

# Annual Report 2018-19

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





*The artwork on the front cover and throughout the Annual Report is by artist Tron Tonnessen.*

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 2019.

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 2018-19 year.

Debora Colvin


**Chief Advocate**

*October 2019*



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## Foreword by the Chief Advocate

The exciting news this year is that the Bennett Brook Disability Justice Centre had its first successful transition for a resident who was put on a conditional release order allowing them to live in the community. Two new residents have also been admitted so they can take advantage of the opportunities offered for habilitation (learning new skills) and rehabilitation (regaining lost skills) with a view to living again in the community.

I think it is fair to say that many people do not understand the role of the Disability Justice Centre or the advocacy services. While we would love to be able to detail more of the work being done, the residents have the right to privacy and confidentiality. The report is therefore confined to the legislative and structural framework around admission to the Disability Justice Centre and the advocacy services.

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 supporting the residents.

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 protection<sup>1</sup>. This is because detention is by its very nature disempowering for the person detained, isolating 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 (Disability Justice Centre) in Caversham. It is a residential-style facility which can accommodate 10 mentally impaired accused persons, hereafter referred to as residents. The Disability Justice Centre was originally established by the Disability Services Commission (DSC) under the Act. From 1 July 2017 the DSC has become a part of the Department of Communities (DoC) but as the Act continues to refer to the DSC this annual report will do the same.

<sup>1</sup> 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.

## Who are the residents of a 'declared place'?

During the 2018-19 period there have been four residents in the Disability Justice Centre ranging from one to two to three residents living there at the same time. One resident was discharged into the community on a conditional release order in December 2018.

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
- have reached 16 years of age
- have a disability as defined in the *Disability Services Act 1993* and the predominant reason for the disability is not mental illness.

'Mentally impaired accused' persons are people who are accused of a criminal offence but are found to be mentally unfit to stand trial and the charge against them is dismissed without any finding as to guilt or otherwise, or found not guilty on the grounds of unsoundness of mind but they may be put on a Custody Order under the CLMIA Act. If they are put on a Custody 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 people on a Custody Order with a disability attributable to an intellectual, cognitive, neurological, sensory, or physical impairment, or a combination of those impairments, 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.

