

# **The Way Forward**

**Synthesis of the Review of the  
Mental Health Act 1996**

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## Synthesis of the Review of the Mental Health Act 1996

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## NOTICE

Public comment is invited on this synthesis of the review of the *Mental Health Act 1996* and especially upon the proposals for the way forward, which are contained within the synthesis. Comments should be addressed in writing or verbally to:

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**The deadline for receipt of comments is the close of business on Friday 7 November 2003.** Due to the reporting requirements of the review, unfortunately late comments cannot be accepted.

## Foreword

The purpose of this synthesis is to capture the thoughts and aspirations of the many people who have shared with the review of the *Mental Health Act 1996* their experiences of a person coping with a mental illness and how mental health legislation may impact, both constructively and with adverse effects, upon the human rights and the quality of life of that person, their family and the wider community.

This synthesis is not the final recommendations of the review of the Mental Health Act, which will be published after a period set aside for comment on the present document. However, embodied within the synthesis are tentative proposals, each of which foreshadows one or more final recommendations. While the main text has been compiled by the executive team, consisting of Mr John Titmus, Ms Jill Rapp and myself, using working party reports, Stakeholder Committee minutes, submissions to the review and other valued resources, the proposals contained within the boxes are my responsibility alone. They are offered with varying degrees of certainty and conviction. I expect some proposals to be non-controversial, because already they enjoy unanimous or at least a broad base of majority support. Other proposals represent a compromise between sometimes deeply polarized positions of interest groups, whose differences of opinion are unlikely to be resolved in the foreseeable future. These, as well as the occasional idea of my own, are put forward to ‘test to the water’. I fully expect to receive both criticism and praise for the proposals. Above all, I expect that the shape of the final recommendations will differ from what appears here. This will occur because critique, open debate and original thinking will uncover a better way forward.

The *United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (1991)* set out an international charter for the observance of human rights and the development of social capital in the mental health sector. A foremost consideration has been to assess the existing Mental Health Act against the 25 UN Principles, to identify best practice, and to ensure that as far as possible, the proposed way forward brings Western Australia into line with these benchmarks. A second thematic consideration has been to introduce greater flexibility into the options for treatment and care for consumers and providers of mental health services. A third general consideration has been the identification of measures to strengthen and streamline the administration of the Mental Health Act. Many issues brought before the review have had resource implications. In this respect, existing resource constraints have been given little weight in formulating a blueprint for the future. There have been other matters where the reviewer has concluded that a solution to the problem lies not in legislation, but in administrative reforms and system development. Where these matters are of sufficient importance, advice from the review will be conveyed to the Minister for Health, but this advice will not form part of the formal recommendations of the review, which are appropriately targeted to the terms of reference.

Recent developments in State Government policy affecting the Mental Health Review Board (MHRB) have presented an unanticipated challenge and have demanded flexibility in the approach to reporting the review’s results. Chapter 6 explains the position that I have adopted, which preserves the work of the review on the MHRB as a valuable resource for those who now have direct carriage of the establishment of the new State Administrative Tribunal.

I urge all interested parties to evaluate carefully the proposals set out in this synthesis and to apprise me of their concerns as well as their support of the likely directions.

Professor C. D’Arcy J. Holman MBBS MPH(Harv.) PhD FACE FAFPHM FAIM  
Reviewer of the Mental Health Act 1996 and Criminal Law (Mentally Impaired Defendants) Act 1996

## Acknowledgments

The authors gratefully acknowledge the exceptional efforts of the many individuals and organizations who have contributed to the reviews of the *Mental Health Act 1996* and the *Criminal Law (Mentally Impaired Defendants) Act 1996*. The review received 101 individual written submissions from interested organizations and members of the public. Many authors of submission went to great lengths to prepare careful, thoughtful, detailed and insightful commentary and suggestions about the way forward, and these contributions have been among the central planks of what has been drawn together in this synthesis.

The reviews have depended on the generous assistance of the following people, who gave of their time to sit on the Stakeholder Committee and its seven working parties. These committees have provided the principal forum in which the bases of Professor Holman's proposals have been developed and discussed.

### Members of the Stakeholder Committee

Ms Jenny Au Yeong	Dr Neville Barber	Mr David Bishop
Mr David Bruce	Dr Ralph Chapman	Ms Ethel Date
Dr Rowan Davidson	Dr Aaron Groves	Mr Kevin Hogg
Mr Sean Harrold	Ms Francine Holder	Ms Cushla Leech
Mr Lloyd Marsh	Mr David Merry Weather	Dr Elizabeth Moore
Ms Irene Morgan	Dr Neil Morgan	Dr Christopher Mulhall
Mr Brent Mansell	Ms Ann McFadyen	Ms Paula Parentich
Dr Steve Patchett	Dr John Penman	Mr Alan Philp
Mr Tim Rolfe	Mr Ramdas Sankaran	Ms Michelle Scott
Ms Elaine Smith	Mr John Titmus	Mr Henry Wallwork
Mr Geoff Williams	Dr Deborah Wilmoth	Ms Ann White
Ms Angela Woodacre	A/Inspector Peter Woollons	

