Submission to the Review of the *Criminal Law (Mentally Impaired Accused) Act 1996*

December 2014

This submission has been collectively developed and endorsed by Western Australian Association for Mental Health, Consumers of Mental Health WA (Inc), Developmental Disability WA, Richmond Fellowship of WA, Debora Colvin Head of Council of Official Visitors, Carers WA, Mental Health Carers Arafmi (WA) Inc, People With Disabilities Western Australia, Bridget Silvestri, Antonio Silvestri, Alan Robinson, Seamus Murphy, Mental Health Matters 2 and the Aboriginal Disability Justice Campaign.

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1. Executive Summary

This is a joint submission by disability and mental health stakeholders. Information about the signatories can be found in Appendix 2.

The recommendations in this submission are divided into three main sections relating to overarching reforms to the Act, the processes which are prescribed by the Act, and the options available for treatment and support of individuals under the Act. Recommendations are grouped into those considered essential and urgent amendments. Further recommendations are also detailed.

The section on overarching reforms contains a number of recommendations intended to give the Act a much clearer intent and focus. These are aligned to the principles of procedural fairness on which our justice system is based and consistent with State legislation relating to people who experience mental illness and disability.

The section on procedural reforms contains a number of recommendations on improving procedural fairness within the processes prescribed in the Act including; the determination that someone is unfit to plead; the testing of evidence; disposition options available to the Courts; requirements for decision making and the communication of those decisions; and appeals and representation.

Finally, the section on options available within the Act for treatment and support of mentally impaired accused details recommendations to strengthen the Act's effectiveness in addressing the issues which have caused these individuals to come into contact with the justice system and managing the risk of future offending behaviour.

1.1 Recommendations

Essential and urgent amendments:

1. New sections that set out contemporary Principles and Objects, consistent with our obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD), to achieve the aims of community safety, least restrictive option, and contemporary treatment and support for people accused under the Act.
2. A right to independent advocacy for all people on remand for assessment, or under a community based or custody order, pursuant to the Act.
3. A right to legal representation in all court and Mentally Impaired Accused Review Board (MIARB) proceedings.
4. Provisions which balance: the rights of individuals to enjoy legal capacity on an equal basis with others and to have their rights, will and preferences respected in the exercise of their legal capacity; with the rights of carers, family members or other personal support persons to be notified, informed and involved.
5. Introduce a separate Part with special provisions pertaining to children and young people. Among other matters this include that the best interests and wellbeing of children and young people aged under 18 are a primary consideration when performing a function under the Act, specialist advocacy and shorter definite term custody orders.
6. The Act sets a clearer standard for assessing fitness to stand trial.
7. The Act allows for fitness to stand trial with supports.

8. Introduce a special hearing to test the evidence against an accused found unfit to stand trial.
9. Amend section 5 to enable the judiciary to make, on the basis of clinical advice, a hospital order for assessment and remand of an accused who is also an involuntary patient.
10. Give the judiciary the discretion to determine the most appropriate disposition in the circumstances of the case, regardless of the type of offence the person has been charged with, and the type of impairment they experience.
11. Custody orders should not be compulsory – Schedule 1 must be repealed.
12. Custody orders should be no longer than the term the person would likely have received, had they been found guilty of the offence.
13. Require the courts to give primary regard to the treatment and care needs of the accused, the least restrictive intervention and the need to protect the community.
14. Remove the requirement to reinstate a custody order upon a breach.
15. New procedural fairness provisions which provide for rights to appear, appeal, review, and rights to information and written reasons for a decision.
16. New provisions which enact rights for carers and significant others to provide and receive information, appear, to request a review and represent the accused with consent of the individual.
17. The Act is amended to remove the role of the Attorney General and Governor. The amended Act must require a court or tribunal to have oversight of custody orders.
18. While the judicial model is developed and consulted on (see recommendation 19) responsibility for the discharge or continuation of custody and community based orders be transferred to the Mentally Impaired Accused Review Board.
19. Government introduces judicial oversight of custody and community based orders under the CLMIA Act and consults all stakeholders on the best model for this.
20. Should the MIARB remain, amendments to improve procedural fairness and align the Board's membership with the principles and objects of the Act must occur.
21. Prison should cease to be a legal place of detention for mentally impaired accused.
22. Enact a right to appropriate services, treatment and supports that enable the individual to recover, habilitate and develop.

Further recommendations:

1.1 The Act's principles and objects provide guidance on how risk is to be understood, determined and mitigated for the purposes of the Act, and that this occurs consistent with contemporary recovery and developmental models of support.

2.1 We recommend that all people on remand for assessment, and all those on custody and community based orders pursuant to the Act, have a right to independent advocacy and representation through the new Mental Health Advocacy Service.

2.2 Advocates must have the powers and responsibilities as available under the *Mental Health Act 2014* for involuntary patients

2.3 Advocacy is made available to families and carers of the accused.

3.1 Individuals should be able to represent themselves or, if they choose, be represented by family, a nominated person, a lawyer or an advocate from the Mental Health Advocacy Service.

4.1 Provisions are introduced so that the Act and its processes accord with the participation rights and obligations of the Mental Health Act 2014, which provides for significant recognition of the role of families and carers as important stakeholders; and that these provisions apply regardless of whether the accused has a mental illness or disability.

4.2 'Nominated person' provisions are introduced to the Act.

4.3. Notification provisions address how and when close family members, carers, personal support persons and/or nominated persons are notified, informed and involved, when consented to by the individual.

4.4. The government consults broadly with mental health and disability consumers, carers and family members, and in particular, individuals subject to the Act, when developing these provisions; this must include a focus on establishing and clarifying issues of privacy and consent and how this relates to family and carer participation.

5.1. Custody orders must be a last resort for children and young people, and for as short a time as necessary. A presumption against a custody order for children and young people be enacted; where a court considers a custody order necessary there be a requirement for written reasons as to why one has been made.

5.2 There must be a requirement for the provision of support to enable fitness to stand trial, and periodic review of a finding of unfitness.

5.3 Additional provisions which enable and require greater involvement of the child/young person's family, significant adults, or authorised representatives in court and MIARB proceedings.

7.1 The Act sets out a clearer standard or benchmark for assessing fitness to stand trial and the articulation of those decisions.

7.2 The Act be amended to allow judicial officers to determine fitness to stand trial with the provision of supports that are appropriate to the nature of the accused's impairment and other factors.

7.3 The Act be amended to include provisions for extended timeframes for determining fitness to stand trial where expert advice indicates that a person could be fit to stand trial with support and/or treatment.

7.4 The Act be amended to better enable people to be remanded in the community with supports pending a determination of fitness.

7.5 The Act be amended to require that where a question about fitness to plead has been raised and where fitness is to be determined, that a notification be made to an independent advocacy body, and family, carers or authorised representatives of the accused.

12.1 Custody orders should only apply to offences for which the statutory penalty includes imprisonment.

12.2. That any orders made for an accused under CLMIA are revoked once charges are withdrawn on the basis of insufficient evidence, or once a special hearing fails to establish beyond reasonable doubt that the person committed the offence (i.e. a case is dismissed).

13.1 Individuals should not be denied release only because they are unable to look after themselves.

16.1 Amend the Act to require review of the Act every five years.

21.1. A range of options, including declared places, are developed for the detention, supervision, recovery, treatment, development and support of mentally impaired

accused and people being assessed under the Act, in consultation with all stakeholders. These should be contemporary in practice, supporting the recovery and development of individuals.

21.2. A secure and safe treatment centre is established as a declared place for people with mental impairment arising from mental illness, who are detained for determinations of fitness to stand trial or subject to custody orders.

21.3. Additional forensic services are provided by the Department of Health and the community managed mental health sector to people under the CLMIA Act in prisons.

21.4. That a forensic adolescent mental health unit be established.

21.5. Prison charges must not apply to mentally impaired accused in prison. When management issues arise, the MIARB or equivalent body should have oversight.

21.6. The Department of Corrective Services develops policies and procedures appropriate to the needs of mentally impaired accused, their vulnerability within prisons, and their status as non-convicted offenders, inclusive of the engagement of families and carers in support and transition planning.

21.7. That specialist mental health units are developed in prisons.

22.1 Courts are enabled to require a person to engage in treatments and supports, with appropriate safeguards as outlined in this submission;

22.2 The courts and reviewing body be enabled to obligate government agencies to develop and implement an individual recovery plan or individual development plan, or both where appropriate, and to provide the required supervision and supports, both in places of detention and in the community, which may include accommodation.

22.3. Carers, family members and/or nominated representatives are engaged in the planning and delivery of these services, with the individual’s consent.

2. Background

This submission has been collectively developed and is endorsed by the Western Australian Association for Mental Health (WAAMH), Consumers of Mental Health WA (Inc), Developmental Disability WA (DDWA), Richmond Fellowship of WA, Debora Colvin Head of Council of Official Visitors, Carers WA, Mental Health Carers Arafmi (WA) Inc, People With Disabilities Western Australia, Bridget Silvestri, Antonio Silvestri, Alan Robinson, Seamus Murphy, Mental Health Matters 2, and the Aboriginal Disability Justice Campaign. Information about these groups can be found at Appendix 2 of this submission.

The signatories to this submission, and the broader disability and mental health sectors have been involved in advocacy for reform of CLMIA for some time. This submission is informed by:

- Involvement with and advocacy for individuals under CLMIA Act custody orders;
- Consultation with our respective members, other agencies, and individuals affected by the Act and their families and carers;
- A CLMIA Act Forum held by WAAMH in October 2014, attended by approximately 70 people, representing mental health, disability, legal and government sectors;
- Desktop research; and
- Engagement in the development of the Disability Justice Services model and Declared Places Bill, and advocacy in support of these reforms.

