

## MEDIA RELEASE

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### CLMIA Act review report a step forward but still falls short

WESTERN Australia's peak body for mental health, the WA Association for Mental Health (WAAMH), along with Developmental Disability WA (DDWA), acknowledge that the long awaited review report of the *Criminal Law (Mentally Impaired Accused) Act 1996* (CLMIA Act) has been released by the state government today, but remain concerned that some of the most fundamental recommendations have not been addressed.

While the review report is a step in the right direction toward improving the fair and equitable treatment of mentally impaired accused, most of the significant human rights abuses in the current CLMIA Act have not been addressed.

WAAMH President Alison Xamon said of the five most urgent and critical reforms recommended by WAAMH, DDWA and its coalition representing people most impacted by this legislation, including people with disability, those with mental illness, numerous organisations, families, and Aboriginal people, only three were addressed.

"Critically we have been calling for reform that custody orders are no longer than the term the person would likely have received, had they been found guilty of the offence, and this was not addressed at all. This is the largest breach of human rights and the most discriminatory aspect under the Act as it detains people of the basis of their mental illness or disability alone, and this is simply not good enough.

"Other states such as Victoria have demonstrated it is possible to achieve community safety with finite detention orders, appropriate supports and other legal measures such as civil law orders," Ms Xamon said. "WA currently has the worst legislation with regards to procedural fairness for some of the most vulnerable people in our community."

DDWA CEO Taryn Harvey said the flawed terms of reference of the review also denied the government the opportunity to address some of the most significant human rights abuses in the CLMIA Act.

"Our recommendation to take the politics out of decision making and instead have judicial experts make decisions about release has been totally ignored," Ms Harvey said. "Which arm of government makes and reviews determinations about the release of mentally impaired accused from custody, and the conditions to be attached to such release, should not have been left out of this review."

"We are also disappointed that the report does not recommend the ready availability of sufficient secure places in either hospitals or declared places, and that prisons will be retained as a place of custody."

WAAMH and DDWA welcomed positive recommendations in the review report that involved more judicial discretion to enable courts to broaden the available disposition options for mentally impaired accused, however it is noted that this principle was not consistently applied across the review report and indefinite custody orders must still be imposed for many offences not serious enough to warrant it. We also welcome judicial officers having more regard as to whether there is a case to answer to in court.

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The review report also made positive recommendations which will improve the rights of people to fair and transparent safeguards in court and board processes, bringing our law up to contemporary procedural standards in many aspects. But the right to appeal these decisions is still missing, and there is no mention of decisions made by the Minister.

“While the review report recommends some positive reforms, to truly achieve justice and safety for all people the Act requires a complete overhaul not a bit-by-bit approach,” Ms Harvey said. “However, because the current situation is so dire something is better than nothing at all.”

Ms Xamon said she remained concerned about how long the review report had taken and was concerned that with the looming election, time was running out to implement any reforms.

“We call on the government to urgently introduce a Bill into Parliament to implement these recommendations so they don’t just gather dust, and so that some progress is made toward improving justice for people with a disability and mental illness,” said Ms Xamon.

“This Act has been under review without any reform since 2003 and we continue to have the worst legislation for the mentally impaired accused in Australia.”

[The report was released today and is available here.](#)

## Fact File

WAAMH, DDWA and its coalition representing people most impacted by this legislation, which includes people with disability, mentally ill, consumers, carers, and Aboriginal people, last year identified and recommended to the state government the following five most urgent and critical reforms for the CLMIA Act:

1. Introduction of a special hearing to test evidence against an accused found unfit to stand trial.
2. Judicial discretion to enable courts to take into account the circumstances of the offence and to impose a range of options for mentally impaired accused. These should include a community-based order for mentally impaired accused found unfit to stand trial and the repeal of Schedule 1, which makes indefinite Custody Orders compulsory for some offences.
3. Limitation of terms - Custody Orders should be no longer than the term the person would likely have received, had they been found guilty of the offence.
4. New procedural fairness provisions which provide for rights to appear, appeal, review, and rights to information and written reasons for a decision in court and Mentally Impaired Accused Review Board (MIARB) proceedings
5. Determinations about the release of mentally impaired accused from custody and the conditions to be attached to such release (if any) should be made by the MIARB but with a right of review before the Supreme Court on an annual basis.

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