

2017 ANNUAL REPORT

by the Chief Advocate for Residents of
Declared Places Under the Declared Places
(*Mentally Impaired Accused*) Act 2015





Cover Image

The artwork on the front cover and throughout the Annual Report is a piece called '*Decomartmentalized*' by artist Carmel Sayer and is reproduced with her kind permission. Copyright remains with the artist, Carmel Sayer.

Carmel Sayer uses her artwork to explore the relationship between post modern global society and the diminishment of human spirituality. Through her work, Sayer explores the adverse effects on humanity and the soul, rising from the misuse of technology and a loss of connectivity with nature and one's self within high density urban environments.

Carmel Sayer is a graduate of the National Art School. She has lectured in the field of Fine Art, whilst taking up roles as project manager, facilitator and community artist in the Peel region, Western Australia. Currently Carmel is Artist-in-residence for 2017 at Contemporary Arts Spaces, Mandurah.

'*Decomartmentalized*' is a portrait of Carmel's daughter when the 'thoughts' have taken over, decompartmentalized, they move around in differing fragments as she struggles to hold her thoughts together and stay in the present. The strong, bold colours juxtapose the dark subject

Photo credit, Ross de Hoog

Hon Stephen Noel Dawson MLC

MINISTER FOR DISABILITY SERVICES

In accordance with section 56(3) of the *Declared Places (Mentally Impaired Accused) Act 2015*, I submit for your information and presentation to Parliament the Annual Report of the Chief Advocate for the financial year ending 30 June 2017.

The report records the activities of the Advocates who provided services to residents of the Bennett Brook Disability Justice Centre, a declared place, during the 2016-2017 year.



Debora Colvin

CHIEF ADVOCATE

5 October 2017

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Foreword by the Chief Advocate

Following on from its somewhat rocky first year of operation, the Bennett Brook Disability Justice Centre has had a mixed year in 2016/2017 and there are questions about its future.

The year started with no residents in the Disability Justice Centre due to a physical security upgrade during which the residents were returned to prison. On their return to the Disability Justice Centre it took some time to undo the harm to the residents' rehabilitation and reintegration progress that the time in prison had caused.

The Advocates worked with the staff of the Disability Justice Centre to ensure that the accepted recommendations of the Blaxell Hayward Report were implemented. The recommendations broadly stated that residents' Individual Development Plans should be individualised and outcomes focused and take into account what had worked and what hadn't. The Advocates gave good, focused input which was acted upon so that by the end of the year both residents were progressing well. These learnings could easily be replicated for new residents.

It is disappointing that there were no new admissions during the year although it is understood that there are other mentally impaired accused people in prison who could be referred. There is therefore a need to look at the selection criteria and process for approval.

The caution around sending another person to the Disability Justice Centre may be a reaction to the problems associated with its first year of operation – security issues and some vocal local community disquiet. The security issues seem to have been resolved by the security upgrade, however, and there were no unauthorised absences in 2016/2017. The disquiet amongst some members of the community, although not gone, seems to be less than it was in the previous year.

Following on from the community concerns and in line with pre-election comments, on 4 August 2017 the Disabilities Services Minister, Hon Stephen Dawson, announced that there would be a review of the Disability Justice Centre. The review by Alan Carter is to examine:

- the extent to which the centre is fulfilling its purpose as a Declared Place, as specified by the Declared Places (Mentally Impaired Accused) Act 2015
- the appropriateness of the Disability Justice Centre's location and the processes used to engage the local community in the establishment of the centre
- strategies for maximising the value to the community of operating a Declared Place as envisaged by the Act
- lessons to be learnt from the establishment and operation of the Disability Justice Centre
- options available to the State Government in relation to the future of the Disability Justice Centre.

It is hoped that this Annual Report will reflect some of the good work that is being done, and that is offered by the Disability Justice Centre, to ensure its continued and expanded operation.

While the process for establishing the Disability Justice Centre and the engagement process with the local community at establishment was sub-optimal, lessons have been learned. Through targeted interventions the residents are progressing so that in a short to medium timeframe they will be able to be reintegrated into the community. If the Disability Justice Centre was closed down and the residents returned to prison, it is quite likely that they would regress, as they did when they were returned to prison from May to August 2016, resulting in the likelihood that they would remain in in prison for the long term. Apart from the severe impact on the residents, there is a significant societal and financial cost in keeping people locked up in prison.

The need to urgently amend the *Criminal Law (Mentally Impaired Accused) Act 1996* that I raised in last year's report, didn't happen during 2016/2017, although the new Government made commitments at this year's election to make amendments. One of those commitments was to "*limit terms so custody orders are no longer than the term the person would likely have received, had they been found guilty of the offence*". If this commitment had been law, the current residents would no longer be under orders and would have been living back in the community.

