GOVERNMENT OF
WESTERN AUSTRALIA

MENTAL IMPAIRMENT REVIEW TRIBUNAL
WESTERN AUSTRALIA

Annual Report 2024/2025

IN LINE WITH STATE GOVERNMENT REQUIREMENTS, THE MENTAL IMPAIRMENT REVIEW TRIBUNAL'S ANNUAL REPORT IS PUBLISHED IN AN ELECTRONIC FORMAT WITH LIMITED USE OF GRAPHICS AND ILLUSTRATIONS TO HELP MINIMISE DOWNLOAD TIME

President's Overview

I am pleased to present the inaugural annual report of the Mental Impairment Review Tribunal (the Tribunal) for the reporting period from 1 July 2024 to 30 June 2025.

On 1 September 2024, the substantive provisions of the *Criminal Law (Mental Impairment) Act 2023* (WA) (the Act) came into effect, including the provision establishing the Tribunal. The Act replaces the *Criminal Law (Mentally Impaired Accused) Act 1996* (WA), a piece of legislation widely criticised and in need of modernisation.

The Act brought with it much needed reform in the area of mental impairment in the context of the criminal justice system. Whereas previously, courts were forced to make the difficult choice of either detaining a person with a mental impairment via an indefinite custody order, or releasing them unconditionally, it is now the case that in certain circumstances, a person with a mental impairment may be given a community disposition. Additionally, a court making a custody order must now determine a limiting term, this being the court's best estimate of the term of imprisonment or term of detention that the court, in all of the circumstances, would have imposed if the court were sentencing a person for an offence. Aside from cases involving offences so serious that the limiting term set by the court is the rest of the person's life, this new scheme brings an end to the concept of indefinite detention of people acquitted of an offence on account of mental impairment or determined to be unfit to stand trial.

A further enhancement to this important area of law was the establishment of the Tribunal as the final authority in determining when a person is considered suitable to be discharged from their custody order (excluding appellate or extended order proceedings).

When considering the cases falling within its jurisdiction, the Tribunal is ordinarily comprised of six members, each of whom bring considerable expertise and experience to the management of this jurisdiction's cases. Members include either myself or a Deputy President, a psychiatrist, a psychologist, a representative of the Corrective Services division of the Department of Justice, a representative of Disability Justice Service division of the Department of Communities, and a community representative. Pursuant to section 172 of the Act, the Tribunal's community representatives include people with:

- knowledge and understanding of forensic mental health and disability;
- knowledge and understanding of victims' interests and concerns;
- knowledge and understanding of Aboriginal culture local to the State;
- knowledge and understanding of a range of cultures among Australians;
- knowledge and understanding of the criminal justice system;
- broad experience in a range of issues such as issues relating to employment, substance abuse, physical or mental illness or disability, or lack of housing, education or training.

I take the opportunity to express my appreciation to Tribunal members who undertake the important and challenging task of protecting the community while simultaneously ensuring that people within the Tribunal's jurisdiction are not punished more than they would have been had they been convicted of an offence, and ensuring they are not restricted more than necessary.

I would also like to express my appreciation to the dedicated support staff provided by the Department of Justice. The support staff play an integral role in ensuring the Tribunal's decisions are accurately communicated to those involved with each case and do so to an excellent standard.

Finally, I acknowledge the collaboration between the various agencies and organisations involved with the management of supervised persons both in custody and in the community, and I express my appreciation for the detailed reports prepared for the Tribunal's consideration, as well as for the important work they do.

The Honourable Jeremy Curthoys
President
Mental Impairment Review Tribunal

September 2025

The Tribunal

TRANSITIONAL REVIEWS

Section 254 of the Act required the Tribunal to review all cases inherited from the repealed *Criminal Law (Mentally Impaired Accused) Act 1996* (WA) that were under the supervision of the Mentally Impaired Accused Review Board. These reviews took place between September and November 2024.

During the transitional review period, the Tribunal designated a Supervising Officer, pursuant to section 99 of the Act, to all pre-existing supervised persons. As stipulated in section 78(3) of the Act, the Tribunal must designate a Supervising Officer to a supervised person and this officer monitors the compliance and engagement of the supervised person whilst on their leave of absence or community supervision order.

The Tribunal also issued new Leave of Absence Orders (LOA) during the transitional review period to bring all pre-existing orders into line with the new legislation.