3. Introduction

It is well established that the *Criminal Law (Mentally Impaired Accused) Act 1996* (the Act) needs to be repealed and replaced with contemporary legislation.

Reform must occur to enable the Act to meet its true aims of community protection and enabling treatment and support for individuals on orders pursuant to the Act.

Overhaul of the Act must also ensure the new legislation is in accord with human rights standards, Western Australian mental health reforms and directions such as those in the *Mental Health Act 2014*, and the new rights and supports proposed in the *Declared Places (Mentally Impaired Accused) Bill 2013*. Key requirements of a new Act include a recovery orientation, far greater procedural fairness and human rights protections, and provisions enabling both a right, and access to, appropriate treatment and support including advocacy. This submission sets out the legislative changes that are required to achieve this.

These recommendations are founded on a view that the Act should be based on the protection of community safety and the rights of mentally impaired accused, and align with the principles of procedural fairness which apply within our justice system. They also reflect an expectation that the Act should be consistent with other state legislation relating to the treatment of people who experience mental illness and disability by the State.

We also identify the most pressing reforms. These issues have been subject to very strong calls for change by the majority of stakeholders, often for many, many years. We strongly urge the government to accept, draft and pass these reforms as a matter of priority.

We acknowledge that a primary purpose of the Act is to achieve community safety and we support this aim. Our submission proposes a range of amendments which seek to strengthen community safety by ensuring that the Act and associated systems function as effectively as possible, with a particular focus on enacting and operationalising treatments and supports that work to reduce the risk of re-offending. We believe that an Act that has a clear focus on procedural fairness and the recovery and development of mentally impaired accused will improve community safety.

4. Overarching Reforms

The Criminal Law (Mentally Impaired Accused) Act 1996 is a unique form of legislation within our system. Its purpose is to prescribe an extrajudicial process for the treatment of people who, as a result of severe mental illness or an intellectual or cognitive disability, are not able to participate in the usual judicial procedures of our criminal justice system.

It was legislated in recognition that there are two groups of people for whom the usual judicial processes and punishments could not fairly apply. Firstly, those unfit to stand trial because of a disability or mental illness, who were disadvantaged within judicial procedures. Secondly, those found not guilty due to unsound mind, who were not culpable for the crime they had committed because of mental illness. The crux of this is evident in the view of the Law Reform Commission of Western Australia, which noted in its report of its Review of the Law of Homicide:

> "It must be remembered that dispositions for mentally impaired accused are not intended to be punishment-based. They reflect the fairness and social control policies underlying the insanity defence and, therefore, must balance the treatment and care needs of the mentally impaired accused with the safety and protection needs of the wider community"1.

However, in the eighteen years since the Act has been in operation, numerous stakeholders have consistently raised concerns that the Act itself has in fact disadvantaged many of the very people it was intended to protect. The consequences include lack of access to procedural fairness, and outcomes such as indefinite custody based, not on the nature of a person's offending, but on the fact of their impairment.

These kinds of outcomes were not anticipated when this legislation was enacted. Yet the absence of principles and objects within the legislation mean that the intent and purpose of the Act remains unclear. There is no context within which to read the Act and no clear framework for debate about how the Act should be operationalised. The act of detaining a person outside of the usual procedures and protections enshrined in our justice system is a significant responsibility and necessitates additional attention to procedural fairness. In this section of the submission, we make recommendations which would resolve this and improve operations of the Act.

[1] Law Reform Commission of Western Australia, 2007, 'Final Report A review of the law of homicide' http://www.lrc.justice.wa.gov.au/P/project_97.aspx

4.1 Principles and Objects

It is of primary importance that reform redresses the long-neglected rights of people subject to the CLMIA Act. Reform must be consistent with our obligations under the UN Declaration of Human Rights and the UN Convention on the Rights of Persons with Disabilities, the most relevant points of which are set out in section 4.1.3 of this submission.

Principles or Objects that guide interpretation and application of the Act are fundamental to the effective operations of any legislation and are urgently required.

We alert the government to three relevant Western Australian precedents. Schedule One of the *Disability Services Act 1993* describes a rights-based set of principles and establishes the Disability Services Commission to further these principles. These principles include the inherent right to respect of human worth and dignity without discrimination, and the same right as other members of society to receive services in a matter that protects their rights and opportunities in the least restrictive option in the circumstances. It also includes the right to access services and supports that are most appropriate to their needs.

The 'Charter of Mental Health Care Principles' in the *Mental Health Act 2014* is a rights-based set of principles that mental health services must make every effort to comply with in providing treatment, care and support to people experiencing mental illness. The Charter is intended to influence the interconnected factors that facilitate recovery from mental illness[2].

The *Declared Places (Mentally Impaired Accused) Bill 2013* sets out in Part 2, principles and contemporary objectives for the provision of services to mentally impaired accused in disability justice centres.

In our consultations, agencies and individuals consistently highlighted the vulnerability of this population and the need to focus on the treatment, care and support needs of people under the Act. In keeping with contemporary practice, the Act should take a recovery focus for people with mental illness and a habilitation focus for people with intellectual or cognitive disability.

It is well established that people can and do recover from mental health conditions[3]. There is no reason why a personal recovery framework cannot be used within the CLMIA legislation. In fact, although not without challenges, it is well established that embedding recovery principles within clinical practice is a key tenet of contemporary forensic mental health practice[4]. It is also well established that a developmental model of supporting people with intellectual or cognitive disabilities is contemporary practice, and this too could be successfully incorporated within CLMIA. There is significant evidence which indicates that a developmental approach to supporting people with intellectual or cognitive who come in to contact with the criminal justice system is successful in mitigating the factors which contribute to offending behaviour[5]. People with co-occurring disability and mental illness may require support that works within both these models.

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[2] *Mental Health Act 2014*, Schedule 1

[3] Commonwealth of Australia, 2013, 'A national framework for recovery-oriented mental health services: Policy and theory'

[4] See for example Davey, I. and Dempsey, J. 2012, 'Working with complexity: a map for recovery in forensic psychiatry', *newparadigm*, Spring/Summer 2012, Psychiatric Disability Services of Victoria (VICSERV)

[5] Cockram, J, "Equal Justice: The Experiences and Needs of Repeat Offenders with intellectual disability in Western Australia" (2005). ERA Trial 2009. Paper 14.

4.1.1 Risk

Key to any framework, which seeks to balance the safety and protection of the community against an individual's rights to freedom, is an articulation of the notion of 'risk'. In the absence of a framework for articulating risk in a way that is sensitive to the impacts of mental illness and intellectual or cognitive disability, the Act as it is currently operationalised makes a blanket assumption of risk to community safety by virtue of the person's impairment. This is inherently discriminatory. We recommend that the Act's principles and objects provide guidance on how risk is to be understood, determined and mitigated for the purposes of the Act, and that this occurs consistent with contemporary recovery and developmental models of support.

For those who are unfit to plead, the Act currently provides only for unconditional release or custody orders, and in the absence of alternatives courts often defer to custody orders. In the shortage of secure hospital beds and the absence of declared places or other models, there is little scope to determine alternative supported community based or custody arrangements that appropriately reflect the accused's risk to themselves or others. The result is mentally impaired accused are primarily detained in prisons, which apply a very particular understanding of risk.

Furthermore, the Act does not limit custody orders, meaning that mentally impaired accused face indefinite periods of custody, without the court able to consider either the likelihood of their offending or the impact of their offending. The Act does not provide for a substantial understanding and articulation of risk in how the Mentally Impaired Accused Review Board (MIARB) determines its recommendations to the Attorney General. Nor does the Act require the Attorney General or Governor to articulate the rationale for their decisions.

Given that the CLMIA Act invests authority in the State to make extrajudicial decisions about mentally impaired accused on the basis of a risk to community safety, we believe it is imperative that the Act provides clear terms of reference in its principles and objects for how those decisions are to be made. We believe these principles and objects must also address how it is that risks might be mitigated through the provision of relevant programmes of support, and in a manner which is least restrictive for the accused person.

Such an approach is clearly reflected in the principles and objectives of the *Declared Places (Mentally Impaired Accused) Bill 2013*, which stipulate that residents will receive the best possible training to promote development, and access to care appropriate to their needs so as to: reduce their risk of offending or re-offending; assist them to live, work and participate in the community as independently as possible; and maximise their quality of life. The principles and objectives stipulate that this is to be done in a manner that is the least restrictive option in the circumstances.

4.1.2 Victims of crime

We return to the fundamental issue of community safety and the impacts of the offence on victims of crime. We remind the reader of our agreement that a primary purpose of the Act is to protect the community, and that we believe this will be most effectively achieved through

the provision of appropriate treatment and supports that assist the accused to address offending and successfully and safely reintegrate into the community.

We support victim rights and suggest that for victims of crime where the accused is under the CLMIA Act, victims should have the same rights as in other criminal justice processes. These include rights to be treated with dignity and respect, to be involved in the criminal justice process and to be notified of court decisions.

4.1.3 Proposed Principles and Objects

In the context outlined, the objects of the Act should not include punishment. The objects we propose for a new Act are to:

- Protect the community, victims and families;
- Respond to the treatment, recovery and habilitation needs of the accused;
- Enable community reintegration in a safe manner; and
- Meet the human rights of people under the Act including the right to liberty on an equal basis as others.

The principles should reflect national and international contemporary frameworks in both disability and mental health including international human rights principles, covenants and declarations.