This report sets out the legislative and structural framework around the advocacy services rather than provide detail of the advocacy provided to residents as it is important to ensure that the confidentiality of the residents is maintained.

Finally, I would like to thank the Senior Advocate and the two Advocates who visit the Disability Justice Centre for their continued good work through the year.



Debora Colvin
CHIEF ADVOCATE

Right of Residents of a Declared Place to Advocacy Services

Part 10 of the *Declared Places (Mentally Impaired Accused) Act 2015* (the Act) makes it a right of people who are detained in a declared place that they must have access to, and the protection of, advocacy services.

The Act sets out principles and objectives which state that the purpose of the custody is the protection of the community and the residents of the declared place, as well the training and development of the residents. The custodial powers provided in the Act are balanced by a range of safeguards to protect resident welfare which include the provision of advocacy services.

People detained in psychiatric wards in authorised hospitals and prisoners in jail similarly have legislation which provides them with a level of protection¹. This is because detention is by its very nature disempowering for the person detained and can lead to abuse.

The advocacy services provided under the Act are aimed at providing rights protection while also fostering the development of the resident, with the Advocate working alongside the resident on their Individual Development Plan (IDP).

What is a “declared place”?

A “declared place” is a “place declared to be a place for the detention of mentally impaired accused by the Governor by an order published in the Government Gazette” under the Criminal Law (Mentally Impaired Accused) Act 1996 (the CLMIA Act).

There is only one declared place in Western Australia - the Bennett Brook Disability Justice Centre (the Disability Justice Centre) in Caversham, established and managed by the Disability Services Commission (DSC) pursuant to the Act. It is a residential-style facility which can accommodate 10 mentally impaired accused, hereafter referred to as residents.

Who are the residents of a “declared place”?

Under the CLMIA Act the only people eligible for detention in a declared place are those who:

- are a mentally impaired accused on a Custody Order
- are over 16 years old
- have a disability as defined in the *Disability Services Act 1993* and the predominant reason for the disability is not mental illness.

¹ See Part 20 of the *Mental Health Act 2014* establishing the role of the Chief Mental Health Advocate and advocacy services and the *Inspector of Custodial Services Act 2003* providing inspection functions and an independent visitor service in prisons and detention centres.

“Mentally impaired accused” are people who are accused of a criminal offence but are found to be mentally unfit to stand trial or not guilty on the grounds of unsoundness of mind. The charge against them is dismissed without any finding as to guilt or otherwise but they may be put on a Custody Order under the CLMIA Act. If they are put on an Order, the person must be detained indefinitely until the Governor orders that they be released. There are four possible places of detention:

- an authorised hospital (when the accused has a mental illness that is capable of treatment)
- a declared place
- a detention centre (when the accused is under 18 years of age), or
- a prison.

A “disability as defined in the *Disability Services Act 1993*” means that only those people on a Custody Order with an intellectual impairment or possibly dual diagnosis where intellectual impairment is the predominant reason for the disability, can be eligible for a place in the Disability Justice Centre. Those people on a Custody Order due to a mental illness alone are not eligible.

The aim of the Disability Justice Centre is to provide an option that is appropriate and rehabilitative for people with intellectual or cognitive disability, or autism, as an alternative to prison and to help prepare them for release in to the community. This is why the Disability Justice Centre is managed and funded by the DSC.

During 2016/2017 there were only two residents in the Disability Justice Centre although it can cater for 10 people.

Criteria and Process for Admission

The Mentally Impaired Accused Review Board (the MIAR Board) and the Minister for Disability Services (the Minister) decide whether a person can be detained in the declared place, that is, the Disability Justice Centre.

As at 30 June 2016, according to the Annual Report of the MIAR Board, there were 39 mentally impaired accused under the MIAR Board’s statutory authority, one less than the 40 under the MIAR Board’s statutory authority at 30 June 2015.

During the year 1 July 2015 to 30 June 2016 at various times 42 individuals were under the MIAR Board’s statutory authority. This was one more than the previous year. Of those 42, 28 people had a diagnosed mental illness (66.6%), seven people had a diagnosed intellectual impairment (16.7%), six people had a dual diagnosis of a combined intellectual impairment and mental illness (14.3%) and one person was diagnosed with a medical condition that constituted a mental impairment but which did not meet the definition of a mental illness or an intellectual impairment (2.4%).

In the reporting year, 1 July 2016 to 30 June 2017, four new people were put under the MIAR Board’s statutory authority.

The MIAR Board must be satisfied that the person meets the criteria and have regard to the degree of risk that the accused's detention in the declared place appears to present to the personal safety of people in the community or of any individual in the community. This is a prime consideration.