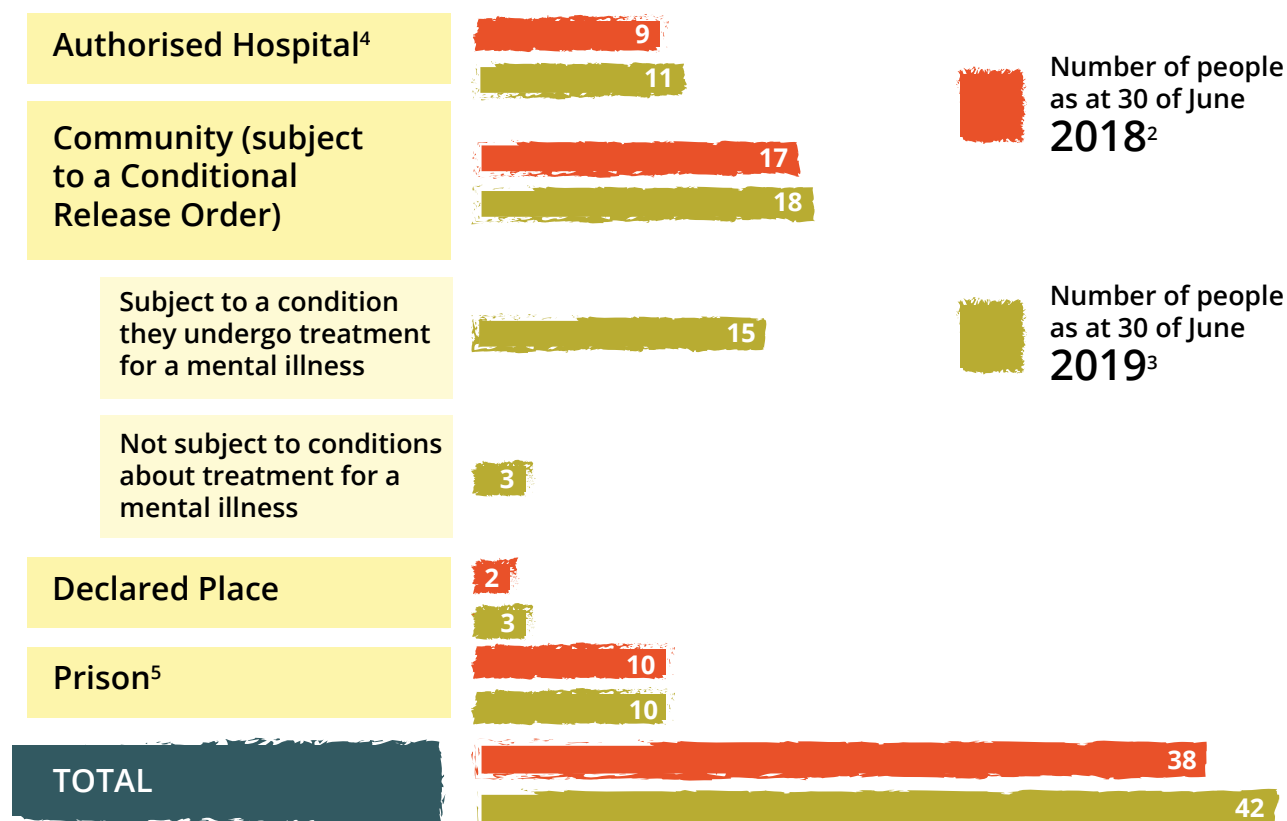
The aim of the Disability Justice Centre is to provide a detention option that is appropriate and rehabilitative for people with intellectual or cognitive disability, or autism, as an alternative to prison and to help prepare them for release into the community. This is why the Disability Justice Centre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

## 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 on a Custody Order can be detained in the declared place, that is, the Disability Justice Centre.

During 2018-19 there were eight new Custody Orders made by the Courts in Western Australia. The Mentally Impaired Accused Review Board made orders that two people subject to Custody Orders were to be detained at the declared place (making a total of three people as at 30 June 2019). Seven people were to be detained at an authorised hospital during 2018-19 (making a total of 11 people as at 30 June 2019), ten people were in prison and 18 people in the community on conditional release orders (as at 30 June 2019):

## Mentally Impaired Accused Persons as at 30 June 2018 and 2019



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 DSC process is to produce an initial assessment which is then considered by a panel comprising of the Director Disability Justice Service, the Manager of the Disability Justice Centre (or delegate), the clinicians who carried out the assessment, and other relevant

<sup>2</sup> Source: Mentally Impaired Accused Review Board Annual Report 2017/18.

<sup>3</sup> Source: Mentally Impaired Accused Review Board email of 1 August 2019. The data is based on Place of Custody Orders made by the Board from 1 July 2019 to 30 June 2019.

<sup>4</sup> MIA persons who are inpatients in authorised hospitals may be participating in a leave of absence from the hospital.

<sup>5</sup> MIA persons may be participating in a leave of absence from prison.

representatives. The panel then makes a recommendation and briefs the Assistant Director General, Disability Services, who approves the report and recommendation and sends the assessment 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. 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.

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 or an authorised hospital if they also have a mental health condition.

## Leave of Absence Orders

Mentally impaired accused persons, whether in a declared place, authorised hospital 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 LOAs 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 seven 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 including advocacy and rights protection services for people who are on Custody Orders due primarily to a mental illness and who are in an authorised hospital or on a conditional release order receiving treatment.

In 2018-19, two Advocates and a Senior Advocate engaged by the Chief Advocate under the *Mental Health Act 2014* worked as Advocates under the Act. Both 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. An acting Senior Advocate was involved with the Disability Justice Centre following the resignation of the previous Senior Advocate from July 2018, and in April 2019 a Senior Advocate was appointed visiting the Centre shortly after.