### Members of Working Parties

Mr Bruce Ambrosius	Ms Jane Armstrong	Dr Dinesh Arya
Ms Judith Baalfe	Dr Neville Barber	Mr Richard Bayly
Dr Stephen Baily	Ms Tatiana Borisow	Ms Stephanie Boyd
Dr Adam Brett	Mr Alan Brook	Mr David Broughton
Mr Patrick Byrnes	Mr Edward Cade	Ms Coralie Carter
Dr Ralph Chapman	Dr Julia Charkey-Papp	Ms Felicity Child
Mr Brendan Clarke	Mr Alan Clively	Ms Rosemary Cowper
Ms Julie Crews	Mr Michael Cabbage	Mr Jim Delaney
Mr Roy Dobson	Ms Maxine Drake	Mr Michael Finn
Ms Helen Foley	Ms Jo Ann Foy	Mr Adam Frawley
Dr Nathan Gibson	Ms Angela Hanslip	Mr Les Harrison
Mr Sean Harrold	Mr Harvey Hatch	Ms Janet Hicks
Mr Steven Heath	Dr Anne Hodge	Mr Kevin Hogg
Ms Francine Holder	Mr Mike Holmes	Ms Marion Hood
Mr Jeff Immerman	Mrs Noreen Jefferies	Ms Cushla Leech
Ms Hannah Leslie	Dr Helen Lette	Ms Mary Longden
Mr Brent Mansell	Mr Lloyd Marsh	Dr Babu Mathews

Ms Mairead McCoy  
Ms Peta Melbin  
Dr Elizabeth Moore  
Mr Chris Mulhall  
Mr Michael O'Kane  
Dr Steve Patchett  
Dr Bronwyn Pierce  
Ms Wendy Radcliffe  
Mr Tim Rolfe  
Ms Jane Sampson  
Mrs. Maxinne Sclanders  
Ms Christine Slattery  
Ms Selva Stenross  
Ms Jennifer Stott  
Ms Dace Tomson  
Dr Dulcie Veltman  
Dr Garry Wilkes  
A/Inspector Peter Woollons  
Mr Zenith Zeeman

Mr Peter McGlynn  
Ms Pam Mikus  
Ms Irene Morgan  
Ms Wendy Murray  
Ms Yvonne Pallier  
Ms Janet Peacock  
Ms Michelle Pule  
Ms Anna Richards  
Dr Mark Rooney  
Ms Jeanette Scanlan  
Mr Grey Searle  
Ms Elaine Smith  
Ms Catherine Stevenson  
Dr Jenny Sudbury  
Ms Lisa Valentine  
Justice Henry Wallwork  
Dr Deborah Wilmoth  
Dr Bernadette Wright

Ms Elaine McKewan  
Ms Debra Moen  
Dr Neil Morgan  
Ms Dene Oliver  
Ms Paula Parentich  
Ms Jillian Pearsall-Jones  
Dr Alan Quigley  
Mr Mark Rogers  
Mr. Premtej Sacha  
Dr Mirceau Schineanu  
Dr Bob Serich  
Mr Ken Steele  
Dr Prue Stone  
Dr Bryan Tanney  
Mr John Van Der Giezen  
Ms Ann White  
Ms Angela Woodacre  
Ms Cheri Yavu-Kama-  
-Harathunian

We are especially indebted to the following people who willingly accepted the onerous task of convening working parties and preparing and presenting the working party reports.

Dr Ralph Chapman  
Involuntary Status and Community Treatment  
Orders Working Party

Mr. Tim Rolfe  
Interstate Movements Working Party

Ms Francine Holder  
Council of Official Visitors Working Party

Ms Ann White  
Patient Rights Working Party

Dr Elizabeth Moore  
Treatment of Patients Working Party

Dr Deborah Wilmoth  
Mental Health Review Board Working Party

Dr Steve Patchett  
Criminal Law (Mentally Impaired Defendant) Act  
Working Party

We are also grateful to Ms Catherine Crawford, Dr Caroline Graham, Mr. Keith Wilson, who have agreed to act on a reference panel of knowledgeable individuals, who have not been directly involved to date in the review's committees and who will each provide a critique of this synthesis to Professor Holman.

We also wish to express our gratitude to Ms Sylvia Meier, who established the structure and processes of the review's working parties, which have proven to be so efficient and effective. We are grateful for the administrative support given to the review by Ms Pauline Robertson during April 2002 to October 2003, and Ms Rachelle Davies from October 2002 to November 2003.

## List of Abbreviations

CALD	Culturally and linguistically diverse
CLMID	Criminal Law (Mentally Impaired Defendant)
CLMID Act	Criminal Law (Mentally Impaired Defendant) Act 1996 in Western Australia
COV	Council of Official Visitors
COVWP	Council of Official Visitors Working Party
CP	Chief Psychiatrist
CTO	Community treatment order
IMWP	Interstate Movements Working Party
ISCTOWP	Involuntary Status and Community Treatment Order Working Party
MHRB	Mental Health Review Board
MHRBWP	Mental Health Review Board Working Party
MID	Mentally impaired defendant
MMHL	Model Mental Health Legislation, as published in 1994 in the Report to the Australian Health Ministers' Advisory Council National Working Group on Mental Health Policy on Model Mental Health Legislation by The University of Newcastle Centre for Health Law, Ethics and Policy
NSW	New South Wales
NSW Act	New South Wales Mental health Act 1990
NT	Northern Territory
NT Act	Northern Territory Mental Health and Related Services Act 2002
PPRWP	Protection of Patients' Rights Working Party
Qld Act	Queensland Mental Health Act 2000
SAT	State Administrative Tribunal
TPWP	Treatment of Patients Working Party
UN	United Nations
UN Principles	United National Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care published in 1991
Vic	Victoria
Vic Act	Victorian Mental Health Act 1886
WA	Western Australia
WA Act	Western Australian Mental Health Act 1996