The MIAR Board first asks the DSC to undertake a "suitability for placement" assessment for any mentally impaired accused person who they are considering for placement at the Disability Justice Centre. Disability Justice Clinicians undertake the suitability for placement assessment. The CLMIA Act also requires that a representative of the DSC must be a member of the MIAR Board and be present when the MIAR Board is making a decision regarding any placement at the Disability Justice Centre. The DSC's representative at the MIAR Board does not undertake the suitability for placement assessment.

The DSC process is to produce an initial assessment which is then considered by a panel comprising the Director Disability Justice Service, the DSC's representative on the MIAR Board, the Manager of the Disability Justice Centre (or delegate), the clinicians who carried out the assessment, and other relevant representatives. The panel then makes a recommendation to the MIAR Board as to whether or not the person is deemed suitable for placement.

The MIAR Board considers the DSC report and determination along with any other materials or expert reports available to it.

If the MIAR Board decides to recommend the detention of the mentally impaired accused at the Disability Justice Centre it sends the Minister a statutory report containing a comprehensive and detailed summary of all of the accused's circumstances, and the MIAR Board's reasons for the recommended placement. The Minister then decides whether or not to consent to the placement. If consent is refused, the person is likely to remain in prison.

Leave of Absence Orders

Mentally impaired accused, whether in a declared place or a prison, may be given Leave of Absence orders (LOAs). The LOAs are granted by the MIAR Board following approval by the Governor. They cannot exceed 14 days and the MIAR Board is to have regard to risk and compliance factors. LOAs are relied on by the Disability Justice Centre as central to the programs used to assist with preparing residents for reintegration into the community and ultimate release. Residents therefore spend a considerable amount of time outside the Disability Justice Centre on day and overnight leave as determined by the MIAR Board's LOAs. Consent to placement in the Disability Justice Centre includes this in the consideration of risk to the community.

The Advocacy Service

Part 10 of the Act establishes the advocacy services for residents of a declared place including a Chief Advocate and Advocates. The Chief Advocate must be informed of the arrival of every new resident in the declared place no later than 48 hours after their arrival. The Chief Advocate must then ensure that the resident is visited or otherwise contacted by an Advocate within 7 days of the resident's arrival (the statutory contact).

Residents can request visits or contact outside the statutory contact and an Advocate must contact them within 72 hours of the request being made. The Chief Advocate must also ensure that an Advocate makes contact with each resident on request and at least four times a year. Residents can, however, decline to be contacted.

The Chief Advocate must also report to the Minister on the activities of the Advocates as soon as practicable at the end of a financial year and the Minister must, within 14 days after receiving the report, cause a copy to be laid before each house of Parliament.

Role of the Advocates

The role of the Advocates is to protect residents' rights and, as the name suggests, advocate for them. In particular they must be involved in the preparation and review of a resident's IDP and the Chief Advocate must be advised of the use of regulated behaviour management which includes medication, restraint and seclusion.

Each Advocate has these functions (see section 53 of the Act) —

- a) visiting or otherwise contacting residents
- b) acting as the personal advocate of residents to safeguard their health and safety and foster their development
- c) monitoring orders under section 10 of the Act restricting freedom of communication
- d) monitoring the use of regulated behaviour management
- e) inquiring into or investigating any matter relating to an environmental condition of the declared place that is adversely affecting, or is likely to adversely affect, the health, safety or wellbeing of residents
- f) inquiring into or investigating the extent to which explanations of the rights of residents have been given in accordance with the Act and the extent to which those rights are being, or have been, observed
- g) assisting residents to protect and enforce their rights
- h) inquiring into, and seeking to resolve, complaints made to Advocates about the management or care of residents
- i) assisting a resident to make a complaint to the person who operates the declared place
- j) assisting a resident to make a complaint under the Disability Services Act 1993

- k) being a resident's representative in respect of a complaint if recognised as the resident's representative under the Disability Services Act 1993
- l) liaising with the resident's enduring guardian or guardian
- m) assisting residents to access legal services
- n) referring any issues arising out of the performance of a function of the Advocate to the appropriate person to deal with those issues, including to the Chief Advocate, if the Advocate cannot resolve the issue or otherwise considers it appropriate to refer the matter
- o) participating in the planning and provision of services received by residents and the preparation of their IDPs.

Powers of the Advocates

The Advocates have substantial powers in keeping with their protection of rights and “watchdog” role which are very similar to the power of Advocates under the Mental Health Act 2014.

