

An Open Letter to the Premier and Leader of the Opposition

Call for an immediate and transparent review of the *Criminal Law (Mentally Impaired Accused) Act 1996*.

This letter has been prepared and signed by a group of organisations and individuals who hold significant concerns about the harmful impact of the Criminal Law (Mentally Impaired Accused) Act 1996 (CLMIA Act) on our community.

During this election campaign we are calling for a commitment from Government and the Opposition to undertake an immediate review of the CLMIA Act in proper consultation with the community. We also call for immediate reform to specific provisions of the CLMIA Act where there is a clear and urgent case for reform.

Under the CLMIA Act, people with senility, intellectual disability, brain damage as well as some people with a mental illness, who have not been found guilty of a crime, can face indefinite detention in a prison or a juvenile detention centre – places that cannot provide the kind of support required to treat a person's mental impairment or prevent them from reoffending. After an initial appeal period has lapsed, the Review Board is only required to review the detention once a year, which usually occurs in the person's absence.

The most senior judge in our state, Chief Justice Wayne Martin, stated in a 2010 judgment that the CLMIA Act has 'serious' deficiencies. A comparison of provisions of the CLMIA Act with similar law in other jurisdictions conducted by the Mental Health Law Centre (WA) Inc is attached. This document demonstrates that the WA Act falls embarrassingly behind progress made in other Australian States and Territories.

In addition to an immediate review, we call for urgent reforms including the:

- Right to legal representation
- Right to reasons for a decision
- Right to request a review
- Right to appeal a Mentally Impaired Accused Review Board decision
- Removal of the indefinite detention at the governor's pleasure provisions.

Yours faithfully

Alan Robinson, Advocate for People with Intellectual Disability and Member of Mental Health Matters 2 and the Mental Health Law Centre (WA) Inc • Ann-Marie Peacock, Family Member • Beverly Cranwell
 Bill Cebula, Independent Mental Health Advocate • Brian Evans, Member of Mental Health Matters 2 • Bridget Silvestri, Family Member • Antonio Silvestri, Family Member • Nicholas Silvestri, Consumer • Michele Silvestri, Family Member
 Leesa Silvestri, Family Member • Carol Evans, Member of Mental Health Matters 2 • Caroline Waddington • Carolyn Fisher, Mental Health Advocate • Cass Murray McCarthy • Charl Van Wyk
 Debra Sobott, WA Carer Representative, National Mental Health Consumer and Carer Forum • Diana Warnock • Donna Chung • Doreen Moulds • Dr Jacqui Dodds • Dr Liz Pattison • Dr Maria Harries AM
 Dr Ron Cacioppe, Managing Director, Integral Development • Eric Baines, Chair, Richmond Fellowship of WA • Frank Ransome, Clinical Social Worker and ICU • Geoff Diver, Mental Health Advocate
 Glenn Mitchell, ex-ABC broadcaster and Mental Health Ambassador • Helen Lynes • Hon Dr Geoff Gallop AC • Hon Keith Wilson AM • Iren Hunyadi, Health Consumer • Jacqui Carter, Community Advocate • Janelle Ridgway • Jill Rundle • Jim McGinty
 Joe Calleja • John Gherardi • Julie Quicke, Court Diversion Officer and Coordinator of Illicit Drug Diversion Program for the Great Southern • Karen Mann • Karen Taylor • Kerry Hawkins
 Lyn Mahboub, Independent Mental Health Consultant and Trainer • Margaret Doherty • Ennio Cicchini • Margaret Smith, Wembley Downs Uniting Church • Mary McCarthy, Mental Health Advocate • Mathew Carter • Max Sulejmani
 Melissa Perry, State Director WA of Mission Australia • Mercurio Cicchini, Clinical Psychologist • Mike Cahill, Board Member Richmond Fellowship • Mike Seward • Mrs S Coolican • Noreen Gould
 Patrick McGee, Coordinator, Aboriginal Disability Justice Campaign • Peter Fotakis, Independent Mental Health Advocate • Pollard Family, Family affected by the CLMIA Act • Prof Patrick McGorry AO • Richard Oades • Robert Holmes, CEO, Enable
 Ron Coleman • Rosie Bunney, Member of Mental Health Matters 2 • Rowena Evans, Bitutek Pty Ltd and a member of Mental Health Matters 2 Rodney Evans, Director/ General Manager, Bitutek Pty Ltd and member of Mental Health Matters 2
 Sandra Evans, Owner/Operator of Travelworld and member of Mental Health Matters 2 • Robert Lundie, Director, Bitutek Pty Ltd • Wayne Evans • Sacha Nadas, Family Member
 Seamus Murphy, Mental Health Advocate and Member of the Australian Crime Prevention Council • Caolan Murphy, Family Member • Stephan Hall • Tony Fowke AM • Tony Pietropiccolo AM • Tracy Sulejmani



