

Declared Places (Mentally Impaired Accused) Bill 2013

Explanatory Memorandum

The purpose of this Bill is to provide the Disability Services Commission with the powers to operate a declared place within the legal framework established by the *Criminal Law (Mentally Impaired Accused) Act 1996*. That Act established a procedural framework for the courts dealing with those found unfit to plead or of unsound mind, the Mentally Impaired Accused Review Board and provided for mentally impaired accused to be held in any one of four places of custody – prison, an authorised hospital, detention centres and declared places determined by the Board.

The Bill, in addition to providing custodial powers, sets out principles and objectives that direct the purpose of custody to be the protection of the community, the individual and the training and development of residents. Individual Development Plans will require personalised life skill programmes directed to returning the individual to responsible participation in the community.

Custodial powers are balanced by a range of safeguards to protect resident welfare. The operation of declared places will be monitored by a specifically designed advocacy service.

This legislation limits those who can be detained in a declared place to persons who have reached 16 years of age and whose predominant disability is not a mental illness.

The Bill also makes amendments to other legislation in consequence of establishing declared places.

This Bill is divided into 12 Parts, as follows-

Part 1-Preliminary

Clause 1: Short Title

This clause provides that the Act may be cited as the *Declared Places (Mentally Impaired Accused) Act 2013*.

Clause 2: Commencement

Sub clause (a) provides that sections 1 and 2 come into effect on the day this Act receives Royal Assent.

Subclause (b) allows for different dates to be set for particular provisions to commence.

Clause 3: Terms used in this Act

Provides the definition of the terms used in the Bill to ensure the provisions of the Act are applied as intended.

Clause 4: Act binds the Crown

The provisions of this Act are binding on the State of Western Australia.

Part 2- Principles and Objectives

Clause 5: Principles applicable to residents

Subclause (1) sets out the principles of greatest importance or significance that govern all functions carried out under the Act. They are listed in priority order to avoid any conflict between principles. Community safety will be favoured over resident protection should such a choice have to be made and resident safety and protection will be favoured over the best interests of children.

Subclause (2) refers to best possible training and development programmes, which are those programmes with empirical data demonstrating effectiveness including programmes agreed to be industry best practice.

Subclause (3) acknowledges the variety of health and psychological needs mentally impaired accused may have. Care incorporates active treatment and interventions that may encompass ensuring social and emotional wellbeing.

Subclause (4) requires any person working in a declared place or involved in any other capacity to have regard for the principles in all matters.

Clause 6: Objectives for programmes and services

Subclause (1) provides for all programmes and services to be designed and delivered in a manner that respects residents' right to be treated with dignity, courtesy, without discrimination or stigma and with equality of opportunity.

Subclause (2) requires programmes and services to be designed and delivered so as to be sensitive and responsive to residents' individual needs and characteristics including age, gender, spiritual beliefs, cultural and language background, family and life style choices.

Subclause (3) requires that programmes and services for residents who are not adults to be designed and administered in such a manner as to give a high importance to the best interest of these residents.

Subclause (4) requires programmes and services to be based on practical experience and observed effectiveness. They must be directed to reducing any risk of residents offending on release; assist residents to live and work in the community, as independently as possible, and maximise their quality of life.

Subclause (5) requires programmes and services to be designed and delivered consistent with Aboriginal and Torres Strait Islander residents' cultural beliefs, mores and practices. They should also take into account the views of residents' families and communities.

Subclause (6) provides that programmes and services are to be designed and delivered in a manner least restrictive of the residents' rights and choices, taking into account the safety and protection of the residents and the community.

Subclause (7) provides that programmes and services are to provide residents and their families, carers and advocates with opportunities to participate in the planning and provision of services.

Subclause (8) requires any person working in a declared place or involved in any other capacity to have regard for the objectives in all matters.

Part 3- Residents' rights

Clause 7: Rights under other laws

Subclause (1) acknowledges that residents have rights under other laws.

Subclause (2) clarifies that this Bill does not in any way limit or affect residents' rights under other laws.

Clause 8: Explanation of residents' rights.