Apart from doing anything necessary or convenient for the performance of the Advocate's functions under section 54 of the Act they may:

- with or without notice, at any time, and for any length of time —
 - (a) visit a declared place and inspect any part of the place
 - (b) visit, or otherwise have contact with, any one or more residents, except a resident who has declined to be contacted by an advocate
- ask a person who works at a declared place questions about any of these matters —
 - (a) the welfare, health, care, training, safety, management or security of any resident
 - (b) the operation, control, management, security and good order of a declared place, to the extent to which the matter is relevant to a matter mentioned in paragraph (a)
- inspect and copy any document at a declared place relating to the place
- inspect and copy any of the following documents, wherever held, except a document to which the advocate has been denied access by the resident —
 - (a) the resident's IDP
 - (b) any other document included, and the information recorded, in the resident's file
 - (c) any of the records listed in section 10(6)(a)(i) and (ii) of the Act that relate to the resident
 - (d) any other document in the possession or control of the person who operates the declared place that relates to the resident
- require a person who works at a declared place to give reasonable assistance to the advocate for the purpose of the performance of the advocate's functions under this Act.

It is an offence under section 55 of the Act to not answer the Advocate's questions, to hinder or fail to assist them, or give them wrong information.

The Advocates are under the control of the Chief Advocate and residents retain the right at all times to decline to be visited or otherwise contacted or to not consent or withdraw consent to the Advocate having access to their records.

Who are the Advocates?

The Declared Places (Mentally Impaired Accused) Regulations 2015 to the Act prescribe that the Chief Mental Health Advocate and Mental Health Advocates as defined in the *Mental Health Act 2014* are the Chief Advocate and Advocates for the Act. The functions and powers of mental health advocates under the *Mental Health Act 2014* are very similar to the functions and powers of Advocates under the Act.

Currently, two Advocates and a Senior Advocate engaged by the Chief Advocate under the *Mental Health Act 2014* work as Advocates under the Act. All three Advocates received training on the Act prior to the Disability Justice Centre opening and continue to stay current with issues to do with advocacy under the Act.

Other Residents' Rights

One of the most fundamental requirements of the Act and therefore right of residents of a declared place is that they are to be provided the best possible training including development programs that promote their physical, mental, social and vocational abilities (see section 5(2) of the Act).

Furthermore, pursuant to section 6 of the Act programs and services for residents must be designed and administered so as to:

- respect the rights of residents to be treated with dignity, courtesy and compassion; without discrimination or stigma; and with equality of opportunity
- be sensitive and responsive to the diverse and individual circumstances and needs of residents taking into account their age, gender, spiritual beliefs, culture or linguistic background, family and lifestyle choices
- reduce the risk of residents offending or re-offending
- assist residents to live, work and participate in the community and be as independent as possible
- maximise quality of life for residents
- assist residents to be trained, developed and cared for in a manner that is the least restrictive option in the circumstances taking into account the need for protection and safety of residents and the community.

The Act also stipulates that an IDP is to be prepared for each resident, and the resident is to be managed and is to receive “care, support and protection” as required by that plan. The Advocates must be consulted as part of the preparation of a resident’s IDP and this is a major part of their work with residents.

Other rights include:

- the right to be told their rights
- freedom of lawful communication – though this right may be restricted in certain circumstances in which case the order must be made and the resident’s Advocate advised (and the restriction cannot deny the resident access to the Advocate, lawyer or Guardian)
- confidentiality
- the right to not be ill-treated
- process and procedure around:
 - incident reporting
 - regulation of behaviour management including seclusion and restraint and notifying the Chief Advocate
 - searching residents.

Activities of Advocates

At 1 July 2016 there were no residents at the Disability Justice Centre due to security upgrade works under construction. The upgrade followed a report requested by DSC from external security consultants and a security analysis by the Department of Corrective Services' Security and Response Service. The upgrade recommended included:

- increasing the height of the internal perimeter fence from 2.1 metres to 4.5 metres
- installing an anti-dig plinth
- providing additional security to external facing windows in residential units and the common room
- making enhancements to the security and communication system.

This work was completed in late July 2016 and the former residents, who had been moved back to prison at the commencement of the security alterations, were returned to the Disability Justice Centre on 5 August 2016.

Although the Disability Justice Centre has a capacity of 10, aside from the residents who returned to the Disability Justice Centre in August, no new residents were approved by any of the three Ministers who held office during the 2016-2017 year. The last new resident to move into the Disability Justice Centre was therefore in December 2015.

Advocate Visits and Contacts

During the period 5 August 2016 to 30 June 2017² in which there were residents in the Disability Justice Centre, Advocates made 20 visits and met with residents on 13 occasions.

Advocates' work during visits included continuing to build a level of trust and understanding with the residents on their return from prison, working with them on their IDPs, and assisting with MIAR Board reviews.

