



**WAAMH**

Western Australian Association  
for Mental Health

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**MEDIA RELEASE**

**24 June 2015**

### **Critical reform needed for unjust CLMIA Act**

WESTERN Australia's peak body for mental health, the WA Association for Mental Health (WAAMH) supports today's calls from WA Children's Court president Judge Denis Reynolds to reform the Criminal Law Mentally Impaired Accused Act (CLMIA Act).

WAAMH and other community organisations have been calling on the State government to meet its election commitment and reform the contentious CLMIA Act for some time.

As the reported case of a 17-year-old boy with brain damage demonstrates, when someone is found unfit to stand trial, judges have only two options – either make an indefinite custody order or release the person back into the community without conditions.

Judges need the option of conditional release for mentally impaired accused individuals who are unfit to stand trial, so they can put in place conditions which balance the rights of the accused with the need to protect the community.

WAAMH president Alison Xamon said: "In order for the government to meet its election commitment to reform the Act, a Bill to reform CLMIA must be introduced to parliament by the end of the calendar year 2015."

"Although the government has reiterated its intent to reform the Act, we are concerned about the time passed and the fact there is no publicly available information about the Review," Ms Xamon said.

As well as reforms that provide judges with more options, other urgent reforms to the Act are needed to ensure procedural fairness, and more rigorous legislative and court procedures.

WAAMH and its coalition representing people most impacted by this legislation, which includes people with disability, mentally ill, consumers, carers, and Aboriginal people, have identified the following five most important reforms:

1. Introduce 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.

"These procedural fairness provisions are nothing new," Ms Xamon said. "We're not asking for anything out of the ordinary. These procedures are in place and completely workable in other states and territories.

"WA's CLMIA Act is critically outdated and needs to be stepped up in line with the standards implemented in other Australian jurisdictions."



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The vast majority of people held under the CLMIA Act can safely return to the community with appropriate specialist supports and court oversight.

Yet, as Judge Reynolds has highlighted, the Act in its current form hampers the role of courts to keep the community safe and ensure people accused are dealt with fairly.

Progressive reforms have recently been introduced by the current State government, such as the Mental Health Act 2015 and the Mental Health, and AOD 10 Year Plan.

“The CLMIA Act undermines these progressive reforms and it is really important that the government addresses this problem as soon as possible,” Ms Xamon said.

### **About WAAMH**

The Western Australian Association for Mental Health (WAAMH) was incorporated in 1966 and is the peak body representing WA’s community-managed mental health sector and around 100 organisational and individual members. Our vision is to lead the way in supporting and promoting the human rights of people with mental illness, their families and carers, through the provision of inclusive, well-governed community-based services, focused on recovery. WAAMH advocates for effective public policy on mental health issues, delivers workforce training and sector development, and promotes positive mental health and wellbeing. Further info at <http://www.waamh.org.au>

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