for this vulnerable group.

Individuals experiencing homelessness

- 5.5. People experiencing homelessness were also identified as being particularly affected by the Scheme. Important outreach and support services are located within PEP boundaries, and the increased reluctance to enter these areas (even if not legally excluded) can prevent people from seeking support they need.¹¹
- 5.6. People experiencing homelessness are also particularly affected by being moved out of areas, as they often have nowhere else to go or may not be able to retrieve important personal belongings (including identity documents) that are located within the areas.¹²

Other groups in the community

- 5.7. Although we do not have the same level of insight into the impacts of the PEP Scheme on other groups and vulnerabilities, young people young people and people with drug and alcohol dependencies, disabilities, or from culturally and linguistically diverse

⁵ Consultation with Consumers of Mental Health WA, November 2025.

⁶ Consultation with Consumers of Mental Health WA, November 2025.

⁷ Consultation with Consumers of Mental Health WA, November 2025.

⁸ Consultation with Consumers of Mental Health WA, November 2025.

⁹ Consultation with Consumers of Mental Health WA, November 2025.

¹⁰ Consultation with Consumers of Mental Health WA, November 2025.

¹¹ Consultation with Street Law Centre WA, Community Legal WA and Shelter WA, November 2025; written response to WAJA from Vinnies WA, November 2025.

¹² Consultation with Street Law Centre WA, Community Legal WA and Shelter WA, November 2025.

backgrounds were all identified during our consultations as being disproportionately impacted.¹³

5.8. Individuals facing disadvantage, including those with experience of poverty or trauma, were also identified as being particularly impacted by the PEP Scheme – especially through increased social isolation and difficulties accessing crucial services arising from the Scheme.¹⁴

5.9. Aboriginal and Torres Strait Islander peoples are also disproportionately impacted, comprising approximately 38% of people issued with short-term exclusion orders or extended exclusion order applications prior to September 2023.¹⁵ This not only contributes to the overrepresentation of Aboriginal and Torres Strait Islander peoples in the justice system more broadly, but resembles historical discriminatory policies that limited the freedom of movement of First Nations peoples in Perth.

Recommendation 5: If the PEP Scheme is not repealed, WAJA recommends amending the Scheme to appropriately account for the many intersectional and compounding factors that perpetuate disadvantage, and considering how this legislation may exacerbate these issues.

6. The PEP Scheme is influencing bail conditions

6.1. Since the PEP Scheme was implemented, Judges have begun using the geographic boundaries defined in the PEP Scheme in drafting bail conditions.¹⁶

6.2. During our consultations, one organisation noted that while their clients are not necessarily given PEP exclusion notices, they are instead excluded from the same areas through bail conditions arising from separate offences.¹⁷ This generates more opportunities for individuals to needlessly accumulate a longer criminal record, especially when access to PEP areas is often necessary for vulnerable groups for the reasons outlined above.

Recommendation 6: WAJA recommends further investigation into the unintended consequences of the PEP Scheme in relation to bail conditions.

¹³ Consultation with Street Law Centre WA, Community Legal WA and Shelter WA, November 2025; written response to WAJA from Vinnies WA, November 2025; Consultation with Consumers of Mental Health WA, November 2025.

¹⁴ Written response to WAJA from Vinnies WA, November 2025.

¹⁵ Western Australia, *Parliamentary Debates*, Legislative Council, 21 September 2023, 5007 (Stephen Dawson, minister representing the Minister for Police).

¹⁶ Consultation with Street Law Centre WA, Community Legal WA and Shelter WA, November 2025.

¹⁷ Consultation with Street Law Centre WA, Community Legal WA and Shelter WA, November 2025.