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## Background

*'Those who cannot remember the past are condemned to repeat it'.*  
-- George Santayana

Before 1871, the treatment of the insane in Western Australia had been regulated by the English Lunacy Act of 1845. In 1871, the Western Australia Parliament passed its own Lunacy Act, thus providing for *'the safe custody of, and the prevention of crimes by, persons dangerously insane; for the care and maintenance of persons of unsound mind, and for the care, management and disposal of the property and estates of such persons.'* An integral part of this Act was the development of a Board of Visitors nominated by the Governor in Council: *'their duty was to visit and inquire what occupations or amusements are provided for the patients, and the result thereof ... and whether there has been adopted any system of non-coercion.'* The original WA Lunacy Act also set out the rules for admission and ensured *'that wrongful detention in an asylum could not take place'* and distinguished between paying patients and the *'pauper lunatics.'*

Between 1871 and 1900, a number of reports recommended improvements to the WA mental health legislation, including a report by a Dr Victor Black to the Vosper Committee, which advised that the *'whole system, including the Lunacy Act should be wiped out, a new asylum built and a new Lunacy Act framed'*. Three years later a Dr Montgomery, after studying the English, New Zealand, New South Wales and Victorian legislation, drafted the *Lunacy Act 1903*. This draft legislation raised much debate, including arguments as to whether or not provision in the Act should be made for voluntary patients and whether or not all forms of mechanical restraint should be banned. This legislation became law on 1 January 1904, and governed the treatment of the mentally ill in the State for over 60 years.

During the intervening years, a number of inquiries produced amendments to the *Lunacy Act 1903* and collateral legislation, including the *Mental Treatment Act 1927*, which strengthened the notion of voluntary patients being able to admit themselves for treatment. However, once admitted, discharging himself or herself was not so straight forward. A voluntary patient was required to give ten days notice of their intent to leave, which gave the superintendent ample time to arrange compulsory detention if it was considered necessary. Care of the criminally insane also attracted attention from the legislature. Following a number of escapes, a Royal Commission was appointed in 1936, which recommended the *'establishment of a board of specialists in mental diseases to decide the place of detention of the criminally insane.'* Further amendments in 1949 defined restraint and seclusion and rewrote the duties of the Board of Visitors to report to the Minister and to table their recommendations in Parliament.

The *Mental Health Act 1962* was amended twice before it came into force on 1 July 1966. As with the 1903 Lunacy Act, this new act was based upon the then British and Victorian models of mental health legislation. New terminology to reflect contemporary practice came into vogue such as *'approved hospitals'*, *'referral'* (instead of certification) and *'detainment for observation'* (without being admitted as a patient). The 1962 Act allowed for the first time a court to remand a person to an approved hospital for a pre-sentence report. A *Mental Health Act 1981* was passed by the Parliament, but never proclaimed. Then a number of reports, including the Campbell Report of 1982, *Health Protecting the Community*, and the Kosky Report on *Psychiatry: A New Era* led to a review of the 1962 Act, and the presentation to the Parliament of the *Psychiatric Services Bill 1986*. This Bill was never passed, because psychiatrists who responded to the Bill expressed misgivings as to the ability of psychiatric services to deliver treatment and care as was proposed and because it was considered to be excessive in expounding legal idealism as the cost of an understanding of mental illness. Moreover, the Government of the day was waiting for the

report on mentally ill offenders and, consequently, the *Psychiatric Services Bill 1986* was abandoned in favour of a further review.

In 1990, the then Health Minister, Hon Keith Wilson, established a working party which considered previous reports, including the Zelestis Report of the 1989 *Inquiry into the Treatment of Psychiatric Patients*. The working party, chaired by Lisa Newby, produced a discussion paper in 1990, which proposed sweeping changes, including the establishment of a review tribunal to examine the detention of involuntary patients and an enhanced review tribunal to examine applications for psychosurgery. In addition, the introduction of community treatment orders and the provision of a patient advocate, whose role would be to resolve complaints as the first avenue of complaint for the patient, were recommended. The report was noteworthy for raising the issues of informed consent, the treatment of voluntary patients and minors, albeit that these issues failed to become reflected in the subsequent Act.

Following public comment on the discussion paper, the review group was reconvened in June 1991, to prepare their final report, entitled *Final Report of the Mental Health Working Party* and released by the Legislation Review and Development Branch of the Health Department of Western Australia in December 1991. The Report had revised some of the recommendations in the former discussion paper, and ultimately became the template for the current Act in existence today. The *National Mental Health Plan* was signed by all Australian health ministers in 1992, and at the time provided an added stimulus for reform, but a change of State government in 1993 produced further delays in the process, leading to a further review in March 1995 by the Mental Health Task Force, established by the then Health Minister, Hon Graham Kierath. In all, there were five successive drafts of the Mental Health Bill before eventually the *Mental Health Act 1996* (WA Act) became a law on 13 November 1996, and was implemented 12 months later. Four working parties were formed to help establish the Council of Official Visitors, Mental Health Review Board, a Police Liaison Group and the development of educational materials.