Requires the CEO to give each resident an explanation of their rights under this Act, the *Freedom of Information Act 1992* and any other Act that applies to residents of declared places. This needs to be done in a form or manner that the resident is likely to understand. A written explanation must also be given to a guardian, enduring guardian if appointed, the guardian of a child and anyone who has reached 18 years of age and has a close personal relationship with the resident.

Clause 9: Freedom of lawful communication

Provides the residents with a right to lawful electronic, postal, telephonic and verbal communication with residents and other persons that are to both receive and send uncensored communications. Residents may also receive visits from or have contact with their advocate, guardian or enduring guardian and lawyer at any time and other persons at reasonable times. Residents may also access newspapers, radio and television at reasonable times.

Clause 10: Restricting freedom of communication

Allows the CEO to make an order prohibiting or limiting residents' communication, but cannot limit or prohibit a resident's access to their lawyer, advocate, guardian or enduring guardian. An order prohibiting or limiting communication can only be made when it is in the resident's best interests, it is necessary to protect others or it is necessary for the proper operation, control, security or management of the declared place. Orders can be varied and must be in writing and placed on the residents' file with reasons for the decision. The resident, one close personal friend who has reached the age of 18 years and an advocate, lawyer, guardian or enduring guardian must be given a copy.

Part 4 - Individual development plans

Clause 11: Residents have individual development plans

Requires the CEO to prepare a plan for each resident that provides for how each resident will be managed, cared for, supported and protected. The written plan and any assessments required to make the plan or required by the plan are to be placed on the resident's file. The plan's purpose is to promote the resident's development and habilitation, and provide for the resident's reintegration in the community.

Clause 12: Preparation, review and change of individual development plan

Subclause (1) requires the CEO to ensure residents are assessed by at least two appropriate persons with different qualifications or experience.

Subclause (2) ensures that any positive behaviour support component of the plan that deals with how to control or manage the resident's behaviour is assessed by a qualified behaviour support specialist such as a forensic psychologist.

Subclause (3) ensures plans must be compliant with any relevant policies and procedures issued by the CEO.

Subclause (4) requires the resident, their enduring guardian or guardian, advocate, carer or family member is consulted and participates in the plan's preparation.

Subclause (5) provides for the plan to incorporate any existing plans, treatment or requirements made by any other person with the power to do so such as a person with power of attorney, guardian or administrator.

Subclause (6) ensures the above provisions apply to any review of or proposals to change an individual development plan.

Clause 13: Content of individual development plans

This clause sets out what must be included, in writing, in any individual development plan. These include an outline of proposed arrangements that:

- promote the resident's development, habilitation and quality of life
- provide for the resident's management, care, support, and protection
- reduce resident's behaviour that might place at risk the resident or others health or safety
- support the resident's reintegration into the community
- plan the resident's transition to the community
- detail medication prescribed and health care needed
- provided for further assessments
- specify any appropriate or inappropriate behavioural management practices
- detail any medication to be used for the management of behaviour
- record any instances of use of emergency that is unplanned behaviour management practices or actions, such as use of restraint or seclusion
- record strategies for reducing use of restraint or seclusion
- any other information as prescribed by regulation.

Clause 14: Review of individual development plans

Requires each plan to be reviewed within six (6) months and then every 12 months and on request of the resident a copy given to the resident and his or her advocate, lawyer, guardian or enduring guardian. A guardian or enduring guardian may request a copy without the consent of a resident.

Part 5- Protection of Residents

Clause 15: Certain incidents to be reported

Subclause (1) sets out what must be reported which includes any ill treatment, unlawful sexual contact and any unreasonable use of force on a resident. It defines who must report such thing as anyone who works at a declared place either employed or providing services under a contract or as a volunteer.

Subclause (2) requires a person who reasonably suspects a reportable incident has occurred to report the matter to either the CEO, a person nominated by the CEO, a person nominated especially for the purpose by the Commission, the Director of the Health and Disability Services Complaints Office or a police officer. The range of persons listed acknowledges that reporting colleagues' behaviour can be challenging; that the person reporting may need to report to an agency or person they feel comfortable with and supported by, or it may be appropriate to report outside of the Commission and in extreme circumstances go to the police. Failure to report such an incident incurs a fine of \$5000.