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) is of particular note, and its protections must feature strongly in the principles for a new CLMIA Act. This convention sets out the rights of persons with disabilities, including persons with mental illness, to equal recognition before the law (Article 12), access to justice (Article 13) and liberty and security (Article 14) on an equal basis with others. Further, Article 17 states that people with disability have the right to respect for his or her mental and physical integrity, on an equal basis with others. It is of note that the Convention also highlights the importance of the involvement of family in enabling persons with disabilities to enjoy the full assertion of their rights, and that the family should be protected and assisted to fulfil this role[6].

In recognition of the additional vulnerabilities of mentally impaired accused, we alert the government to principle h of the *Young Offenders Act 1994*, which provides that custody be used only as a last resort, and for as short a time as necessary. This principle aligns with the proposed purpose of CLMIA, which must balance the risk to the community with the least restrictive option and the treatment and support needs of the accused.

The new principles should include:

- Equal recognition before the law;
- Human rights of people under the Act and their families;
- Procedural fairness;
- The least restrictive option, with detention and custody a last resort;
- Participation;

[6] United Nations Convention on the Rights of Persons with Disabilities
http://www.un.org/disabilities/convention/conventionfull.shtml

- Respect, dignity, compassion;
- Diversity and cultural security;
- Diversion and early intervention;
- Participation of carers and family members;
- Best practice in forensic, mental health and disability supports and treatment;
- A recovery focus;
- Coordination of agencies responsible for servicing mentally impaired accused;
- Quality of life;
- Community inclusion;
- Right to best available, contemporary treatment, development and supports;
- Reducing the risk of offending or re-offending; and
- Equality of opportunity for services and supports to all people under the Act, comparable to that of people in the community.

The Act must also require those acting under the Act to have regard to such principles and objects in their actions and decision making. For example, the *Declared Places (Mentally Impaired Accused) Bill 2013* outlines three 'paramount considerations' and a priority to those: protection and safety of the community; protection and safety of the residents; and the best interests of residents who are not adults.

Essential and urgent amendment:

1. New sections that set out contemporary Principles and Objects, consistent with our obligations under the UNCRPD, to achieve the aims of community safety, least restrictive option, and contemporary treatment and support for people accused under the Act.

Further recommendations:

1.1. The Act's principles and objects provide guidance on how risk is to be understood, determined and mitigated for the purposes of the Act, and that this occurs consistent with contemporary recovery and developmental models of support.

4.2 Right to independent advocacy

The lack of safeguards, in the form of independent advocacy, has repeatedly been identified as a fundamental flaw of CLMIA, which requires urgent change.

We recommend that all people on remand for assessment, and all those on custody and community based orders pursuant to the Act, have a right to independent advocacy and representation through the new Mental Health Advocacy Service. Advocacy must be available to all people under the Act, not just those on a custody order or in hospital but also those in prisons, detention centres, declared places and the community. The service would therefore require expansion to encompass all mentally impaired accused, including those with disability.

Advocates must have the powers and responsibilities as available under the *Mental Health Act 2014* for involuntary patients.

At WAAMH's CLMIA Forum[7] held in October 2014, family members and carers of accused described the experience of navigating the CLMIA system as very confusing and challenging, and argued for a form of advocacy to also be made available to families and carers.

Amendments to require notification to the Chief Advocate will be required.

A right to independent advocacy for people who are found unfit to plead due to intellectual or cognitive disability who would be detained in a declared place has been embedded in the *Declared Places (Mentally Impaired Accused) Bill 2013*. Part 10 of the Bill prescribes that people with an intellectual or cognitive disability who are detained in a declared place under the CLMIA Act must have access to an independent advocate. It is understood that residents would have access to the Mental Health Advocacy Service for this purpose. Clauses 53 and 54 of the Bill outline advocate functions and powers respectively. The *Disability Services Act 1993* also ensures that people with a disability will have access to an advocate in relation to complaints and investigations.

Essential and urgent amendment:

2. A right to independent advocacy for all people on remand for assessment, or under a community based or custody order, pursuant to the Act.

Further recommendations:

- 2.1. We recommend that all people on remand for assessment, and all those on custody and community based orders pursuant to the Act, have a right to independent advocacy and representation through the new Mental Health Advocacy Service.
- 2.2. Advocates must have the powers and responsibilities as available under the Mental Health Act 2014 for involuntary patients
- 2.3. Advocacy is made available to families and carers of the accused.

4.3 Right to legal representation

The CLMIA Act's lack of provisions regarding procedural fairness and natural justice continues to be widely condemned. One of the Act's most significant failings concerns access to legal advice and the lack of the right to legal representation in ongoing proceedings under the Act.

WAAMH CLMIA Forum participants identified the need for the Act to clarify the right to legal representation for those without capacity to instruct a lawyer, as under Section 451 of the *Mental Health Act 2014*, as well as the need to not conflate capacity to instruct a lawyer and fitness to stand trial.

Legal representation must be available for all people in all court and MIARB proceedings and processes, including for those not yet under an order but being assessed, or held on remand, subject to proceedings.

[7] 'Not guilty due to unsound mind: Achieving reform of the *Criminal Law (Mentally Impaired Accused) Act 1996*'. Report available at http://waamh.org.au/systemic-advocacy/prison-systems.aspx

We also recommend that, as under the *Mental Health Act 2014*, individuals should be able to represent themselves or, if they choose, be represented by family, a nominated person[8], a lawyer or an advocate from the Mental Health Advocacy Service.

Although in recent times MIARB practice has better enabled representation in MIARB proceedings; through our consultations, people with lived experience and lawyers advised us that this remains a priority for change. We strongly advocate for urgent amendments to establish the right to legal representation.

Notification requirements to enable legal or other appropriate representation will require insertion into the Act, for example notification of a review.

Essential and urgent amendment:

3. A right to legal representation in all court and MIARB proceedings.

Further recommendations:

3.1. Individuals should be able to represent themselves or, if they choose, be represented by family, a nominated person[9], a lawyer or an advocate from the Mental Health Advocacy Service.

4.4 Balancing the rights of individuals with those of carers and family members

Contemporary legislation, such as the *Carers Recognition Act 2004* and the *Mental Health Act 2014*, seek to balance the rights of individuals with the rights of carers and other family members. The CLMIA Act holds no such provisions. The recommendations proposed in this section seek to achieve this balance.

Under Article 12 of the UNCRPD, people with disability (including mental illness) have an equal right with other persons to have their rights, will and preferences respected. For people subject to the CLMIA Act, explicit provisions are needed to clarify their right to decisions regarding confidentiality, supported decision-making and advocacy/representation arrangements. In addition the Convention stipulates that the role of family members should be protected, and they should receive the necessary protection and assistance to enable them to support the person with disability to assert their rights.

It must be understood that being unfit to stand trial, or not culpable for the offence, does not equate to a lack of capacity in decision-making, in nominating a representative, or refusing the sharing of information or involvement of others in decisions that affect them.

We have also heard stories of significant distress from family members and carers who described difficulties in accessing information; providing information to the courts, MIARB or prisons; accessing the individual to provide supports in prisons; and being recognised as a valid interested party and/or advocate. Many, although not all of these instances occurred in the context of prisons' policy and the operations of the MIARB. Significant distress for the

[8] *Mental Health Act 2014*, division 3, subdivision 1, subdivision 2, a nominated person is a person formally nominated by a person experiencing mental illness who is generally entitled to be informed and involved whilst the patient is being provided with treatment or care pursuant to the Act.

[9] Under the Mental Health Act 2014, division 3, subdivision 1, subdivision 2, a nominated person is a person formally nominated by a person experiencing mental illness who is generally entitled to be informed and involved whilst the patient is being provided with treatment or care pursuant to the Act

family, and detrimental impacts on the accused such as worsening mental illness, was often the result.

We recommend provisions be introduced so that the Act and its processes accord with the family and carer participation rights and obligations of the *Mental Health Act 2014*, which provides for significant recognition of the role of families and carers as important stakeholders in supporting people with mental illness. The *Mental Health Act 2014* also provides for the involvement of other significant people, 'personal support person's', which may include the person's guardian. Similarly, the *Disability Services Act* provides for a 'person's representative' which can include an advocate or guardian, or a parent in the case of a minor. Such recognition should be included in the principles and objects of a reformed Act. These rights must be carefully balanced with the rights of individuals subject to the Act, as outlined in the UNCRPD.

We note that the requirement for consultation with a carer or family member in the development of an individual development plan under the *Declared Places Bill* sets a further precedent for recognition and involvement of carer and family member rights and their positive contribution.

We note that the CLMIA Act and its processes interact with the government and non-government disability and mental health sectors which provide services and supports to people under CLMIA. As such, we advocate that the *Carers Recognition Act 2004* and its Carers Charter should apply to CLMIA. This must include carer involvement where decisions are being made that impact upon their ability to fulfil their caring role.

We commend to the Attorney General the 'nominated person' provisions of the *Mental Health Act 2014* and recommend the introduction of this concept into a reformed CLMIA Act. A nominated person is a person formally nominated by a person experiencing mental illness who is generally entitled to be informed and involved whilst the patient is being provided with treatment or care pursuant to the Act. Their role is to assist the person who nominated them by ensuring that a person or body performing a function under the *Mental Health Act 2014* observes the person's right under the Act and takes that person's wishes and interests into account[10]. The nominated person provisions should apply to all people subject to the Act, not only those with mental illness.

Where nominated person provisions are introduced it is important that the Act specify how these affect and interact with the rights of other carers, family members or significant others to be involved. Due to the episodic nature of mental illness, provisions should be made to enable individuals under the Act to alter their choice of nominee with ease.

The different rights of involvement for these various groups, and how these interact with the rights of individuals subject to the Act which are of primary importance, requires further deliberation and consultation.

Specific obligations to notify, inform and involve close family members, carers, personal support persons and nominated persons, when consented to by the individual, must also be included in an amended CLMIA Act.

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[10] *Mental Health Act 2014*, Section 263.