Although it had bipartisan support, there was an understanding at the time that the WA Act had many imperfections and section 215 acknowledged the ongoing nature of legislative reform in mental health by requiring the Minister for Health to carry out a review of the operation and effectiveness of the Act as soon as practicable after the expiration of five years from its commencement. By 1998 there was already an undertaking to make amendments to the WA Act as stakeholders were unhappy with difficulties being experienced with it. Submissions were called for and received during 1998-99. Many submissions raised issues that did not relate to legislation and because it appeared that agreement could not be achieved, ideas of an early review were abandoned in favour of observing the WA Act in operation for a longer period before further changes were made.

On 14 November 2001, the then Minister for Health, Hon Bob Kucera, appointed Professor D'Arcy Holman to undertake the statutory review on behalf of the Minister, as required by section 215. In publicly announcing the Review, Minister Kucera stated that his government wanted to see '*improved treatment and care for people with a mental illness or disorder and the protection of the rights of the mentally ill, their carers and families.*' Subsequently, a decision was made to incorporate the *Criminal Law (Mentally Impaired Defendants) Act 1996* into the same review process. Resources to undertake the reviews were approved by the Minister for Health on 12 June 2002, and terms of reference were approved by the Minister in consultation with the Attorney General on 22 July 2002.

## Terms of Reference

The following terms of reference were approved by the Minister for Health in consultation with the Attorney General on 22 July 2003:

1. To review the operation and effectiveness of the *Mental Health Act 1996* and in the course of that review consider and have regard to:
  - (a) the effectiveness of the operations of the Mental Health Review Board and the Council of Official Visitors;
  - (b) the need for the continuation of the functions of the Mental Health Review Board and the Council of Official Visitors; and
  - (c) such other matters as appear to be relevant to the operation and effectiveness of the Mental Health Review Act 1996.
  
2. To review the operation and effectiveness of the *Criminal Law (Mentally Impaired Defendants) Act 1996* and in the course of that review consider and have regard to:
  - (a) the effectiveness of the operations of the Mentally Impaired Defendants Review Board;
  - (b) the need for the continuation of the functions of the Mentally Impaired Defendants Review Board; and
  - (c) such other matters as appear to be relevant to the operations and effectiveness of the *Criminal Law (Mentally Impaired Defendants) Act 1996* including its relationship with the *Mental Health Act 1996*.

# Methods of the Review

## ROLE DELINEATION AND TIMEFRAME

### *Reviewer*

The Minister for Health and the Attorney General appointed Professor Holman to conduct the review and prepare a report outlining recommendations. Professor Holman has the final decision-making authority regarding the recommendations.

### *Stakeholder Committee*

The function of the Stakeholder Committee was to enable discussions, collate information and identify major issues for the reviewer, thereby guiding the development of the recommendations that will be made to the Minister for Health and the Attorney General. The Stakeholder Committee was directed to focus on the terms of reference; to engage in open and frank discussions regarding specific issues; establish working parties to address specific areas; and to collate information from stakeholders for presentation to the Committee. The Stakeholder Committee was chaired by Professor Holman.

### *Working Parties*

Working parties were established to collate information and address specific issues.

### *Reference Panel*

The function of the panel became to review this synthesis and provide comments to the reviewer from the perspective of those with relevant knowledge who had not been directly involved in the Stakeholder Committee or its working parties.

### *Executive Officer*

The Executive Officer, Ms Sylvia Meier from April 2002 to February 2003 and Mr John Titmus from February 2003 to November 2003, was responsible for coordinating the review process, including the facilitation of the Stakeholder Committee and working parties, gathering and analysing information from other stakeholders and the development, implementation and the reporting of a rural and remote consultative process. The Executive Officer provided the reviewer with executive support throughout the review and was responsible for the operations of the review's office.

### *Project Assistant*

Ms Pauline Robertson, April 2002 to October 2003, and Ms Jill Rapp assisted by Ms Rachelle Davies from October 2002 to November 2003, provided administrative, financial and project support to the Executive Officer, committees and working parties.

### *Timeframe*

Initially, the review was to report to the Minister for Health and Attorney General by 30 June 2003. However, in September 2002 and again in February 2003, the review received a number of requests from stakeholders seeking an extension of the deadline for public submissions. The Minister for Health gave approval on both occasions of extensions to the timeframe, in recognition of the need for proper consideration of the submissions made by community organizations and the public. As a consequence the due date of the reports of the review was extended until the end of November 2003.

The following milestones with respect to timeframe have steered the course of the review:

<b>Milestone</b>	<b>Target Date</b>
Background preliminary work	August 2002
Working parties:	
Establish working parties	September 2002
Deliberation of working parties	October 2002 – March 2003
Working Parties to present to the Stakeholder Committee	April – June 2003
Closing Date for submissions after extension	28 March 2003
Stakeholder Committee deliberations	May – August 2003
Rural and remote consultation	June – July 2003
Preparation of synthesis	August – September 2003
Distribution of synthesis	End of September 2003
Period of comment on synthesis	October 2003
Preparation of final recommendations	November 2003
Presentation to the Minister for Health and Attorney General	28 November 2003

## PUBLIC SUBMISSIONS

The review was active in seeking participation of the general public in its processes, and key non-government organizations actively canvassed their members to submit their views. An advert was placed in the West Australian newspaper on 7 September 2002, and again on the 22 February 2003, inviting public submissions to the review.