Clause 16: Residents not to be ill treated

This clause creates an offence of ill treatment of a resident by any person responsible for caring, providing services, supervising, managing or controlling a resident. It is punishable by a fine of \$24,000 or imprisonment of 2 years.

Clause 17: Medical treatment for residents

This clause acknowledges the current law regarding medical consent and the provisions for consent when the person lacks capacity to consent. Medical treatment is defined to include medical, surgical or dental treatment. It provides for the CEO to consent to treatment, only as a last resort and only where all other possible consent providers are unable to give consent. It requires the CEO when giving consent to have regard only for the best interests of the resident and to consider actions to provide for consent on future occasions. When a health professional provides urgent treatment as provided for under the *Guardianship and Administration Act 1990 S110ZI* they are obliged to record why alternative consent was not available and what treatment was provided in the resident's file.

Part 6- Functions of CEO

Clause 18: CEO's functions as to residents

This clause provides that when the Mentally Impaired Accused Review Board makes an order for the detention of a resident in a declared place then the CEO is responsible for their welfare and custody.

Clause 19: CEO's functions as to declared places

Subclause 1 ensures that the CEO is responsible to the Board of the Disability Services Commission for the proper operation and good order of declared places.

Subclause 2 requires the CEO to notify the Board, Commission, Commissioner of Police and either a guardian or enduring guardian in circumstances where a resident has died or is absent without leave.

Subclause 3 specifies that absent without leave is being away from a declared place without a leave order issued by Mentally Impaired Accused Review Board under S28 of the CL(MIA) Act 1996 or having received a leave order fails to return after it has expired or been cancelled.

Subclause 4 requires the CEO to notify a guardian or enduring guardian if a resident is taken to other premises for medical treatment.

Subclause 5 requires the CEO to inform the Commission of any accident, serious irregularity or unusual event that affects the good order and security of a declared place.

Subclause 6 ensures that these provisions do not affect the responsibility of the CEO to report any deaths in declared places to the Coroner.

Clause 20: Delegation of CEO's functions

This clause provides the necessary power for the CEO to delegate any duties and for delegates to further delegate powers to others. This must be done in writing in other than an emergency where oral approval must be confirmed in writing. Delegated responsibility will be assumed to comply with a delegation and does not restrict a delegate in using or hiring officers or agents. There are, however, duties and powers that cannot be delegated to a contractor or subcontractor as defined in Clause 3. Contractor means a person or organisation that has contracted to operate a declared place. The non delegable duties set out in the table are considered inappropriate for a contractor and may create conflict of interest.

Part 7- Management of declared places

Clause 21: Terms used.

Provides the definition of intoxicant and prohibited thing used in later provisions in this Bill.

Clause 22: Powers to control and manage declared places

Provides the necessary powers to search persons and the premises, refuse entry to any persons visiting declared places, to remove persons who do not submit to a search and seize any prohibited thing.

Clause 23: General powers in relation to residents

Provides the powers to give residents reasonable orders for the purposes of detaining or controlling residents when in a declared place or when in the community or in premises providing health services. It provides for the searching of the resident and any premises used by the resident and for the seizing of any prohibited thing.

Clause 24: Searching people and seizing things

Details what can be done in any search and how it should be done .The provision is compatible with the standard search provisions of the *Criminal Investigation Act 2006*. A search of an adult should if practical be done by someone of the same gender and if a child it must be conducted by a person of the same gender and with an accompanying adult. Searches should be done as quickly as practical and be no more intrusive as is necessary. Things seized can be held safely and returned, destroyed if an intoxicant or if a firearm handed to the police. All things seized must be recorded.

Part 8- Regulation of behaviour management

Division 1 Behaviour management medication

Clause 25: Terms used

Provides the definition of the terms used in this Part to ensure the provisions are applied as intended. It clarifies that this Part does not apply to medication used for health care which may include medication that influences behaviour or mood but is prescribed treatment and taken with consent. It defines those who work in a declared place to include persons working under a contract of service or for services and volunteers.

Clause 26: Administration of behaviour management medication

Requires all medication to be prescribed by a doctor and delivered by a doctor or nurse. It may only be given if in the best interests of residents or for the safety and welfare of the resident or others. It must be given as directed by the doctor and the resident observed as required by the doctor's directions. The use of medication should be not more restrictive or intrusive than required, administered with minimal force, not last longer than necessary and can be used outside of a declared place. Residents' needs for food, fluids, bedding, clothing and access to a toilet must be attended to and the residents' health and welfare should be reviewed within two (2) hours after treatment.