Reports to the Chief Advocate

Section 42 of the Act requires that the CEO of DSC ensure that every three months the Chief Advocate is notified about any and all residents' records of behaviour management medication, restraint and seclusion. Four quarterly reports from the CEO, detailing each document included, and the information recorded, in residents' files were provided as required under the Act.

Residents' Issues

The main focus of the Advocates' work was to ensure that their rights under the Act were being observed including the provision of services that meet their individual cultural and linguistic, medical, numeracy and literacy, and emotional needs.

² Advocates' functions and powers only apply while the residents are in the Disability Justice Centre and did not apply while they were in prison.

There was unfortunately an impact on the residents of having been sent back to prison between 20 May and 5 August 2016 including:

- disruption to residents' LOAs
- loss of contact with Disability Justice Staff for several weeks impacting on the progress of their IDPs
- a resident reporting a serious incident resulting in an examination in hospital and a police interview. Although not technically a resident of the Disability Justice Centre at the time, the Advocate was informed by the Disability Justice Centre Manager. The Advocate requested that the resident see their usual doctor and be offered counselling on return to the Disability Justice Centre and this occurred.

Examples of other issues involving Advocates during the year included:

- a resident's complaint involving a staff member, which was resolved to the satisfaction of the resident and included acknowledgement by Disability Justice Centre management that they could have handled the issue differently and a commitment to do better in future
- reporting that a resident's file was outdated, contained inaccurate or incomplete information, and that medical notes had not been updated for some months, although a list of current medications was kept electronically elsewhere. After raising the issue, medication lists were updated and a protocol drafted to ensure that amendments to one list would result in amendments to all lists at the same time.
- checking the files of residents following an issue in April 2017 to satisfy themselves that policies, including the Operational Guidelines and Behaviour Support Plans, were appropriate and that their requirements had been met.

Issues reported by Advocates included:

- boredom and social friction due to there being so few other residents
- desire to live with others, preferably outside the Disability Justice Centre
- desire to have a job or to be doing some similar contributing activities.

Individual Development Plans

The Act stipulates that programs and services at the Disability Justice Centre are to be delivered in accordance with the IDP for each resident. The plan, which must be in writing, must be reviewed before the expiry of 6 months after it is first prepared and then every 12 months. Residents can also request a review because of changed circumstances.

The main role of Advocates in relation to residents' IDPs, has been to make sure the IDPs are outcomes-focused with programs suiting individual resident needs, and that recommendations of the Blaxell Hayward Report³, commissioned in January 2016 by the then Minister for Disability Services, were followed. The report was an independent analysis of the IDPs, programs and services for residents of the Disability Justice Centre, which resulted in a number of recommendations to improve the IDPs which were accepted by the Minister. See annexure 1.

³ Bennett Brook Disability Justice Centre Independent Analysis of Individual Plans, Programmes, and Services for Residents by the Hon. Peter Blaxell and Professor Colleen Hayward AM

The contents of IDPs are specified by the Act (section 13) to include an outline of the proposed arrangements for programs and services which will:

- promote the resident's development, habilitation, rehabilitation and quality of life
- provide for the resident's management, care, support and protection
- reduce the intensity, frequency and duration of the resident's behaviour that places at risk the health or safety of the resident or others, including positive behaviour support
- support the resident's reintegration into the community.

In addition the IDP must include:

- an outline of the proposed plan for the resident's transition to participation and inclusion in the community
- details of any medication and provision for the review of the resident's health care medication
- what constitutes appropriate or inappropriate regulated behaviour management for the resident's case
- details of any medication prescribed as behaviour management medication
- details of each emergency when a restraint was used on the resident or the resident was placed in or returned to seclusion
- strategies for avoiding, reducing and eliminating any further use of a regulated behaviour management.

The Act also requires that all residents be assessed (for the purposes of each IDP) by at least two persons with appropriate qualifications or experience from two different disciplines. An assessment by a qualified behaviour support specialist is also required if the IDP has a positive behaviour support component.

Advocates strongly supported residents' cultural needs and attachment to family and community through the goals and aims of their IDPs, as being one of the best methods of rehabilitation and reintegration into the Western Australian and their own communities in the future.

Advocates reported that by 30 June 2017:

- the residents' IDPs were amended so that the residents' activities were linked to goals and concentrated on activities that excited their interest
- the residents' IDPs took into account recommendations 1, 2 and 3 of the Blaxell Hayward Report
- there was linkage between the IDP and residents' LOAs such that the LOAs were linked to the IDP goals/outcomes
- measurements against goals had been established so that achievements towards goals were taken into account and new or amended goals were developed as the result of achievements.