**Department of Health**  
Government of Western Australia

**Review of the *Mental Health Act (MHA) 1996* and the *Criminal Law (Mentally Impaired Defendants) Act (CLMIDA) 1996***

**Extension date for Submissions**

As required by legislation, the Minister for Health is reviewing the operations and effectiveness of the *Mental Health Act (1996)*. In addition, the Attorney General has agreed to review the *Criminal Law (Mentally Impaired Defendants) Act (1996)*. Professor C. D'Arcy J. Holman, Chair in Public Health at the University of Western Australia, is chairing the independent Review of both Acts and will make his recommendations in November 2003.

The Minister for Health has approved an extension for submissions from the public and community organisations.

Public submissions are now being sought to assist in the conduct of the review. The closing date for submissions is 28 March 2003. Public submissions should address the following Terms of Reference.

**Terms of Reference**

- To review the operation and effectiveness of the *Mental Health Act 1996* and in the course of that review consider and have regard to:
  - the effectiveness of the operations of the Mental Health Review Board and the Council of Official Visitors;
  - the need for the continuation of the functions of the Mental Health Review Board and the Council of Official Visitors; and
  - such other matters as appear to be relevant to the operation and effectiveness of the *Mental Health Act 1996*.
- To review the operation and effectiveness of the *Criminal Law (Mentally Impaired Defendants) Act 1996* and in the course of that review consider and have regard to:
  - the effectiveness of the operations of the Mentally Impaired Defendants Review Board;
  - the need for the continuation of the functions of the Mentally Impaired Defendants Review Board; and
  - such other matters as appear to be relevant to the operations and effectiveness of the *Criminal Law (Mentally Impaired Defendants) Act 1996*, including its relationship with the *Mental Health Act 1996*.

Written submissions addressing the Terms of Reference will be accepted up to the close of business Friday 28 March 2003.

Submission feedback forms have been developed to assist the public in addressing the Terms of Reference and copies can be obtained by telephoning 9222 5440 during business hours or by emailing [ReviewofMHA@health.wa.gov.au](mailto:ReviewofMHA@health.wa.gov.au) Copies are also available from [www.health.wa.gov.au/publications](http://www.health.wa.gov.au/publications)

Please address written submissions to the Executive Officer, Review of the MHA and CLMIDA, 11th Floor, Dumas House, 2 Havelock St, West Perth 6005.

A submission template was devised to assist people in their response and was made available upon request or could be down-loaded from review's website.

In total, 101 submissions were received from individuals or groups in the following categories:

Mental Health Workers	27
Non Government Organizations	19
General Health Workers	4
Consumers and Carers	31
Government organizations	13
Other	<u>7</u>
Total	101

Many of the submissions were the collective thoughts of committees in the respective organizations, established to provide input to the review. The method of submission to the review came in all available forms of communication such as e-mail, courier, hand written notes and facsimiles. A small number of people personally delivered their submission to the review office and sought to expand upon and express their concerns in person.

### ***Confidentiality of Submissions***

The review adhered strictly to guidelines concerning the confidentiality of submissions. Every person making a submission was asked to nominate one of the following options: (i) the submission was to remain strictly confidential and was not to be shared or distributed to anyone outside of the review; the submission could be shared or distributed to any other party, provided that the respondent's identifying details were removed and kept confidential; (iii) the submission was public information and could be freely available to anyone interested; or (iv) the submission was for the reviewer's eyes only. In recognition of the often sensitive and personal content of many of the submissions, members of the Stakeholder Committee were asked to sign a confidentiality acknowledgement form prior to viewing the submissions.

### ***Comment of the Quality of Submissions***

It was regretful that a handful of submissions sought unduly to personalize certain issues or to make allegations without providing supporting evidence. However, the reviewer was greatly reassured by the vast majority of submissions, so many of which were of the highest possible quality, being thought-provoking and often articulated with painstaking attention to detail.

## **WEBSITE**

Upon commencement of the review a website at <http://www.health.wa.gov.au/mhareview/> was established to provide an avenue for the dissemination of information, access to resources such as mental health legislation, the United Nations (UN) Principles and the placing of submissions for public access. The website received frequent hits by members of the public in WA and interested parties elsewhere in Australia, who were monitoring the progress of the review in consideration of changes to interstate legislation.

## STAKEHOLDER COMMITTEE AND WORKING PARTIES

The function of the Stakeholder Committee was to enable discussions, collate information and identify major issues for the reviewer, thereby guiding the development of the recommendations that will be made to the Minister for Health and the Attorney General. The membership of the committee comprised a broad range of people representative of the following services or organizations:

- Association Relatives And Friends of the Mentally Ill.
- Authorized Mental Health Practitioner. Metropolitan area.
- Authorized Mental Health Practitioner. Rural Area.
- Australian Association of Social Workers Representative.
- Council of Official Visitors.
- Culturally and Linguistically Diverse representation.
- Commonwealth Department of Health.
- Clinical Psychologists Association.
- College of Mental Health Nurses.
- General Practice Divisions of WA.
- Disability Services Commission.
- Health Consumers Council.
- Indigenous representative.
- Judicial System.
- Mental Health Consumer Advisory Program.
- Mental Health Consumer Advocacy Project.
- Mental Health Law Centre.
- Mental Health Review Board.
- Mentally Impaired Defendants Review and Parole Board.
- Office of the Chief Psychiatrist.
- Office of Mental Health.
- Police Service.
- Psychiatrist Representing Integrated mental health services.
- Public Advocate.
- Royal Australian and New Zealand College of Psychiatrists.
- WA Association for Mental Health.