## | 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, review and proposals for change 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; and the Advocate must monitor the restriction)
- 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

### Visits and notifications

In accordance with the requirements of the Act:

- each resident received four visits during the year<sup>6</sup> or the equivalent proportion
- the two new residents were visited within seven days of their admission
- the Chief Advocate received quarterly reports for each resident as to whether there had been any regulated behaviour management pursuant to ss27, 32 or 36 (behaviour management medication, restraint and seclusion).

### Individual Development Plans (IDP)

The programs and services at the Disability Justice Centre must be delivered in accordance with the IDP for each resident. The plan must be reviewed before the expiry of six months after it is first prepared and then every 12 months. The IDPs are required to include programs and services designed to:

- promote the resident's development, habilitation (focussing on learning new skills), rehabilitation (focussing on regaining skills lost) and quality of life
- 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

<sup>6</sup> Section 52 of the Act requires the Chief Advocate to ensure that each resident is visited or otherwise contacted within 7 days of the resident's arrival at a declared place and 'at least 4 times a year'. The Chief Advocate has determined that the four visits are to be counted in each reporting year which means between the 12 months between 1 July and 30 June and, if a resident arrives or departs from the declared place within that period, the number of visits required is based on the proportion of the resident's stay in the 12 month period.

- support the resident's reintegration into the community and include an outline of the proposed plan for the resident's transition to participation and inclusion in the community.

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.

Advocates contributed to the IDPs in various ways including advocating for culturally appropriate care and programs and supporting a resident who was getting ready to transition out of the Disability Justice Centre.

Following the departure of a resident the Advocates made various suggestions for activities and other therapies for the remaining resident.

The admission of two new residents in June 2019 was welcome and the Advocates have focussed on ensuring that they are settling in and will take part in the development of their IDPs.

In addition the IDP must include:

- 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.

There were two emergency restraints and one seclusion notified to the Chief Advocate during the year. The Advocates followed up on each incident checking that the resident's rights were observed, including having a suitably qualified person check on the resident's health and welfare within two hours of the restraint in compliance with s41(2) of the Act. This did not happen on two occasions but the resident was checked by a GP the following day in each case. The Advocates also promoted learnings from the incidents for staff and consideration of any updates needed to the IDPs.

## Reviews by the Mentally Impaired Accused Review Board

Under the CLMIA Act residents are required to be reviewed by the MIAR Board and a report sent to the relevant Minister (the Attorney General) at least once a year and whenever the MIAR Board 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 usually 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 can draft written submissions or, with the permission of the MIAR Board, attend review hearings. The Advocates contacted the residents prior to hearings and reviewed documentation sent to the MIAR Board but no submissions or attendances were recorded in 2018-19.

## Chief Advocate

The Chief Advocate met with the Minister for Disability Services twice during the year and in December briefed him on issues arising from a media report about the Disability Justice Centre. In May 2019 the Chief Advocate was advised of another media report identifying a resident of the Disability Justice Centre. The Chief Advocate worked with the resident's guardian and the DSC to protect the resident's rights not to be defamed and to privacy.

## | Cost of the Advocacy Services

In accordance with the agreed funding arrangements, the DoC is invoiced for advocacy services provided pursuant to the Act. The cost of the advocacy services in 2018-19 was \$5,093.24

## | Glossary

|                           |   |
|---------------------------|---|
| The Act                   | <i>Declared Places (Mentally Impaired Accused) Act 2015</i>   |
| 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  |
| DoC                       | Department of Communities   |
| DSC                       | Disability Services Commission. Due to the Machinery of Government changes effective 1 July 2018, 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 Part 4 of 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 persons (as defined in the Act) living at the Disability Justice Centre   |
| Statutory contact         | Contact by an Advocate within seven days of the resident's arrival as required by the Act   |