Essential and urgent amendment:

4. Provisions which balance: the rights of individuals to enjoy legal capacity on an equal basis with others and to have their rights, will and preferences respected in the exercise of their legal capacity; with the rights of carers, family members or other personal support persons to be notified, informed and involved.

Further recommendations:

4.1. Provisions are introduced so that the Act and its processes accord with the participation rights and obligations of the *Mental Health Act 2014*, which provides for significant recognition of the role of families and carers as important stakeholders; and that these provisions apply regardless of whether the accused has a mental illness or disability.

4.2. 'Nominated person' provisions are introduced to the Act.

4.3. Notification provisions address how and when close family members, carers, personal support persons and/or nominated persons are notified, informed and involved, when consented to by the individual.

4.4. The government consults broadly with mental health and disability consumers, carers and family members, and in particular, individuals subject to the Act, when developing these provisions; this must include a focus on establishing and clarifying issues of privacy and consent and how this relates to family and carer participation.

4.5 Provisions for children and young people

Many stakeholders in Western Australia have recommended the introduction of specific provisions regarding children and young people under the age of 18 years[11] in recognition of their additional vulnerability, needs and development. We strongly support this call.

In addition to the rights and protections proposed for adults in this submission, amendments should include provisions which require the courts and MIARB to prioritise the best interests and wellbeing of children and young people and a greater emphasis on the least restrictive option. We refer the government to the *Young Offenders Act 1994*, in which specific principles seek to balance the rights of the community to safety and protection, and the additional needs of children and young people.

In addition to the safeguards available to adults, juveniles under the Act must have access to specialist child/youth advocacy through the forthcoming Mental Health Advocacy Service.

Custody orders must only be a last resort and for a short as time as necessary; this would be in accordance with principle h of the Young Offenders Act. We further propose enacting a presumption against a custody order for children and young people. Where a court considers a custody order necessary we recommend a requirement for written reasons as to why one has been made and that these reasons be given in a context of the Objects and Principles of the Act and understanding and mitigating risk.

Custody and community based orders pursuant to the Act must allow shorter timeframes than orders for adults, with more frequent judicial review and fast track assessment processes.

[11] Including the Holman Review, the Commissioner for Children and Young People and the Stokes Review.

It is essential that knowledge of psychologists or psychiatrists who specialise in child and adolescent mental health be sought by parties when determining whether someone is fit to plead, making an order or considering release. Fitness to stand trial is not a fixed and absolute concept. It is based on a person's level of understanding and capacity at a given point in time, and as such, it is something which can develop over time and with the right supports[12] for both adults and children.

As children and young people are continuing to develop, it is imperative that their fitness to stand trial be re-assessed so that their impairment may be reviewed as they pass through developmental milestones. For example, a man known as 'Jason' was found unfit to stand trial at 14 years of age following a significant traumatic event. In the eleven years since, there has been no requirement within the Act that his fitness is reviewed to reflect his ongoing development, or that support be provided to enable him to become fit to stand trial. We therefore recommend a requirement for the provision of support to enable fitness to stand trial, and periodic review of a finding of unfitness.

We recommend additional provisions to enable and require greater involvement of the child/young person's family, significant adults, or authorised representatives in court and MIARB proceedings.

The legislation must set out rights for the child/young person to access appropriate disability and/or mental health supports and services that enable the least restrictive alternative in the circumstances.

We support the Commissioner for Children and Young People's view that a coordinated, multi-agency program providing assessments, treatment and support for children and young people experiencing mental health issues in the criminal justice system be established as a matter of priority[13]. In addition, in recognition of the low population of children and young people under the Act, amendments to enable the declaring of a child and adolescent inpatient mental health facility or a forensic mental health facility as a declared place under the CLMIA Act should be considered.

Essential and urgent amendment:

5. Introduce a separate Part with special provisions pertaining to children and young people. Among other matters this must include that the best interests and wellbeing of children and young people aged under 18 are a primary consideration when performing a function under the Act, and require specialist advocacy and shorter definite term custody orders.

Further recommendations:

5.1. Custody orders must be a last resort for children and young people, and for as short a time as necessary. A presumption against a custody order for children and young

[12] The Victorian Law Reform Commission states "unfitness to stand trial is not a 'black and white' issue, but is decision-specific, time-specific and support-dependent." Victorian Law Reform Commission, 2014, Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 – Report, Page xxvi.

[13] Commissioner for Children and Young People, 2011, 'Position statement on the *Mental Health Act 1996* (WA) and the *Criminal Law (Mentally Impaired Accused) Act 1996*

people be enacted; where a court considers a custody order necessary there be a requirement for written reasons as to why one has been made.

5.2. There be a requirement for the provision of support to enable fitness to stand trial, and periodic review of a finding of unfitness.

5.3. Additional provisions which enable and require greater involvement of the child/young person's family, significant adults, or authorised representatives in court and MIARB proceedings.

5. Procedural reforms

The primary function of CLMIA is to provide for extrajudicial processes for those who have allegedly offended and who are found to be unfit to stand trial due to mental impairment or who are found not guilty by reason of unsound mind. Critiques of the Act and its operation have consistently pointed to concerns about a lack of procedural fairness within the legislation.

We remind the government of its obligations under the UN Convention on the Rights of Persons with Disabilities to equal recognition before the law, access to justice, liberty and security of persons, and a right to respect for physical and mental integrity, on an equal basis with others. We similarly remind government of its obligations under this Convention to enable families to assist the individual to fulfil and enjoy their rights. We suggest that this should include in family engagement with the justice system.

This section focuses on recommendations to improve procedural fairness in keeping with our international obligations.

5.1 Provisions about finding someone unfit to stand trial:

Our judicial system assumes that people have the capacity to stand trial, and the act of determining that someone does not is of significance. The determination that a person is unfit takes them out of the usual justice processes and into those which are prescribed by CLMIA. In light of the significance of such a decision, we recommend that the Act should set out a clearer standard or benchmark for assessing fitness to stand trial and the articulation of those decisions.

Section 9 of the Act outlines seven potential reasons for unfitness to stand trial. The Act requires that fitness to stand trial be decided by the presiding judicial officer 'on the balance of probabilities after inquiring into the question and informing himself of herself in any way the judicial officer thinks fit'. Clearer standards for deciding the question of mental fitness should include mandating that Courts take expert advice, and this expert advice must be relevant to the impairment of the mentally impaired accused person, including multi-disciplinary assessment and advice where that is appropriate. For example, if the person has a cognitive or intellectual disability then a clinician with experience in disability should be sought.

Fitness to stand trial is not fixed, and nor is it absolute. There are numerous factors which impact on a person's fitness and their ability to articulate this, not the least of which is the episodic nature of mental illness. These can include language, learning modality,

confidence, time, culture, and the relationship and level of trust with the person undertaking the assessments. The concept of 'fitness to stand trial with support' would provide scope for better understanding and responding to these factors with the view to ensuring that every possible opportunity has been afforded to the person to develop their fitness. Such an approach to developing capacity for fitness is consistent with the concept of supported decision making which is used in many jurisdictions with regard to guardianship and administration and other forms of decision making for people with decision making disabilities. Supported decision-making assumes capacity and recognises that capacity can be developed with support.

Due to the fluctuating or episodic nature of mental illness, people experiencing such who have been found not fit to stand trial under the Act may also have a fluctuating capacity for fitness. We note the earlier Mental Health Advisory Council submission[14], which described someone who was assumed fit to stand trial, until after a period of remand in prison their mental health so deteriorated that they were later found unfit and faced a custody order as a result.

We recommend that the Act be amended to allow judicial officers to determine fitness to stand trial with the provision of support that is appropriate to the nature of the accused's impairment and other factors. This would be more consistent with Article 13 of the UNCRPD, which requires governments to ensure effective access to justice on an equal basis as others, including through the provision of accommodations, commonly known as 'reasonable adjustments' in Australia. It would also be consistent with recommendations of the Victorian Law Reform Commission, which recommended changes to the way the test operates in Victorian legislation. This included "approaches that require the law to do more to consider and provide the support needed by an accused with a mental illness, intellectual disability or other cognitive impairment to optimise their fitness, where such measures would assist them to understand and participate in their trial"[15].

Acknowledgement that a person's capacity and health and therefore their fitness is not fixed would require flexibility in the timeframes required for determining fitness. We recommend that the Act be amended to include provisions for extended timeframes for determining fitness to stand trial where expert advice indicates that a person could be fit to stand trial with support and/or treatment. We recommend that the legislation include provisions for the Court to approve an additional six months for determination of fitness to enable fitness to be developed or regained and for appropriate supports to potentially assist someone through a trial if they become fit. This should include reasonable adjustments that could be made to Court processes in order to accommodate fitness with support.

We also recommend that the Act be amended to better enable people to be remanded in the community with supports pending a determination of fitness. Even where a person has been found unfit to plead with supports at a point in time, their fitness should be able to be reviewed periodically to provide further opportunities for capacity to be developed. We believe that such amendments are essential, particularly for children and young people. As they continue to progress through developmental milestones there are ongoing possibilities

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[14] Mental Health Advisory Council, 'Submission the Criminal Law (Mentally Impaired Accused) Act 1996 (WA)', recommendation 2.4, http://www.mentalhealth.wa.gov.au/Libraries/pdf_docs/CLMIA_Act_Submission_2.sflb.ashx
[15] Victorian Law Reform Commission, 2014, Review of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 – Report, Page xxvii

for their capacity and fitness to stand trial to develop, and therefore there must be structured opportunities for that to be reviewed.