COMPARATIVE LAW

| | WA | VIC | NSW | SA | QLD | TAS | NT | ACT | CTH |
|--|----|--------------------|------------------------------------|---|-------------------------|-----------------|---------------|-------------------------------------|---|
| Legislative Coherence Consolidated, coherent, effective and mutually supportive civil and forensic mental health systems | ✗ | ✗ | Yes. | ✗ | Yes. | ✗ | ✗ | Yes. | ✗ |
| Procedural Fairness | | | | | | | | | |
| Right to special hearing for unfit accused | ✗ | Yes. S. 15 | Yes. S. 19(1) | Trial of objective elements of the offence: S. 269FB, 269GA, 269HA, 269NA | Yes. Chapter 6, Part 4. | Yes. S. 15. | Yes. S. 43V | Yes. S. 316 | 'Prima facie case': S20(3) |
| Right to be heard | ✗ | Yes. S. 36(1); 70 | Yes. S. 34 Mental Health Act 2007. | Yes. | Yes. S. 403(a) | Yes. S. 26. | Yes. S. 432. | Yes. S. 80. | Yes. S. 205K, 206D. |
| Right to legal representation | ✗ | Yes. S. 36(3), 70 | Yes. S. 15 Mental Health Act 2007. | ✗ | Yes. S. 403(b) | ✗ | Yes. S. 360. | Yes (children) S. 81. | ✗ |
| Right to reasons for decision | ✗ | Yes. S. 66 | ✗ | ✗ | Yes. S. 205. | ✗ | ✗ | Yes. S. 138. | ✗ |
| Right to 6 monthly review | ✗ | ✗ | Yes. S. 37 Mental Health Act 2007. | ✗ | Yes. | ✗ | Yes. | Yes. S. 72(2) | Yes. S. 205D, 206K. |
| Right to request review | ✗ | Yes. S. 31 | Yes. S. 42 Mental Health Act 2007. | Yes. S. 269P. | Yes. S. 201. | ✗ | ✗ | Yes. S. 73, 137A. | ✗ |
| Right to appeal | ✗ | Yes. S. 26(5); 34 | Yes. S. 44 Mental Health Act 2007. | Yes. S. 269Y. | Yes. Chapter 6. | Yes. S. 36. | Yes. S. 432B. | Yes. S. 141. | ✗ |
| Detention Orders | | | | | | | | | |
| Always subject to judicial discretion | ✗ | Yes. S. 26(2) | Yes. S. 39. | Yes. S. 269Q(1) | Yes. S. 289. | Yes. S. 18, 21. | Yes. S. 432. | Yes. S. 323(1), 324(1), 329, 335(2) | ✗ |
| Limited duration | ✗ | Nominal term S. 28 | Limiting term S. 23 | Yes. S. 269Q(2) | ✗ | ✗ | ✗ | Yes. S. 303, S. 75(1) | Yes. S. 205C, 206J. |
| Termination by a Court | ✗ | Yes. S. 35 | Yes. S. 39 | Yes. S. 269P | ✗ | Yes. S. 27 | Yes. S. 432H | Yes. S. 926R | ✗ |
| Children and Young People | | | | | | | | | |
| Special procedures? | ✗ | ✗ | ✗ | ✗ | Yes. Chapter 6 Part 2. | Yes. S. 39A. | Yes. S. 52A. | ✗ | Depends on state or territory law: S. 20C |

The original version of this table includes titles of legislation and further references. For the purpose of this table, 'court' is taken to include a tribunal or board.

The complete table is annexed to the CLMIA Act submission by the MHLA (WA) Inc, which will be published on their website.