TRIBUNAL SITTINGS
SEPTEMBER 2024 – JUNE 2025

SITTINGS	TOTAL
ADULT	41

'Sittings' refers to each occasion on which the Tribunal convened.

LOA ORDERS ISSUED & SUPERVISING OFFICER DESIGNATED
SEPTEMBER 2024 – JUNE 2025

DECISIONS		Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
ADULT	LOA Orders Issued	32	22	1	1	0	0	0	1	1	0	58
	Supervising Officer Designated	32	22	1	1	0	1	0	4	1	1	63

'Decisions' refers to the count of determinations the Tribunal made during Tribunal and Authorised Persons sittings.

PERSONS SUPERVISED BY THE TRIBUNAL

- The Tribunal currently oversees 49 adult and one juvenile supervised persons.
- Of the 49 adult supervised persons, five are female and 44 are male.
- Since the inception of the Tribunal on 1 September 2024, 13 supervised persons have been discharged from their Custody Orders.
- All but seven supervised persons under the Tribunal's oversight were previously the subject of orders under the repealed legislation.

DECISIONS OF THE TRIBUNAL

As at 30 June 2025, the Tribunal oversaw 50 LOA Orders. A LOA Order permits a supervised person's absence from their place of custody under conditions stipulated by the Tribunal. Generally, when a person becomes subject to the Tribunal's oversight, the conditions under which a person is permitted to be absent from their place of custody are highly limited (for example, an absence may only be permitted for medical reasons and would be subject to close supervision). Over time, as the supervised person recovers, the Tribunal is able to gradually increase the freedom available to the supervised person via relaxation of the conditions of a LOA Order, achieving the goal of subjecting the supervised person to the least possible restriction on their freedom consistent with the protection of the community.

The Tribunal receives the considerable benefit of the collaborative efforts of agencies and branches such as the Department of Communities' Disability Justice Service, the State Forensic Mental Health Service, Guardians (usually from the Department of Justice's Office of the Public Advocate) and Supervising Officers employed in the Adult Community Corrections branch of the Department of Justice. This level of interagency collaboration is a feature of the new legislation and did not occur to the current extent during the operation of the Mentally Impaired Accused Review Board.

Recommendations are frequently jointly agreed by stakeholder agencies, giving the Tribunal the necessary advice to safely determine how the least amount of restriction can be imposed on a supervised person while ensuring community safety.

The Tribunal varied the conditions of LOA Orders on 42 occasions during the financial year.

LOA ORDER CONDITIONS VARIED BY THE TRIBUNAL
SEPTEMBER 2024 – JUNE 2025

DECISIONS 2024		Jul	Aug	Sep	Oct	Nov	Dec
ADULT	LOA Order Conditions Varied	0	0	2	2	6	4

DECISIONS 2025		Jan	Feb	Mar	Apr	May	Jun
ADULT	LOA Order Conditions Varied	2	8	4	2	7	5

DECISIONS 2024-2025		TOTAL
ADULT	LOA Order Conditions Varied	42

COMMUNITY SUPERVISION ORDERS

An important feature of the new legislation is the introduction of a community-based disposition option for courts that have determined a person to be not guilty on account of mental impairment or unfit to stand trial. A Community Supervision Order provides the Tribunal with the opportunity to craft conditions which protect the community while requiring the supervised person to engage with specialist agencies that provide supervision and/or treatment.

The Tribunal currently oversees four supervised persons who are subject to Community Supervision Orders. During the reporting period, no conditions of a Community Supervision Order were breached.

EXTENDED ORDER HEARINGS

Pursuant to section 103 of the Act, the Tribunal is required to provide the Minister with a report outlining whether or not an extended order application to the Supreme Court is recommended. Upon receipt of the Minister's application, the Supreme Court may extend a Custody or Community Supervision Order if satisfied that is it necessary on grounds that relate to the protection of the community as stipulated at section 100(3) of the Act.

During the 2024/2025 financial year, the Tribunal recommended the Minister apply to extend nine Custody and Community Supervision Orders and did not recommend the Minister apply to extend Custody and Community Supervision Order on 29 occasions.

EXTENDED ORDER RECOMMENDATIONS
SEPTEMBER 2024 – JUNE 2025

RECOMMENDATION	TOTAL
EXTENDED ORDER – NOT RECOMMENDED	29
EXTENDED ORDER – RECOMMENDED	9