Other experts, such as a Child and Adolescent Psychiatrist, were co-opted to the Committee during debates related to their area of expertise. The Stakeholder Committee met on 22 occasions between August 2002 and September 2003.

Members of the Stakeholder Committee were: Ms Jenny Au Yeong, Dr Neville Barber, Mr David Bishop, Mr David Bruce, Dr Ralph Chapman, Ms Ethel Date, Dr Rowan Davidson, Dr Aaron Groves, Mr Kevin Hogg, Mr Sean Harrold, Ms Francine Holder, Ms Cushla Leech, Mr Lloyd Marsh, Mr David Merry Weather, Dr Elizabeth Moore, Ms Irene Morgan, Dr Neil Morgan, Dr Christopher Mulhall, Mr Brent Mansell, Ms Ann McFadyen, Ms Paula Parentich, Dr Steve Patchett, Dr John Penman, Mr Alan Philp, Mr Tim Rolfe, Mr Ramdas Sankaran, Ms Michelle Scott, Ms Elaine Smith, Mr John Titmus, Mr Henry Wallwork, Mr Geoff Williams, Dr Deborah Wilmoth, Ms Ann White, Ms Angela Woodacre and A/Inspector Peter Woollons.

### ***Working Parties - Overview***

Seven working parties were established to debate specific areas of the WA Act and CLMID Act. The purpose of the working parties was to collate specific information for the Stakeholder Committee and to address specific issues related to the different aspects of the Acts. Each working party was convened by a member of the Stakeholder Committee. Membership of working parties was dictated by a desire to include representation by consumers, carers, clinicians and other relevant organizations or individuals.

### ***Treatment of Patients Working Party***

The objectives of this working party were to consider the operations and effectiveness of *Part 5 – Treatment of Patients* and to recommend possible amendments to part 5. The working party of 21 people met for a total of 12 occasions between November 2002 and April 2003. The members were: Ms Tatiana Borisow, Mr Patrick Byrnes, Dr Julia Alexandra Charkey-Papp, Mr Brendan Clarke, Mr Jim Delaney, Mr Roy Dobson, Mr Michael Finn, Mr Adam Frawley, Mrs Noreen Jefferies, Ms Hannah Leslie, Dr Helen Lette, Mr Lloyd Marsh, Dr Elizabeth Moore (Convenor), Ms Mairead McCoy, Ms Paula Parentich, Ms Michelle Pule, Dr Alan Quigley, Ms Wendy Radcliffe, Mr Tim Rolfe, Mr Grey Searle, Dr Bob Serich, Ms Christine Slattery, Dr Dulcie Veltman, Ms Angela Woodacre and Dr Bernadette Wright.

### ***Protection of Patients' Rights Working Party***

The objectives of this working party were to consider the operations and effectiveness of *Part 7 – Protection of Patients' Rights* and to recommend possible amendments to part 7, including matters concerning carer rights and the possible inclusion of a complaints process for patients and carers. The working party of 17 people met for a total of nine occasions between October 2002 and March 2003. The members were: Dr Steve Baily, Mr Alan Brook, Mr David Broughton, Mr Patrick Byrnes, Ms Julie Crews, Dr Julia Alexandra Charkey-Papp, Ms Maxine Drake, Ms Jo Ann Foy, Dr Nathan Gibson, Ms Angela Hanslip, Mr Kevin Hogg, Ms Marion Hood, Ms Cushla Leach, Mr Peter McGlynn, Ms Elaine McKewan, Ms Peta Melbin, Ms Pam Mikus, Mr Chris Mulhall, Ms Janet Peacock, Ms Elaine Smith, Ms Selva Stenross, Ms Jennifer Stott, Dr Jenny Sudbury and Ms Ann White (Convenor).

### ***Mental Health Review Board Working Party***

The objectives of this working party were to consider the operations and effectiveness of the MHRB and to recommend possible amendments to part 6 of the WA Act. The working party of 16 people met for a total of ten occasions between October 2002 and March 2003. The members were : Dr Neville Barber, Dr Julia Alexandra Charkey-Papp, Mr Michael Cabbage, Ms Maxine Drake, Ms Mary Longden, Ms Debra Moen, Ms Paula Parentich, Ms Michelle Pule, Ms Anna Richards, Dr Mark Rooney, Dr Mirceau Schineanu, Mrs Maxinne Sclanders, Ms Jennifer Stott, Ms Ann White, Dr Debra Wilmoth (Convenor) and Mr Zenith Zeeman.