Advocates contributed to the IDPs in various ways including:

- making suggestions regarding activities which were more appropriate for the goals of the individual resident
- advocating for the implementation of the Blaxell Hayward Report and getting this achieved before 30 June 2017
- making suggestions regarding activities which were more culturally appropriate
- using their experience with mental health issues to suggest mental health consultations and reviews of medication and other therapies.

All of the residents had LOAs made by the MIAR Board which allowed the IDPs to include a program of absences from the Disability Justice Centre. The objective of the LOAs is to give a staged, gradual and supervised transition back into the community, which is the ultimate goal for all residents.

Reviews by the Mentally Impaired Accused Review Board

Residents are required to be reviewed by the MIAR Board and a report sent to the Minister at least once a year and whenever it thinks there are special circumstances which justify doing so. The MIAR Board has agreed to keep the Chief Advocate advised in advance of all Board reviews scheduled for Disability Justice Centre residents. Letters are also sent to the Chief Advocate following a hearing by the MIAR Board containing the decision of the Board, any reasons for that decision, and the next date the matter will be considered by the Board.

Advocates were involved in three MIAR Board reviews for residents during the period to 30 June 2017. Written submissions were provided to the MIAR Board in one case as prepared by the Advocate on behalf of the resident. The submission highlighted the positive work done with and by the resident at the Disability Justice Centre.

In addition the MIAR Board held further reviews in August 2016 as orders needed to be amended to allow the residents to be returned to the Disability Justice Centre from prison on completion of the security renovations undertaken at the Disability Justice Centre.

Other legal issues

In addition to advocating for residents in relation to their MIAR Board reviews, Advocates assisted with advocacy on guardianship and administration orders by the State Administrative Tribunal. Advocates also made direct contact with residents' lawyers and guardians across a spectrum of issues of mutual interest during the year including legal, medical and cultural issues, and in respect of LOA approvals. Guardians were sometimes involved with the IDP process and their input was sought for the measurement and monitoring of achievements towards goals.

Systemic Advocacy

Addressing Community Concerns

As reported in last year's Annual Report, in January 2016 there was considerable controversy and calls for the Disability Justice Centre to be closed following two residents going absent without leave.

The Chief Advocate spoke out in January 2016 and continues to speak out in strong support of the Disability Justice Centre on the basis that the concerns were caused by misunderstandings and miscommunication. Residents are no risk to public safety, more especially since the security upgrade made over a year ago. There is also a rigorous screening process before admission.

It is important that the Disability Justice Centre is sited within a community because the aim is to reintegrate residents so that they do not remain incarcerated for the rest of their lives.

As an example of this and how residents can, and are, contributing to the local community, can be found in projects agreed by the Disability Justice Centre Community Engagement Group. Established in late 2016, the group aims to build and maintain linkages between the local community and the Disability Justice Centre. Projects undertaken to date by residents have included "mud kitchens" for a local primary school and local playgroup (as seen in photo) and a sink made for a local high school (as seen in photo). The residents were supported to utilise their woodwork skills to construct the mud kitchen before completing the artwork using designs and colours of their choice. This work is assisting the residents to gain vocational qualifications that will enable them to engage in meaningful work as part of their eventual return to living in the community. Residents have also made items for personal use such as garden boxes and benches for the veranda area outside of their



An example of a 'mud kitchen' made for local primary school and playgroup by residents of the Disability Justice Centre.

units. One of the residents has created a planter box for cultivating chillies which are then used when cooking. Construction of these products is further contributing to the residents' ongoing skill development.

Apart from the security upgrade referred to above, various attempts to address ongoing community concerns continued during the year, although there have been no further instances of unauthorised absences.

On 19 July 2016 the then Minister hosted a community meeting which the Chief Advocate attended. The stated aims of the meeting were to:

- inform community members about the recent developments at the Disability Justice Centre
- explain the findings of the Blaxell Hayward Report
- provide local residents with information about the Disability Justice Centre's security upgrade
- explain programs available to Disability Justice Centre residents including LOA arrangements.

One of the outcomes of this community meeting was the establishment of a Community Engagement Group. The aim of the group was to provide a forum for information exchange between the Bennett Brook local community and the DSC.

On 22 November 2016 the then Director General of the DSC wrote to the Chief Advocate inviting the Chief Advocate to attend a meeting of the Community Engagement Group to provide the group with general information about the services provided by Advocates. The invitation was accepted and a PowerPoint presentation developed in early 2017 but the presentation did not proceed. The Chief Advocate remains willing to provide a presentation to the Community Engagement Group or any other community forum to provide information on the advocacy services for residents of the Disability Justice Centre.



A sink made by residents of the Disability Justice Centre for a local high school.

