

# Criminal Law (Mentally Impaired Accused) Act 1996 (WA) ~ The CLMIA Act



## The Status Quo

The Criminal Law (Mentally Impaired Accused) Act 1996 (WA), also known as the CLMIA Act, **was out of line** with other progressive disability and mental health reforms.

In 2016, the UN found **WA breached its responsibilities** under the UN Convention of the Rights of Persons with Disabilities and recommended law reform

An alternative for those with mental impairment built in 2015 was ineffective, with 19 staff yet only 3 of a possible 10 residents

An advocacy group - Australians for Disability Justice, believe **over 1000 people** with mental impairment were detained indefinitely each year, where 30% of those were Indigenous

The Australian Institute of Health and Welfare found that in 2018, people with disability formed 29% of the prison population, despite being only 18% of the general population



95% of First Nations people charged with criminal offences who appear in court have an intellectual disability, cognitive impairment, or mental illness



## The Report

WAJA produced a report in partnership with the Western Australian Association for Mental Health, the Mental Health Law Centre and Magistrate Felicity Zempilas: *Justice Delayed is Justice Denied*.

WAJA's Report provided 13 recommendations to improve the CLMIA Act.

WAJA held several consultations with experts and advocates in the field.



# The Result



The McGowan Government introduced the Criminal Law (Mental Impairment) Bill 2022 (WA) into Parliament in December 2022. **This bill will completely repeal the CLMIA Act.**

Numerous recommendations from WAJA's Report have been adopted in the proposed legislation. Infinite detention will be abolished in the new legislation, fulfilling a recommendation of the Report. **This is a significant win for justice.**

WAJA recognised the importance of increased information sharing between government agencies.

This is a priority of the new legislation, which creates a statutory requirement for agencies to cooperate to assist individuals impacted by this legislation.



**The Bill introduces community supervision orders** similar to those proposed in WAJA's report. Although some means of judicial discretion have been changed, there are other statutory requirements that would be considered when a person commits an offence



This Bill is imperfect, but is a significant step in the direction of reform. WAJA recommends establishing further procedures to facilitate procedural fairness in line with the recommendations produced by the Report, in particular, establishing a centralised list for hearings on matters of fitness.

However, the Government must commit resourcing in both justice and health to ensure these reforms are upheld.

WAJA looks forward to advocating for ongoing legislative and procedural reform on this critical issue.

