



OFFICE OF THE INSPECTOR  
OF CUSTODIAL SERVICES

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MEDIA RELEASE

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**Mentally impaired accused on 'custody orders': Not guilty, but incarcerated indefinitely**

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The plight of mentally impaired accused and those judged of unsound mind trapped in WA's prison system are the subject of a report released today by the Inspector of Custodial Services.

On releasing the report Inspector Neil Morgan said:

Overall this review generally confirmed, quite unequivocally, what many people had suspected. Our current system for managing mentally impaired accused is unjust, under-resourced and ineffective.

The issue of people held on custody orders under the Criminal Law (Mentally Impaired Accused) Act has been subject to considerable recent media attention due to the sad plight of Ms Rosie Anne Fulton, who is being held indefinitely in Eastern Goldfields Regional Prison after being found unfit to stand trial. Media scrutiny of her case follows on from the concern that greeted the case of Mr Marlon Noble when it became known four to five years ago.

This report is the first full study on the number, profile, and circumstances of people held under the Act. It finds that Ms Fulton's case is far from unique. One particular case that has stood out to Mr Morgan was that of 'Mr B', who he met on a prison inspection in 2012, and who continues to be incarcerated without being convicted of any offence:

Mr B is still a prisoner, five and a half years since his custody order was imposed. If he had been well enough to be tried and convicted he would not have served anything like this period. Indeed, he might not have been sent to prison at all.

The report also examines the circumstances of the distinct group of offenders who are acquitted by reason of 'unsoundness of mind' (commonly called the insanity defence). This cohort typically progress to release more quickly than those deemed unfit to stand trial but their rehabilitation is impacted by a chronic shortage of forensic mental health beds.

For both types of offenders, the prison system is absolutely an inappropriate place to be accommodated, a fact that has long been acknowledged by successive governments. In the

case of these particularly vulnerable individuals within our society Mr Morgan poses the question of why, when the issues are known, there has been so little action:

The issues have dragged on far too long. Immediate pragmatic legislative changes are required to make the Act more workable and more just, including increased judicial flexibility and oversight, and a time limit on the duration of custody orders.

Mr Morgan acknowledged encouraging recent signs of progress, including this Government's commitment to establishing a 'declared place' for people with a cognitive impairment, and the development of a business case for the expansion of forensic mental health services and infrastructure. In addition, the Department of the Attorney General has committed to a public consultation process on amending the Act later this year.

The report makes a number of recommendations to improve the management of mentally impaired accused. Mr Morgan said:

Reform can be staged if necessary and it is important not to lose the opportunity to make good practical changes even if comprehensive longer term reform will take longer. The first stage will be to give more discretion to the courts and, at the same time, to action broader reforms to forensic mental health and to services to address issues of cognitive impairment.

The report is available on the Office of the Inspector of Custodial Services website at (<http://www.oics.wa.gov.au/publications/review>).