### ***Involuntary Status and Community Treatment Orders Working Party***

The objectives of purpose of this working party were to consider the operations and effectiveness of *Part 3 – Involuntary Patients* and to recommend amendment to part 3, including particular consideration of the adequacy of Part 3 in rural and remote areas. The working party of 21 people met on a total of 13 occasions. The members were: Dr Dinesh Arya, Dr Steve Baily, Ms Stephanie Boyd, Mr Alan Brook, Ms Coralie Carter, Dr Ralph Chapman (Convenor), Mr Brendan Clarke, Mr Michael Finn, Mr Kevin Hogg, Dr Babu Mathews, Ms Paula Parentich, Dr Bronwyn Pierce, Ms Michelle Pule, Mr Mark Rogers, Mr Tim Rolfe, Ms Christine Slattery, Ms Jeanette Scanlan, Dr Prue Stone, Dr Bryan Tanney, Ms Dace Tomson, Ms Lisa Valentine, Dr Garry Wilkes, A/Inspector Peter Woollons and Ms Ann White.



### ***Council of Official Visitors Working Party***

The objectives of this working party were to consider the operations and effectiveness of the Council of Official Visitors (COV) and to recommend possible amendments to part 9 of the WA Act. The Working Party of 13 people met for a total of 11 occasions, between October 2002 and March 2003. The members were: Ms Judith Baalfe, Mr Alan Clively, Ms Margaret Cook, Ms Janet Hicks, Dr Anne Hodge, Ms Francine Holder (Convenor), Ms Mary Longden, Mr Lloyd Marsh, Mr Michael O’Kane, Ms Yvonne Pallier, Ms Elaine Smith, Ms Selva Stenross and Ms Catherine Stevenson.

### ***Criminal Law (Mentally Impaired Defendants) Act Working Party***

The objectives of this working party were to consider the operations and effectiveness of the CLMID Act and to recommend possible amendments to the CLMID Act, including consideration of the Mentally Impaired Defendants Review Board and the relationship between the CLMID and the WA Acts. The working party of 34 people met for a total of 11 occasions between October 2002 and March 2003. The members were: Mr Bruce Ambrosius, Ms Jane Armstrong, Dr Neville Barber, Mr Richard Bayly, Dr Adam Brett, Mr Edward Cade, Dr Ralph Chapman, Ms Felicity Child, Ms Rosemary Cowper, Ms Helen Foley, Mr Les Harrison, Mr Harvey Hatch, Mr Steven Heath, Ms Francine Holder, Mr Mike Holmes, Mr Sean Harrold, Mr Jeff Immerman, Ms Cushla Leech, Mr Brent Mansell, Ms Irene Morgan, Dr Neil Morgan, Ms Wendy Murray, Ms Dene Oliver, Dr Steve Patchett (Convenor), Ms Jillian Pearsall-Jones, Ms Michelle Pule, Mr Premtej Sacha, Ms Jane Sampson, Mr Ken Steele, Ms Catherine Stevenson, Mr John Van Der Giezen, Mr Henry Wallwork, A/Inspector Peter Woollons and Ms Cheri Yavu-Kama-Harathunian

### ***Interstate Movements Working Party***

The objectives of this working party were to consider the operations and effectiveness of Part 4 – Interstate Movements and to recommend possible amendments to part 4. The working party of six people met on two occasions in January and March 2003. The members were: Mr Jim Hosie, Ms Irene Morgan, Ms Paula Parentich, Dr Steve Patchett, Mr Tim Rolfe and Ms Angela Woodacre.

### ***Conflict of Interest Policy***

Issues regarding conflict of interests of the working party and Stakeholder Committee members were carefully managed. A policy required all real and potential conflicts of interest of a pecuniary, personal or any other nature to be declared to the Chairperson. The policy provided for the Chairperson to determine one of three possible course of actions: the member was to (i) withdraw themselves from the aspect of the review in question; (ii) not participate in discussions concerning the specific area where there was a conflict of interest (but to participate in other discussions); or (iii) maintain full involvement.

## **REVIEW WORKSHOP**

On 4 December 2002, a workshop was held for all members of the Stakeholder Committee members entitled *Striking a Balance – Human Rights and the Mental Health Act*. This workshop, facilitated by Mr Alan Bandt, had the specific objectives: (i) to identify the Committee’s key concerns regarding the human rights implications of mental health legislation; (ii) to identify the specific human rights issues to be addressed in the reviews and possible actions to resolve them; and (iii) at the completion of the workshop, to produce a collection of guiding human rights principles for each of the working parties to assist in their deliberation of recommendations.

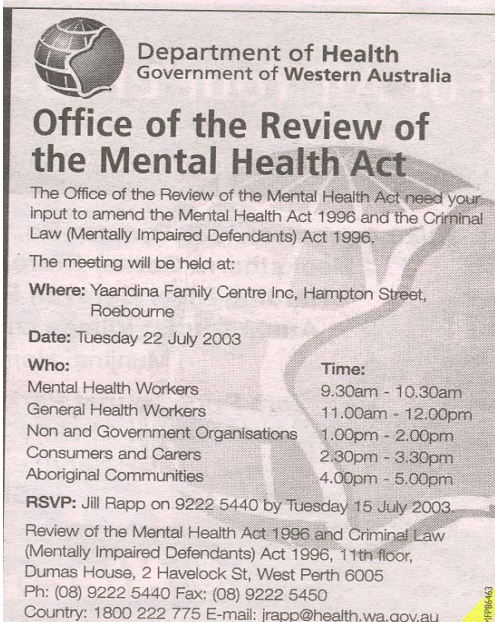
## RURAL AND REMOTE CONSULTATIONS


The review's Stakeholder Committee in February 2003 endorsed the importance of conducting a truly statewide review, so as to avoid the formulation of 'Perth centric' recommendations, which might fail to meet the needs of people in the rural and remote communities. Accordingly, a program of consultations was undertaken with rural and remote communities of WA concerning the matters before the review.