One way to facilitate this could be to amend the Act to allow courts to make an order for assessment to determine fitness rather than this decision being made by the presiding judicial officer. Such orders could stipulate that a person is to be remanded with support in the community, or an alternative place if appropriate, for a period to enable their fitness to be determined based on expert evidence by a specialist mental health or disability tribunal which combines both expert clinical and judicial expertise. Such tribunals could be mandated to determine fitness to stand trial with treatment or support, and authorised to mandate the provision of supports and reasonable adjustments to court processes that would support fitness.

In order to safeguard people through the process of fitness to plead being determined, we also recommend that the Act be amended to require that where a question about fitness to plead has been raised and where fitness is to be determined, that a notification be made to a body such as the Council of Official Visitors, or soon to be Mental Health Advocacy Service. We also recommend that, where consented to by the individual subject to the Act, notification also be made to a carer, family member or other authorised representative who would have the authority to advocate on behalf of the person through the process of determining fitness.

Essential and urgent amendments:

6. The Act sets a clearer standard for assessing fitness to stand trial.
7. The Act allows for fitness to stand trial with supports.

Further recommendations:

- 7.1. The Act sets out a clearer standard or benchmark for assessing fitness to stand trial and the articulation of those decisions.
- 7.2. The Act be amended to allow judicial officers to determine fitness to stand trial with the provision of supports that are appropriate to the nature of the accused's impairment and other factors
- 7.3. The Act be amended to include provisions for extended timeframes for determining fitness to stand trial where expert advice indicates that a person could be fit to stand trial with support and/or treatment.
- 7.4. The Act be amended to better enable people to be remanded in the community with supports pending a determination of fitness
- 7.5. The Act be amended to require that where a question about fitness to plead has been raised and where fitness is to be determined, that a notification be made to an independent advocacy body, and with consent family, carers or authorised representatives of the accused.

5.2 Special hearing

A fundamental principle of our judicial processes is that accused persons have the opportunity to address the charges which are laid against them and have the evidence against them contested. Under the current provisions of the Act, people found unfit to stand trial are denied the opportunity to have the evidence against them tested in Court. We

recommend that the Act be amended to introduce a requirement for a special hearing or some other judicial process to test the evidence against a person who is found unfit to stand trial. If the evidence is found not to satisfy the normal threshold for proceeding with a prosecution, including on the grounds of public interest and risk to community safety, then any charges should be dismissed and the person released.

Essential and urgent amendment:

8. Introduce a special hearing to test the evidence against an accused found unfit to stand trial.

5.3 Disposition options

Some of the most forceful criticisms of the CLMIA Act focus on the few and narrow disposition options available to the courts under the Act. Were the Act to have Objects and Principles as recommended in this submission, the judiciary would be required to determine the most appropriate disposition option, balancing the potential risk to community safety and the rights of the accused person. The limited options in the current Act and the absence of Principles and Objects that require the balancing of the least restrictive option, the treatment and care needs of the individual, and the safety and protection of the community result in arbitrary discrimination based on mental illness or disability. In this section, we make recommendations about the disposition options available to the Courts to improve this situation.

5.3.1 Bail and remand

We remain concerned that an accused person who is also an involuntary patient cannot be placed on a hospital order, with the effect that they cannot be remanded to hospital, only to prison. We support the Mental Health Advisory Council recommendation that section 5 of the Act be re-drafted to allow for an involuntary patient, particularly in the community, to be placed on a hospital order at the discretion of the magistrate or judge[16].

Stakeholders have raised the need for greater use of bail in keeping with the principle of least restrictive intervention. Alongside this, government must resource supports to enable the use of bail. This applies during the period while a person's fitness to stand trial is being assessed, and where proceedings have been adjourned for six months if there is a possibility the person may become mentally fit to stand trial. We submit that more use of bail, with appropriate supports and treatment, would enable the judiciary to test the accused' ability to live safely in the community with conditions. The courts could then consider this when making an order pursuant to the Act.

Essential and urgent amendment:

9. Amend section 5 to enable the judiciary to make, on the basis of clinical advice, a hospital order for assessment and remand of an accused who is also an involuntary patient.

[16] Mental Health Advisory Council, 'Submission the Criminal Law (Mentally Impaired Accused) Act 1996 (WA)'

5.3.2 More disposition options for all accused

Calls to introduce additional disposition options that enable the courts to determine the most appropriate option in the circumstances remain loud and clear. It is clear that these must be available to all accused under the Act - people found unfit to stand trial, people found not guilty due to unsound mind, and those charged with what are currently Schedule 1 offences. Whether a mental illness is deemed 'treatable' or not should not limit the person's right to an appropriate place of detention and appropriate recovery oriented services and supports.

The dispositions available should include Community Release Orders, Community Treatment Orders and Intensive Supervision Orders in line with the options available under the *Sentencing Act 1995*.

The State Forensic Mental Health Service or the Department of Corrective Services should supervise community based orders, with public mental health services and Disability Services Commission obligated to provide supports to individuals under such an order.

A recommendation of the Holman Review worthy of further consideration is the introduction of an interim custody order, with return to court for further proceedings. This would allow for the planning and provision of supports, and allow the court to consider the objects of the Act within a service provision framework.

Essential and urgent amendment:

10. Give the judiciary the discretion to determine the most appropriate disposition in the circumstances of the case, regardless of the type of offence the person has been charged with, and the type of impairment they experience.

5.3.3 Custody Orders

Also of pressing concern is the requirement for the court to impose a custody order when someone has been found not guilty by reason of unsoundness of mind for a Schedule 1 offence. This as well as the indeterminate nature of custody orders leave lawyers and people accused of an offence reluctant to pursue a question of unfitness or the Section 27 defence. These situations, or the anticipation of such, cause considerable fear and anxiety on the part of those accused and their families and carers, and cause an ethical problem for lawyers and guardians.

This requirement restricts the court from considering all the purposes of the Act as originally intended when proclaimed. While community safety must never be ignored, we submit that when making a disposition, Schedule 1 requires the court to act only in accord with the community safety purpose of the Act. As a result, the State is allowed to abdicate its responsibility to the other main purposes of the Act – the treatment, care and support needs of the accused, and the principle of the least restrictive option. This has particular adverse effects on people who do not have a treatable mental illness, or who are not sufficiently unwell to occupy a bed at Frankland, which has an extreme bed shortage.

Further, Schedule 1 does not allow the court to consider the circumstances of the case or of the individual when making a disposition, as it would were the person found guilty of the offence. Due to the episodic nature of mental illness, is it possible that a person could

recover sufficiently to no longer pose a risk to the community at the time of the trial, thus removing the need for a custody order. Instead, the court could consider community supervision and management. Others may not pose a sufficient risk to justify a custody order were they to receive appropriate, community based supervision, support and treatment.

Many stakeholders hold the view that custody orders should not be compulsory, among them the Law Reform Commission of Western Australia, which recommended such when it reviewed the disposition system within CLMIA in its final report into the law of homicide[17].

Much of the input we received from stakeholders focused on comparing the effect of an indefinite custody order, compared to the often shorter sentence received by those who are convicted of a similar offence. We were told of individuals who were advised by their lawyer to plead guilty, despite a Section 27 defence being available, or the likelihood they would be found unfit to stand trial. In other cases, individuals found unfit to stand trial have received a custody order for offences to which, had they been found guilty, imprisonment could not apply, because the court found no alternative due to the lack of appropriate community based options that sufficiently addressed the risk of re-offending.

The issues of stigma and the criminalisation of mental illness and disability are highly relevant to this debate. It must be remembered that those individuals with a Section 27 defence have been found not culpable for the offence, and those who are unfit to stand trial are unable to be tried. The Act exists in recognition of the need for special procedures in these cases.

The issues of stigma and criminalisation are relevant to the Objects and Principles sections of this submission and because of these issues, we are reluctant to draw connections between individuals convicted of offences and those accused who are under CLMIA. However, due to the feedback we received from stakeholders that people with disability and mental illness should not be incarcerated any longer than those without, we recommend that custody orders should only apply to offences for which the statutory penalty includes imprisonment. Imprisonment is never an appropriate response to the welfare and treatment needs of those people accused of more minor offences.

Another essential change to custody orders is to remove the indeterminate length of the order. We reiterate our argument that indefinite orders do not allow the court to consider the circumstances of the case, nor the treatment, support and development needs of the accused. Indefinite orders again allow the state to overlook its responsibility to provide appropriate services to the accused. Neither should custody orders be subject to a minimum period of detention.

Even in cases of murder where the accused is culpable and has been found guilty, the court has discretion to consider the appropriate sentence. Although there is a presumption of a life imprisonment, the court can give a lesser sentence if a life sentence would be unjust given the circumstances of the offence and the person, and if the person is unlikely to be a threat to the safety of the community when released from imprisonment[18].

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[17] The Law Reform Commission of Western Australia, 2007, Final Report of the Review of the Law of Homicide
[18] *Criminal Law Amendment (Homicide) Act 2008*, Section 279 (4)

Surely, in cases where the accused is not culpable, the judiciary should have similar discretion. We call for immediate change to the Act to provide that custody orders can be no longer than the period the person would have likely received, had they been found guilty of the offence.

At the end of this term, should the accused still pose an unacceptable risk to the community to enable release, the Act should enable the use of the involuntary patient provisions of the *Mental Health Act 2014* to enable time limited treatment orders that can be extended if necessary. Although we do not have similar legislation for people with disability, it is unacceptable that we continue to allow indefinite detention for want of an appropriate judicial framework.

A final recommendation is that where charges are withdrawn on the basis of insufficient evidence, or once a special hearing fails to establish beyond reasonable doubt that the person committed the offence (i.e. a case is dismissed), the custody order should lapse.

Essential and urgent amendments:

11. Custody orders should not be compulsory – Schedule 1 must be repealed.
12. Custody orders should be no longer than the term the person would likely have received, had they been found guilty of the offence.