In March 2017, local member of Parliament, Hon Dave Kelly, was quoted in a report in a community newspaper, the Eastern Reporter, as saying, *“Mark McGowan gave a commitment to review the Disability Justice Centre on Lord Street and that review will include whether or not the location is going to be appropriate. I am very keen to make my view known when that review takes place and that is it is in the wrong place and it should be moved”*.

The announcement about the review foreshadowed in this report was made on 4 August 2017. The Chief Advocate and Advocates working with residents at the Disability Justice Centre were assured by the Minister that they would be interviewed as part of the review.⁴

Urgent need to amend the CLMIA Act

In last year’s Annual Report, the Chief Advocate called for the urgent need to amend the CLMIA Act. In July 2016 the Chief Advocate was invited by the then Attorney-General to take part in a working party to review recommendations 13 and 16 of the “Final Report of the Review of the Criminal Law (Mentally Impaired Accused) Act 1996”. The working party was chaired by Hon Peter Blaxell and a report delivered in October 2016.

The benefits to society of the Disability Justice Centre in part depend on amending the CLMIA Act. Currently lawyers will do everything they can to avoid a person pleading not guilty by reason of unsound mind or not able to stand trial, because of the gross injustice of the CLMIA Act. By way of example, if the current residents of the Disability Justice Centre had been able to plead to the charges they were accused of committing, and had been found guilty, they would most likely have completed their sentences and would be living freely in the community.

Failure to amend the Act means many more people with cognitive impairment are pleading guilty and going to prison, where they are vulnerable to abuse and institutionalisation resulting in more issues when they are released, when they could be gaining from the programs offered at the Disability Justice Centre.

It is noted that it is an election commitment of the Government to make the following reforms in its first year in office:

- allow the judiciary the discretion to impose a range of options for mentally impaired accused such as community-based orders for mentally impaired accused found unfit to stand trial
- limit terms so custody orders are no longer than the term the person would likely have received, had they been found guilty of the offence
- introduce new procedural fairness provisions which provide for rights to appear, appeal and review
- ensure determinations about the release of mentally impaired accused from custody, and the conditions to be attached to such release (if any), are made by the MIAR Board but with the right of review before the Supreme Court on an annual basis.

⁴ This took place on 18 August 2017.

Other Activities

During the course of the year the following other activities took place relating to the Disability Justice Centre and its residents:

- Meetings and discussions were held with Taryn Harvey, CEO of Developmental Disability WA. These discussions revolved around sharing information and issues concerning the operation of the Disability Justice Centre.
- The Chief Advocate met with officers from the Office of the Auditor General⁵ in connection with an audit of serious incident reporting of those living with a disability. The focus of the audit was on the management of the Serious Incident Reporting System by the DSC.
- In accordance with the agreed funding arrangements, two invoices for advocacy services to the DSC during the 2016/2017 financial year were prepared and sent, which the DSC paid.

⁵ This took place on 26 June 2017.

Annexure 1 - Blaxell Hayward Report Recommendations

1. Goal setting in Individual Development Plans.

We recommend that the goals in each IDP be structured and expressed in a way that the resident will readily understand (when read out to him). Ideally there should be a single long term goal expressed in very simple terms (e.g. "To live at home with my family", or "To live in a unit near my family"). There should then be as few as possible subsidiary goals of a milestone character (e.g. "I will not use drugs", "I will not breach my LOAs") which are necessary precursors to achieving the long term goal. During preparation of the IDP, these goals should be set out diagrammatically and/ or pictorially so that the resident readily understands them and gains a clear visual perception of what he will have to do if he is to live in the community. We also suggest that the details of programs which will be undertaken to achieve these goals should not be incorporated into the goal structure, but should be set out in a separate section of the IDP.

Response to (1) - accepted.

The Disability Services Commission will modify the goal setting approach in individual development planning to ensure that residents clearly understand their long term goal and will separate plan strategies from goals.

2. Timelines for completing Individual Development Plans.

We recommend that the deadline for completing IDPs be extended from 20 days after residents arrive at the Centre to three months. We do not suggest any change to existing procedures during the first 20 days, but recommend that the document produced at the end of that period should be called an "Interim Individual Development Plan". We believe that a three month period for completion of each IDP will result in goals being more closely attuned to the resident's 'vision of a good life'. It will also allow the resident more time to develop a sense of 'ownership' of his plan. (viz. so that he can feel that the IDP goals are his own rather than something that is being imposed upon him).

Response to (2) - accepted.

The Disability Services Commission has agreed to extend the timeline for preparing Individual Development Plans.

