

COMHWA Member Briefing Paper – April
2023



CLMIA/CLMI Bill reforms and update

Purpose

To ensure non-discriminatory, fairer treatment for people with mental health issues and intellectual disability who have been charged with a crime but have been found unfit to stand trial.

The Issue

The *Criminal Law: Mentally Impaired Accused 1996 (CLMIA)* Bill denies people due process, natural justice, and human rights and compromises public safety by creating barriers to people accessing vital supports. The new *Criminal Law: Mental Impairment 2022 (CLMI)* Bill offers reform, including an end to indefinite detention.

Background

Under the former *Criminal Law: Mentally Impaired Accused (CLMIA) 1996* Bill, people with mental health issues, intellectual or cognitive disability who were found to be unfit to stand trial or be convicted of a crime could be detained indefinitely¹. Mental Health advocacy organisations such as WAAMH², CoMHWA, Helping Minds, Developmental Disability WA, Mental Health Matters 2 and others³ have lobbied politicians and other key decision-makers for years to amend the Bill, advocating for changes to ensure that the human rights of people who have been accused of a crime are protected.

As a result of this advocacy, and to fulfill the Labor Party's election promises to reform CLMIA, the new *Criminal Law: Mental Impairment 2022 (CLMI)* bill was introduced in 2022⁴ and enforces the following reforms:

- Custody orders cannot be longer than the term they would likely have received, had they have been found guilty.
- Mentally impaired accused who are found unfit to stand trial will have community-based orders rather than custody orders in prisons.
- Provisions for procedural fairness which provide for rights to appear, appeal and review.
- Determinations about the release of mentally impaired accused from custody, and the conditions to be attached to such release (if any), are made by the Board but with a right of review before the Supreme Court on an annual basis.

¹ Bridges, Alicia. 2022. 'WA government moves to repeal law that allows indefinite detention of mentally impaired people'. <https://www.abc.net.au/news/2022-12-02/wa-mentally-impaired-accused-act-repeal-new-law/101724650>

² WAAMH. 2015. CL(MIA) 1996 Advocacy Brief: Priorities for Urgent Reform.

<https://waamh.org.au/assets/documents/systemic-advocacy/clmia-priorities-for-reform-advocacy-brief-final.pdf>

³ Joint Submission. 2014. Submission to the Review of the Criminal Law (Mentally Impaired Accused) Act 1996.

<http://static1.squarespace.com/static/5ee88174e9df4a4140e3e19a/5ee883eba4c5522c10233e0e/5ee883b4a4c5522c10231b76/1592296372860/Joint-CLMIA-Submission-Final-12-12-14.pdf>

⁴ WA Parliament. 2023. Progress of Bills.

<https://www.parliament.wa.gov.au/parliament/bills.nsf/BillProgressPopup?openForm&ParentUNID=F3634B3CF5F7D1E74825890800145A29>

Consumers of Mental Health WA (CoMHWA)

The Department of Justice is leading the project of reform to develop CLMI, including the work required to implement the Bill. Justice is responsible for chairing the steering group, which meets bimonthly. The Mental Health Commission is supporting these processes by undertaking planning to manage the potential impacts this reform may have on the Mental Health and Alcohol and Other Drug sector. The Commission continues to facilitate consultation with people with Lived Experience, clinicians, and sector-wide government and non-government representatives.

CoMHWA's Position

- CoMHWA welcomes the end of imposing indefinite sentences on people found not fit to stand trial or be charged with a crime and recognises the deep impact and lasting trauma that CLMIA has had on consumers, carers, family members and the wider community. We also acknowledge that people impacted by CLMIA will need ongoing support and advocacy.
- CoMHWA encourages the provision of community-based orders and argues for clarification around the use of facilities such as the Bennet Brook Disability Justice Centre⁵, which has been under-utilised despite being a 'declared place' for people under CLMIA.
- CoMHWA looks forward to being involved in implementation (along with other people with Lived Experience) of the Bill in due course.

Have your say:

CoMHWA is dedicated to representing your views on these reforms. To have your say, please get in touch with our Systemic Advocacy Team at sysadvocacy@comhwa.org.au.

⁵ Western Australian Government. 2022. Bennett Brook Disability Justice Centre.
<https://www.wa.gov.au/service/health-care/community-health-services/bennett-brook-disability-justice-centre>