Further recommendations:

- 12.1. Custody orders should only apply to offences for which the statutory penalty includes imprisonment.
- 12.2. That any orders made for an accused under CLMIA are revoked once charges are withdrawn on the basis of insufficient evidence, or once a special hearing fails to establish beyond reasonable doubt that the person committed the offence (i.e. a case is dismissed).

5.3.4 Court requirements when making and reviewing an order

Changes are also required to the provisions about what the court must consider when making an order pursuant to the Act. When deciding whether, or what order to impose, the judicial officers should give primary regard to the primary purposes of the Act – the need of the person for treatment or care, and the need to protect the community.

The court should also consider:

- The principles and objects of the Act (which as proposed would include the primacy of the least restrictive alternative);
- The circumstances of the offence and the accused;
- The individual's treatment, support and development needs;
- Independent assessment of the mental health and/or disability support needs of the individual;
- Advice on what supports are available to the individual (including those services that agencies would be obligated to provide as proposed in this submission);
- The input of carers/family members/significant others;
- Independent, expert advice on the risks posed by the individual, including advice on the risk posed with supports and treatment; and

- Independent cultural advice.

When considering release, the decision making body must have regard to these same issues. We recommend that an individual should not be denied release only because they are unable to look after themselves. If this is the case the person should be able to receive health and disability supports in the community.

Essential and urgent amendment:

13. Require the courts to give primary regard to the treatment and care needs of the accused, the least restrictive intervention and the need to protect the community.

Further recommendations:

13.1. Individuals should not be denied release only because they are unable to look after themselves.

5.3.5 Breaches

Consistent with the principles and objects of a reformed Act as proposed in this submission, we recommend that the requirement for automatic reinstatement of custody order upon a breach should be removed. As with other decisions, the full range of disposition options should be available to the judiciary or reviewing body to enable the most appropriate response in the circumstances.

Essential and urgent amendment:

14. Remove the requirement to reinstate a custody order upon a breach.

5.5 Procedural Fairness

Among the fiercest criticisms of the Act is the lack of natural justice evident in the legal proceedings and decision-making processes that apply in court, at MIARB and by the Governor. Nowhere else in our justice system do people have so few rights.

Urgent changes are required to both court and MIARB processes; these must be in keeping with our obligations under the UN Convention on the Rights of Persons with Disabilities and the UN Declaration of Human Rights, as outlined in section 3.1.

The following procedural fairness provisions should apply to any court, tribunal, board or other decision maker performing a function under the Act. They must include:

- The need for decision makers to give regard to the principles and objects of the Act;
- The right for individuals subject to the Act to receive information and a statement of rights under the Act, in a language and form of words the person is likely to understand;
- The right for carers, other family members and nominated persons to receive information and a statement of rights under the Act, in a language and form of words the person is likely to understand;
- The right to appear;

- The right to be represented by an advocate, lawyer or other person and for that person to cross examine;
- The right to hear evidence, receive information, review reports and documents and be notified of reviews and decisions;
- The right to written reasons for decisions;
- The right to a review and to request a review;
- The right to notice of a hearing or review;
- Rights for carers and family members to appear, to provide and receive information, to request a review and to reasons for a decision;
- The introduction of a nominated person who can represent the individual at any point, and who receives information and notification[19];
- The right to appeal MIARB and court decisions to a higher court, and further courts of appeal; and
- Timeframes for decision making which apply to all decisions about CLMIA Act orders, and to all decision makers.

We note that while Section 12 (4) of the Act does allow for decisions regarding fitness to stand trial to be appealed, we recommend that this be amended to allow for such decisions to be appealed to a higher court. In some jurisdictions, such as Queensland, this decision is made by a dedicated Mental Health Court and presided over by a Supreme Court judge. Decisions about the disposition made should also be appealable to a higher court.

Appealable decisions of the MIARB should include place of custody, transfer, release or discharge and the conditions of release.

In keeping with procedural fairness and the proposed principles and objects of the Act, regular reviews of custody and community based orders must occur. We recommend that these be in keeping with the review provisions for involuntary patients in the Mental Health Act 2014, which require three monthly reviews. Further provisions should enact the right to request a review, and the right to review of a breach.

Similarly, if dissatisfied with the Tribunal review, people under CLIMA should be able to appeal to the original court, the State Administrative Tribunal, and finally the Supreme Court.

In keeping with natural justice, the Act should be amended to require review of the Act every five years.

Essential and urgent amendments:

15. New procedural fairness provisions which provide for rights to appear, appeal, review, and rights to information and written reasons for a decision.
16. New provisions which enact rights for carers and significant others to provide and receive information, appear, to request a review and represent the accused, with consent of the individual.

Further recommendations

16.1. Amend the Act to require review of the Act every five years.

[19] As under the *Mental Health Act 2014*

5.6 The decision making body

5.6.1 The role of the Executive

One issue of utmost importance not canvassed in the Government's CLMIA Act Discussion Paper is the role of the Attorney General and the Governor in making decisions about leave of absence and release.

A well-established principle of democracy is the 'separation of powers' of the judiciary and the executive. This principle is the cornerstone of an independent and impartial justice system, which the Special Rapporteur on the independence of judges and lawyers has described as a *sine qua non*[20] for a democratic State[21]. We note that the Human Rights Committee has "repeatedly recommended that States adopt legislation and measures to ensure that there is a clear distinction between the executive and judicial branches of government so that the former cannot interfere in matters for which the judiciary is responsible"[22].

We suggest that the role of the Attorney General and Governor under the current Act contravenes these recommendations, and may constitute discrimination on the basis of mental impairment.

We note that in the majority of Australian jurisdictions detention orders are always subject to judicial discretion and terminated by a court[23]. We further note that the principle of courts determining release or discharge is already established in Western Australia under the *Dangerous Sex Offender Act 2006*.

We further note that people subject to the CLMIA Act may have been detained for some time under an Act that is inconsistent with their human rights. In advance of a new judicial model being developed (see section 4.6.2 of this submission), we propose an urgent amendment which transfers responsibility for the discharge or continuation of custody orders to the Mentally Impaired Accused Review Board. This would mitigate the effects of the current Act and reduce unreasonable delays in decision making about leave of absence and release while the new model is developed, enacted and implemented.

In the event that this amendment is not immediately made, the Act must require provisions which outline what the Governor and Attorney General must have regard to when making a decision or providing advice pursuant to the Act, and timeframes for within which decisions must be made. Further, the Supreme Court should review the decisions every two years.

Essential and urgent amendments:

17. The Act is amended to remove the role of the Attorney General and Governor. The amended Act must require a court or tribunal to have oversight of custody orders.

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[20] *Sine qua non* … refers to an indispensable and essential action, condition, or ingredient. It was originally a Latin legal term for "[a condition] without which it could not be", or "but for..." or "without which [there is] nothing".

[21] *Report of the Special Rapporteur on the independence of judges and lawyers*, UN document E/CN.4/1995/39, para. 55.

[22] International Commission of Jurists, 2007, 'International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: Practitioners Guide No. 1', page 19 http://www.refworld.org/pdfid/4a7837af2.pdf accessed 21/11/14

[23] Mental Health Law Centre, 'Comparative Law', http://www.mhlcwa.org.au/wp-content/uploads/2013/01/CLMIA-Act-COMPARATIVE-LAW.pdf

18. While the judicial model is developed and consulted on (see recommendation 19) responsibility for the discharge or continuation of custody and community based orders be transferred to the Mentally Impaired Accused Review Board.

5.6.2 Oversight by a Court or Tribunal

Stakeholders agree that judicial oversight of orders, reviews and release is an essential ingredient of a just Act.

Several models have been proposed. One is that the original court has oversight of the ongoing appropriateness of the order, with advice provided to it by a specialist body such as a mental health and disability board or tribunal. Another is that a specialist tribunal or court is established which itself has oversight of orders. A further model is that oversight and review of orders occurs in the Supreme Court. In all cases, appeal rights to a higher court would apply.

The importance of getting such a model right indicates the need for broad consultation with mental health, disability, legal and justice stakeholders including consumers.

There are however some essential ingredients. It should be separate to both the government executive and the Prisoners Review Board, which has different objectives to those of the CLMIA Act. It must have, as part of its membership or access to, appropriate expertise including in recovery and in contemporary forensic disability and forensic mental health.

The judicial body must have the same objectives as that of the proposed objects of the Act, with a primary focus on community safety, the least restrictive alternative, and the treatment, support and development needs of the accused. It must act in accord with the proposed principles of the Act and be solution-focused, find therapeutic or developmental solutions to address offending behaviour, and ensure the availability of required services and supports. To achieve this, it should have the ability to obligate the provision of services by relevant government agencies.

It should also have some of the same powers as the Mental Health Tribunal under the *Mental Health Act 2014*, such as the power to make recommendations about the person's treatment, support and service plan. As cross-departmental involvement is required for people under CLMIA, it should also have a case coordination function.

We also received a submission arguing for alignment of the CLMIA Act with the *Mental Health Act 2014*, and that both lie within the jurisdiction of the Minister for Mental Health, thereby ensuring the involvement of mental health stakeholders in the reform process and in program development.

Specialist and independent clinical advice must be available to the judicial body, which could be provided by a second body. The advice available must include assessment of fitness to plead with appropriate supports; cultural issues; support, treatment and development needs; available supports; and risk (both with and without appropriate supports). The nature of the advice required would warrant this being provided by a specialist body such as a board or tribunal.

Essential and urgent amendment:

19. Government introduces judicial oversight of custody and community based orders under the CLMIA Act and consults all stakeholders on the best model for this.