The consultations in rural and remote were undertaken by the Executive Officer, Mr John Titmus, assisted by Project Assistant, Ms Jill Rapp. The reviewer attended two of the forums, being those in Bunbury and Port Hedland. In all, 15 regional centres were visited by the review, the choice of which was determined following consultation with Mental Health Services, WAACHO, the Office of Aboriginal Health and WACAG. These forums provided a snap shot view of rural and remote populations in each health region. It was considered important that the forums were conducted in a neutral, non-stigmatising venue for ease of access and to promote people's comfort in expressing their thoughts.

Some concern was expressed by WAACHO that some of the proposed venues might not be considered appropriate for a meeting with Aboriginal people. In an attempt to resolve this concern, letters were sent to 19 Aboriginal services advising of the review's visit and objective to provide an indigenous-only forum to ensure that Aboriginal mental health needs were reflected in any proposed changes. Each service was asked to consider the appropriateness of the venue for Aboriginal people and to offer the suggestion of an alternative if considered preferable. Two responses were received, one expressing concern over the time of day the forum was scheduled and the other offering assistance to 'spread the word'. Given that no adverse feedback was received regarding the venues, the review proceeded as planned.

The consultations took place in the following towns in June and July 2003: Albany, Broome, Bunbury, Carnarvon, Derby, Esperance, Fitzroy Crossing, Geraldton, Halls Creek, Kalgoorlie, Kununurra Moora, Northam, Port Hedland and Roebourne. A total of 655 personal invites were sent to mental health service providers, general health service providers, government and non-government organizations, religious bodies and Aboriginal services. The WA Community Advocacy Group and Association of Relatives And Friends of the Mentally Ill also sent letters on the review's behalf to their members in the respective towns. An advert was placed in every centre's local community paper two weeks before the forum.



 Department of Health  
Government of Western Australia

### Office of the Review of the Mental Health Act

The Office of the Review of the Mental Health Act need your input to amend the Mental Health Act 1996 and the Criminal Law (Mentally Impaired Defendants) Act 1996.

The meeting will be held at:

**Where:** Yaandina Family Centre Inc, Hampton Street, Roebourne

**Date:** Tuesday 22 July 2003

Who:	Time:
Mental Health Workers	9.30am - 10.30am
General Health Workers	11.00am - 12.00pm
Non and Government Organisations	1.00pm - 2.00pm
Consumers and Carers	2.30pm - 3.30pm
Aboriginal Communities	4.00pm - 5.00pm

**RSVP:** Jill Rapp on 9222 5440 by Tuesday 15 July 2003

Review of the Mental Health Act 1996 and Criminal Law (Mentally Impaired Defendants) Act 1996, 11th floor, Dumas House, 2 Havelock St, West Perth 6005  
Ph: (08) 9222 5440 Fax: (08) 9222 5450  
Country: 1800 222 775 E-mail: jrapp@health.wa.gov.au

The advert in the local paper in Derby attracted interest from the listeners of Radio Station 6DBY, seeking more information. The review was contacted by the station requesting an on air interview with Professor Holman, which was conducted on 18 July 2003. The review was aware that the Christmas and Cocos Islands had adopted the WA Act in legislation. Health personnel on the islands were contacted by telephone to seek their views.

A total of 217 people attended the forums. Each forum was divided into five individual groups, to provide an opportunity for people to feel comfortable to discuss their concerns in their own professional or layperson's language. The total numbers attending in each group were as follows:

Mental health workers	72 people
General health workers	44 people
Government and non-government organizations	51 people
Consumers and carers	33 people
Aboriginal communities (also represented in other groups)	17 people

Each group forum was of approximately one hour in duration, in which the participants were asked to share their personal experiences with the MH and CLMID Acts, express any concerns about both Acts, and suggest recommendations to meet the needs of people living in the rural and remote areas of WA. The rural and remote consultation provided the review with a wealth of knowledge in regards to the difficulties and deficiencies of the present act outside of the Perth Metropolitan area. Proposals to address these deficiencies have been incorporated into the body of this synthesis.

## REFERENCE PANEL

In July 2002, the Minister for Health approved the formation of an Executive (Drafting) Committee as a group of individuals who would provide support to the reviewer in the development of the draft and final reports. It was considered that the group would require specific legal and psychiatric expertise. It was stated also that if additional support was required, it could be co-opted as necessary.

As the review proceeded it became clear that the Stakeholder Committee had become the principal forum for discussion and debate concerning matters before the review. It was agreed in March 2003 to redefine and rename the executive committee as the expert Reference Panel. The function of the Panel became a means to review the draft of the synthesis and provide comments to the reviewer from the perspective of those with relevant knowledge, who had not been directly involved in the Stakeholder Committee or its working parties.

Members of the Panel are:

Ms Catherine Crawford	To provide the reviewer with legal expertise, which is not representing any stakeholders or position;
Dr Carolyn Graham	To provide the reviewer with psychiatry expertise, which is not representing any stakeholders or position; and
Mr Keith Wilson	To provide the reviewer with a broad perspective on community issues and provide feedback to the community.

[Click here for next chapter](#)

# Synthesis