3. Programmes of activities.

We recommend that during the development of each IDP there should be a greater focus on finding activities which excite the interest of the particular resident. The aim should be to develop programmes of day to day activities which each resident is eager to be involved in. When there are difficulties in finding providers willing to come into the Centre to deliver particular services, consideration should be given to using Leave of Absences so that the resident can pursue activities externally. (It will be for the Board to decide whether it is willing to include conditions in LOA orders to this effect). A full programme of activities for each resident should commence within three months of his arrival at the Centre.

Response to (3) - accepted.

The Disability Services Commission will focus on offering activities and developmental opportunities that will be attractive to residents.

4. Records of breach of Leave of Absences and of breaches generally.

The one flaw that we have identified in the Centre's generally excellent record keeping is that we were unable to locate any single document for each resident which listed any breaches of conditions and the consequences which then ensued. We recommend that a standard record of this nature be created showing the date of the breach, the nature of the breach, any resulting sanction (or other consequences), and the date that the latter was imposed. Obviously this record should not include minor infractions, but should be limited to breaches which had the potential to cause any risk to the community, to staff or other residents, or to the resident himself.

Government Response to (4) - accepted.

The Disability Services Commission will modify the Centre's record keeping system to track any substantial Leave of Absence breaches and to record the consequences of such breaches.

5. Continuous improvement in service delivery.

The task faced by DSC in operating the Centre in compliance with the DP Act is a complex, sensitive and difficult one. There is no precedent which can be applied by way of guidance, and the true effectiveness of the current ways of delivering services will only become known in hindsight. In these circumstances it is necessary that there be regular reviews of the Centre's operations as well as candid assessments of what is working and what is not. It appears to us that key personnel do have the willingness and flexibility to be open to change if that should be shown to have merit. It also appears to be part of the DSC culture that there are frequent, open and frank exchanges of views. Nevertheless we recommend that formal internal reviews of the effectiveness of Centre operations be conducted at least annually.

Government Response to (5) accepted.

The Disability Services Commission will conduct a formal internal review of the effectiveness of the Centre's operations on an annual basis, with the first review to be scheduled for January 2017.

Addendum to Report

Recommendation

That the Disability Services Commission undertake an education program directed at the legal profession and at members of the Criminal Lawyers Association in particular. Lawyers should be invited to visit the Centre to gain a full understanding of the programmes it has to offer.

Government Response to (5) - accepted.

The Disability Services Commission will liaise with Legal Aid WA.

Annexure 2 – Information sheet for residents about the advocacy services

Advocacy Service for Residents



We can visit you
We can help you with any concerns



Advocates
Are there to speak up for you
and help you say what you
want to say



Advocates
Are independent. You can talk
to them confidentially



Advocates
Are people who understand the
issues you face.



Advocates
Can visit you or talk to you on
the phone



Advocates
Can help you know your rights
and make sure others know and
observe your rights. They can
check any restrictions on your
rights



Advocates
Can help you if you have a
complaint. They can make sure
your complaint is heard



Advocates
Will check any behaviour
management requirements you
are under



Advocates
can help you take part in
making your Individual
Development Plan IDP



Advocates
Can help you get a Lawyer

It's Up To You!

An advocate will visit you within 7 days of you arriving at the Disability Justice Centre. You don't have to talk to them if you don't want to. If you change your mind and want to talk to them later, you can call and ask for an advocate to visit. You can also ask a staff member to call an advocate for you and they must call the advocate. The advocate will visit you as soon as they can but no more than 72 hours after you ask for the visit.



Mental Health Advocacy Service
Address: Unit 6, 18 Harvest Tce, West Perth WA 6005
Phone: 1800 999 057 or 6234 6300
Email: contactus@mhas.wa.gov.au

Glossary

The Act	<i>Declared Places (Mentally Impaired Accused) Act 2015</i>
Blaxell Hayward Report	Analysis of the individual plans, programs and services for residents of the Disability Justice Centre commissioned by the then Minister carried out by the Hon Peter Blaxell, retired Justice of the Supreme Court of Western Australia, and Professor Colleen Hayward AM of Edith Cowan University in 2016
CLMIA Act	<i>Criminal Law (Mentally Impaired Accused) Act 1996</i>
Disability Justice Centre	The declared place in Caversham known as the Bennett Brook Disability Justice Centre
DSC	Disability Services Commission. Due to the Machinery of Government changes effective 1 July 2017, the DSC became part of the Department of Communities and is now known as Department of Communities, Disability Services
IDP	Individual Development Plan required by the Act to be prepared at regular intervals for all residents of a declared place
LOA	Leave of Absence Order made by the MIAR Board on approval of the Governor
Minister	Minister for Disability Services
MIAR Board	Mentally Impaired Accused Review Board
Residents	Mentally impaired accused (as defined in the Act) living at the Disability Justice Centre
Statutory contact	Contact by an Advocate within 7 days of the resident's arrival as required by the Act