5.6.3 The Mentally Impaired Accused Review Board

As already argued, a judicial body should have oversight of custody and community based orders. However should the MIARB remain, improving procedural fairness and transparency of MIARB processes would be critical. The changes required to enable procedural fairness, which would apply to the MIARB as well as any court, are outlined in Section 4.5 of this submission.

We also submit, supported by many stakeholders, that the MIARB must be separated from the Prisoners Review Board, because they operate under different legislation, with different purposes. The value of specialist expertise is demonstrated by mental health courts, which have a unique ability to consider mental illness in decision making. We support the continuance of a judge as the head of the MIARB. Other members should have contemporary expertise in recovery, forensic disability and forensic mental health. There must be an Aboriginal representative and at least one member must have knowledge of Culturally and Linguistically Diverse communities and the issues they face.

Essential and urgent amendment:

20. Should the MIARB remain, amendments to improve procedural fairness and align the Board's membership with the Principles and Objects of the Act must occur.

6. Appropriate services and infrastructure

This section focusses on recommendations to improve services and places of detention for people under the Act.

6.1 Places of Detention

As argued earlier in this submission, the principles and objects of the Act include community safety, the least restrictive option, and a focus on the treatment, development and support needs of the accused. There is no place for the concepts of punishment or deterrence in this legislation. However, the effect of a custody order involves detention in prison for the majority of people found mentally impaired accused. For some, this is for the full period while under an indefinite order, others may spend part of their time in hospital.

It must be remembered that all those under the Act have either not had a fair trial, or have been deemed not culpable for the offence. Yet, the effect of a custody order for those without a treatable mental illness, or who are not sufficiently unwell to occupy a hospital bed at Frankland, is to be treated as a prisoner. Prisons are punitive places, not places for effective recovery, rehabilitation or development. We refer the government to the International Covenant on Civil and Political Rights:

> "Article 10, 2 (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons."[24]

We echo the view of the Law Reform Commission of Western Australia that:

> "…the failure of government to provide appropriate facilities in the community should never be the rationale behind keeping such people incarcerated in prisons. These are welfare issues, not criminal issues."[25]

We refer to the presentation given at the WAAMH CLMIA Act Forum in October 2014[26], by a mental health services consumer who had been held in both Frankland and prison, subject to CLMIA Act proceedings. He described being given no information about his rights or the hospital to prison transfer processes, being given his medication in full view of prisoners, and being 'stood over' by prisoners who wanted his medication. He spoke of being more unwell when he came out of prison than when he went in, and appealed for a declared place for people with mental illness.

We also note the case study provided by Arafmi Mental Health Carers, included as Appendix 1 in this submission. Arafmi highlighted the concerns of families, who are often unable to ensure that their loved ones receive their necessary medications, and prison staff may not be aware of the consequences of this. They further noted the need for prison staff to receive support and training, and to engage and support families and carers in support and transition planning.

Our government should no longer accept the lack of a suitable model, funds or infrastructure for the supervision and care needs of the accused, as a reason for detention in prison.

We commend the government on the development of disability justice centres for people with disability found unfit to stand trial. We also note that that this model will not be suitable for all people with disability under the CLMIA Act and recommend the development of alternatives able to accommodate diversity and individual needs.

We support the recommendation of the Mental Health Advisory Council's submission[27] for the establishment of a secure and safe treatment centre for people with mental impairment arising from mental illness who are detained for determinations of fitness to stand trial or subject to custody orders. We further support their advice that this centre should incorporate best international practice in forensic mental health and reflect the person-centred, recovery-focused, family inclusive current government policy direction in WA and nationally.

While alternative community based and declared places are being developed, we cautiously support the Office of the Inspector of Custodial Services' recommendation that the government should develop transitional mental health units at Bandyup Women's Prison and

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[24] International Covenant on Civil and Political Rights http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx accessed 28 November 2014

[25] Law Reform Commission of Western Australia, 2007, 'Final Report A review of the law of homicide', page 241

[26] WAAMH, 2014, 'Report of the Forum 'Not guilty due to unsound mind: Achieving reform of the *Criminal Law (Mentally Impaired Accused) Act 1996'*. http://waamh.org.au/systemic-advocacy/prison-systems.aspx

[27] Mental Health Advisory Council, 'Submission the Criminal Law (Mentally Impaired Accused) Act 1996 (WA)', Recommendation 5.2, http://www.mentalhealth.wa.gov.au/Libraries/pdf_docs/CLMIA_Act_Submission_2.sflb.ashx

at least one male prison[28] and that these be available for the detention of mentally impaired accused.

We also support the Commissioner for Children and Young People recommendation for a forensic adolescent mental health unit[29].

Hospital continues to be an appropriate place for some people held on custody orders under the Act. Noting that there are currently insufficient forensic beds, we support the Stokes Review call for additional forensic mental health services to be developed. These would include comprehensive assessment and treatment services (also with specialised units in prisons); specialised secure inpatient care to defendants and offenders who are very unwell; assertive community care to those released into the community from prison or on custody orders; and community care to special groups of offenders such as sex offenders, violent offenders, stalkers and arsonists[30].

While prison continues to be an option, it is essential that the Department of Corrective Services (DCS) develops policies and procedures appropriate to the needs of mentally impaired accused and their status as non-convicted offenders. It is important to recognise the vulnerable state of individuals with mental health issues and/or disability within the prisons systems and the risk of being targeted and/or exploited. Prison policy and procedures should be reflective of this vulnerability, and have protective measures that do not further victimise those under the Act who are detained in prisons and detention centres. These circumstances can also be of concern to carers and family.

We request that Government clarifies whether and how the *Prisons Act 1981* applies to people under the CLMIA Act. We recommend that prison charges do not apply, and that the MIARB or equivalent body has oversight when prison charges occur. Further, the MIARB should be able to make recommendations about the treatment and supports provided, as the Mental Health Tribunal is able to do under the *Mental Health Act 2014*.

We commend Disability Services Commission's development of in-reach services for mentally impaired accused. We recommend that additional forensic services are provided by the Department of Health and the community managed mental health sector to people under the CLMIA Act in prisons who experience mental illness and hope that this will be resourced through the 10 Year Mental Health Services Plan.

Essential and urgent amendment:
21. Prison should cease to be a legal place of detention for mentally impaired accused.

Further recommendations:

21.1. A range of options, including declared places, are developed for the detention, supervision, recovery, treatment, development and support of mentally impaired accused and people being assessed under the Act, in consultation with all

28 Office of the Inspector of Custodial Services, 2014, ' Mentally impaired accused on 'custody orders': Not guilty, but incarcerated indefinitely'

29 Commissioner for Children and Young People, Submission to the Stokes Review. In Government of Western Australia, 2012 'Review of the admission or referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia' (Stokes Review), page 115

30 Government of Western Australia, Department of Health, 2012, 'Review of the admission or referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia' (Stokes Review), page 112

stakeholders. These should be contemporary in practice, supporting the recovery and development of individuals.

21.2. A secure and safe treatment centre is established as a declared place for people with mental impairment arising from mental illness who are detained for determinations of fitness to stand trial or subject to custody orders.

21.3. Additional forensic services are provided by the Department of Health and the community managed mental health sector to people under the CLMIA Act in prisons.

21.4. That a forensic adolescent mental health unit be established.

21.5. Prison charges must not apply to mentally impaired accused in prison. When management issues arise the MIARB or equivalent body should have oversight.

21.6. The Department of Corrective Services develops policies and procedures appropriate to the needs of mentally impaired accused, their vulnerability within prisons, and their status as non-convicted offenders, inclusive of the engagement of families and carers in support and transition planning.

21.7. That specialist mental health units are developed in prisons.

6.2 Services

We note the Stokes Review finding that approximately 50 per cent of WA's mentally impaired accused persons detained under custody orders are in prison (14 people at that time) and there are no specific services for them[31]. These people are vulnerable within the prisons and the community.

It is our view that, when restricting people's liberty, governments have an obligation to provide rights to appropriate treatment, support and care, and that these be provided in a context of dignity and humanity. We further contend that the provision of the right mix of treatment and support will better meet the Act's objective of protecting victim and community safety.

We therefore recommend that the CLMIA Act should enact a right to appropriate services, treatment and supports that enable the individual to recover, habilitate and develop, with a focus on reducing the risk of re-offending and eventual return to community.

The CLMIA Act should also:

- Be able to require a person to engage in treatments and supports, with appropriate safeguards as outlined in the Principles and Objects and procedural fairness sections of this submission;
- Enable the courts and reviewing body to obligate government agencies to provide the required supervision and supports, both in places of detention and in the community, which may include accommodation; and
- Require government to develop and implement an individual recovery plan or individual development plan, or both if required in cases of co-occurring mental illness and disability.

[31] Stokes Review, page 116

These supports must focus on recovery, rehabilitation, risk management, and development. They must support the person's well-being, to live a contributing life, address offending and work towards community reintegration (where appropriate). They must be available to all people under the Act regardless of the type of mental impairment and whether they are detained or in the community. In keeping with the proposed principle of early intervention and diversion the supports must have as an objective the reduction of future risk of offending, which will also support the community safety objective. They should include secure step up and step down facilities and non-secure community forensic mental health services.

These must be in accordance with National Mental Health Standards, the National Standards for Disability Services, and the Principles, Objects and procedural fairness provisions proposed in the submission. They must also be in keeping with the mental health and disability reforms of this government - person-centred, recovery-focussed and family inclusive.

By way of precedent, we submit that the *Declared Places (Mentally Impaired Accused) Bill 2013* requires that residents have individual development plans which focus on development and habilitation, and which provide for their care and support.

Services for people under CLMIA need to be complemented by sufficient mental health resources in the community to avoid the unintended consequence of people committing a crime as a pathway to accessing supports and to provide earlier intervention and appropriate supports for people at risk of coming under the CLMIA Act into the future. These would include improved forensic mental health services, community-based disability justice services, State-wide court diversion programs, and in-prison services and treatment for convicted offenders with disability and those experiencing mental illness.

Supports for carers and family members are also required, in particular advocacy specific to the needs of families and carers supporting a loved one with disability and/or mental illness affected by the CLMIA Act.

Implementing a new Act will require resources; however, a perceived lack of resources should not deter review and significant amendment.

Essential and urgent amendments:

22. Enact a right to appropriate services, treatment and supports that enable the individual to recover, habilitate and develop.

Further recommendations:

- 22.1. Courts are enabled to require a person to engage in treatments and supports, with appropriate safeguards as outlined in this submission.
- 22.2. The courts and reviewing body be enabled to obligate government agencies to develop and implement an individual recovery plan or individual development plan, or both where appropriate, and to provide the required supervision and supports, both in places of detention and in the community, which may include accommodation.
- 22.3. Carers, family members and/or nominated representatives are engaged in the planning and delivery of these services, with the individual's consent.

Appendix 1 Case Study: Submitted by Mental Health Carers Arafmi

This case study is based on a request to Arafmi for advocacy support by the mother of a 20 year old son diagnosed with treatment resistant schizophrenia in 2012 in WA. Her son had also been diagnosed in 2006 in New Zealand with Asperger's Syndrome, Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD), hearing loss and learning disability and was eventually assessed as eligible for services with the Disability Services Commission in WA (2014).

Son was admitted to a mental health ward for treatment in 2012. Whilst an inpatient, he set fire to his room and arson charges were made against him. The son was deemed unfit to stand trial and was placed at Frankland Centre pending the charges being heard. He remained there for the next eleven months. Because of the son's complex needs and co-morbidities, the mental health staff found him to be a challenging patient. There appeared to be little understanding of his Asperger's, learning disability, hearing loss and cultural differences. He became increasingly unwell in this unsuitable environment and remained unfit to stand trial.

Mother was largely dependent on public transport to visit her son, which required over an hour trip each way. She visited her son almost every day, unless he was too unwell for visits. For her this was an extremely worrying time as she felt that her son's serious illness was exacerbated by the prison-type environment at Frankland Centre. He told her many times that he was scared and did not feel safe. Many times the scheduled Court Hearings were deferred due to the son's continuing unwellness. For both the son and his mother, it seemed there was no hope of getting him home again.

The lawyer representing the son was very concerned that if the son remained unfit to stand trial, or pleaded "not guilty" due to unsound mind, he was at risk of being detained indefinitely under the CLMIA Act. Because of the serious nature of the arson charge, if the son was deemed fit to plead and pleaded "guilty", he would almost certainly be given a custodial sentence. It was apparent to both the lawyer and the mother that because of the son's vulnerabilities, he would not function well in prison. The lawyer fortunately was able to get the charge downgraded from arson to "wilful damages", which meant that the charge could be now be heard in the Magistrate's Court rather than the Supreme Court. If the son pleaded guilty, the penalty could be a fine, or if a custodial term was imposed, his time spent at Frankland Centre would mean that the term had already been completed. The son, in consultation with the lawyer and his mother, signed a declaration that he wished to change his plea to "guilty" of the lesser "wilful damages" charge.

Eventually, the son was deemed fit to stand trial, his charge was heard and he was released into the care of his mother and the local community mental health services. The son went on to be linked into and engaged with a number of community support services, and maintained a level of wellness back in the care of his family.

An excerpt from an email about three months prior to the son's release, conveys the impact of the son's legal dilemma on the mother –

"She is desperately concerned for the son as there is the worry of him being tried under the CLMIA Act, in which case the Court has the option of detaining her son indefinitely. Her son

relies entirely on her for emotional support and she has been travelling often several times each week from Medina to Frankland Centre to visit him. Aside from that, she has two small daughters who require her care and attention. She is also working part-time, starting work at 4am through to 9 am as a cleaner. She is now saying that she is becoming unwell physically and is emotionally and mentally exhausted."

Appendix 2 Signatories to this Submission

This is a joint submission by:

- Western Australian Association for Mental Health;
- Developmental Disability WA;
- Consumers of Mental Health WA (Inc);
- Carers WA;
- Mental Health Carers Arafmi (WA) Inc;
- People with Disabilities WA Inc.;
- Aboriginal Disability Justice Campaign;
- Richmond Fellowship of Western Australia;
- Alan Robinson, Advocate for People with Intellectual Disability in the Justice System;
- Bridget and Antonio Silvestri;
- Mental Health Matters 2;
- Debora Colvin, Head of the Council of Official Visitors; and
- Seamus Murphy, Mental Health Advocate.

Western Australian Association for Mental Health (WAAMH) was incorporated in 1966 and is the peak body representing the community-managed mental health sector in WA. With around 150 organisational and individual members, its vision is to lead the way in supporting and promoting the human rights of people with mental illness and 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 development and promotes positive attitudes to mental health and recovery. Further information on WAAMH can be found at waamh.org.au

Developmental Disability WA (DDWA) was established in 1986 and is the peak body representing people with intellectual and other developmental disabilities and their families and carers. With more than 1,200 individual and organisational members, its vision is that people with intellectual and other developmental disabilities live their lives their way. DDWA creates lasting positive change by supporting people with developmental disability and their families to have a strong voice, partnering with others to develop more connected and inclusive communities, and influencing government and other decision makers. Further information on DDWA can be found at http://www.ddc.org.au

Consumers of Mental Health WA (Inc) (CoMHWA), is a non-profit, community based organisation dedicated to supporting mental health reform and recovery of people with lived experience of mental health challenges. CoMHWA is WA's peak consumer organisation led for mental health consumers, by consumers.

Carers WA is the peak body representing people who provide ongoing care to a family member or friend with ongoing care needs. Carers provide unpaid care and support to family members and friends who have a disability, mental illness, chronic condition, terminal illness, an alcohol or other drug issue, or who are frail aged.[1] The Carers Recognition Act 2004[2] is

[1] www.carersaustralia.com.au

Western Australian legislation that requires the Department of Health and Disability Service Commission or any organisations funded by them to formally recognise carers as key partners in the delivery of care. There is likely to be upwards of 307,000 people in Western Australia in a caring role[3] or approximately one in eight people in the community.

Mental Health Carers Arafmi (WA) Inc began offering support groups in 1976 and was incorporated in 1987 as a not-for-profit, community service organisation. Since then Arafmi has existed as the pre-eminent mental health carer organisation in Western Australia. Today it is a member of the wider Arafmi Mental Health Carers Australia body whose objective is *supporting and promoting the wellbeing of mental health carers and their families*. It is funded to provide carer and consumer services and programs for children and adults across WA. Currently these services include advocacy for people with complex interplays between mental health, legal rights and family dynamics; the provision of stigma reduction training across Perth high schools; family support services including counselling and support for families, carer support and referral, and school holiday programs and education for young carers; respite services for young and adult carers and their families; awareness raising of children of parents with a mental illness (CoPMI) issues across the community and within the mental health sector specifically; carer peer support and Aboriginal mental health outreach services for carers in the West Kimberley Aboriginal communities and Broome. Arafmi also runs programs to support individuals suffering with a mental health issue, including Family Mental Health Support Services (FMHSS), an early intervention program for children who are at risk of developing a mental health issue, Personal Helpers and Mentors Services in Cockburn and, as a Goldfields/Midwest Medicare Local WA Consortium member, Partners in Recovery services to adults with severe and persistent mental illness in Carnarvon.

Richmond Fellowship of WA (RFWA) is a not-for-profit, mental health agency that supports individuals with mental health issues on their recovery journey. As a non-government organisation, RFWA aims to develop environments and programs that integrate key elements of recovery with accommodation, support services and specialist, evidence based training. Its programs include Accommodation Services, Outreach Services, Carer Services, Hearing Voices Network, Partners in Recovery and Training and Education. It is RFWA’s aim that all its programs work toward supporting the journey toward wellbeing and enabling a meaningful, contributing life - what it calls the ‘recovery journey’.

Mental Health Matters 2 (MHM2) is a community action and advocacy group aimed at mental health reform. MHM2 is a unique alliance of people with a lived experience of mental ill-health, their families and supporters as well as individuals who provide mental health services in public, private and community-managed organisations. The group particularly advocates for those individuals and families experiencing multiple unmet needs which may include ongoing mental distress with co-occurring alcohol and other drug use and involvement in the criminal justice system.

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[2] Available from the State Law Publisher at http://www.slp.wa.gov.au/pco/prod/FileStore.nsf/Documents/MRDocument:21015P/$FILE/CarersRecognitionAct2004-01-a0-01.pdf?OpenElement

[3] Edwards, B., Gray, M.C., Baxter, J. and Hunter, B.H. 2009. *The Tyranny of Distance? Carers in Regional and Remote Areas of Australia*. Commonwealth of Australia and Carers Australia, Canberra.

People with Disabilities WA Inc has a mission to empower the voices of people with disability in Western Australia. We do this through individual and systemic advocacy, information provision and peer support. PWDWA is an organisation run by and for people with disabilities

The **Aboriginal Disability Justice Campaign** (ADJC) is a national campaign addressing the imprisonment and indefinite detention of people with a cognitive impairment in jails and psychiatric institutions as a result of being found unfit to plead / mentally impaired. A significant number of Aboriginal people with cognitive impairment are currently being held in maximum security prisons, despite not having been convicted or sentenced for a crime that would require them to be held in such a facility. ADJC is a collection of volunteers from around Australia who are concerned about this and its particular disproportionate impact on Aboriginal people.