Clause 27: Records of behaviour management medication

Details of all medication prescribed including matters such as dates, times, personnel involved, administration and observation arrangements and results, must be placed in the resident's file and individual development plan. Further matters may be specified in regulations.

Division 2 Restraint

Clause 28: Terms used: restraint

Defines restraint to exclude any kind of appliance or support that is required for the resident to undertake the tasks of daily living or surgical appliances or equipment required for medical treatment.

Clause 29: Approval of restraint devices

Requires that only the CEO may approve the sort of device used either specifically or by issuing a policy or procedure which specifies the device or equipment that may be used.

Clause 30: Restraint to be authorised

Subclause 1 limits the use of restraint to circumstances where regard has been given to the resident's individual development plan, which may have specific requirements for the use or non use of restraints. It also requires the CEO to be satisfied that such an action is the least restrictive option for protecting the residents' health and safety or that of others and the device to be used is approved.

Subclause 2 requires that authorisations must be in writing, and given to all who are managing or controlling the resident. Authorisations must include the type of restraint to be used, the reasons for restraint being applied, any restrictions on use, duration, observation intervals (which must be no longer than 15 minutes), and any special measures. Authorisations must include the date and time of authorisation and any other information required by regulation.

Clause 31: Restrain to be used in accordance with authorisation

Subclause 1 provides for the use of restraint where no written authorisation has been issued but only in an emergency and only if it is not practicable to get an authorisation. In these circumstances a person must inform the CEO of restraint use, the reasons why it was used and why authorisation was not possible. The subclause also requires that such use of restraint must comply with Clause 40 which requires any use of restraint to use no more force than is reasonable, use no more measures than are reasonable, must not be unnecessarily restrictive, be applied for no longer than is reasonable and may be applied outside of the declared place. This later requirement is necessary as the resident may have supervised leave to undertake work or training programs in the community or be receiving treatment in a health service. Clause 41(1) is a general requirement applied to all use of restraint that ensures residents' needs for food, fluids, bedding, clothing, access to toilets and medication are met.

Subclause 3 requires all persons responsible for controlling a resident to end restraint if they consider it to be unnecessary for the care and support of the resident or the CEO orders the restraint to be removed.

Clause 32: Records about restraint

Sets out all the matters which should be recorded on a resident file for each use of restraint. This includes all matters covered in the authorisation, the identities of each person who applied and removed a restraint, those who observed and the person who assessed the health and welfare of the resident at the conclusion of restraint. Dates, time, duration and results of these activities must be recorded. If the restraint was used in an emergency then the time and details of the notification of the CEO must also be included and any matters prescribed by regulation.

Division 3 Seclusion

Clause 33: Term used: seclusion

Defines seclusion as used in this Part to be confinement in a room or place, at any time, alone and without free exit for the purpose of controlling the resident's behaviour. Residents confined in their rooms at night for purposes of general security and safety will not be considered secluded.

Clause 34: Seclusion to be authorised.

Subclause 1 limits the use of seclusion to circumstances where regard has been given to the resident's individual development plan, which may have specific requirements for the use or non use of seclusion. It also requires the CEO to be satisfied that such an action is necessary to protect the resident or other people from imminent physical harm and is the least restrictive option for protecting the resident's health and safety or that of others.

Subclause 2 requires that authorisations must be in writing, and given to all who are managing or controlling the resident. Authorisations must include the reason for seclusion, the date, time, maximum duration any special requirements for their care and observation requirements which must be at intervals no longer than 15 minutes. Authorisations must include the date and time of authorisation and any other information required by regulation.

Clause 35: Seclusion to be in accordance with authorisation

Subclause 1 stipulates that a person may only place a resident in seclusion if they are authorised to do so under Clause 34 or in an emergency when it is not practicable to get an authorisation. In these circumstances a person must inform the CEO as soon as practicable of the seclusion, the reasons for the seclusion and the reasons for not getting an authorisation. Both authorised and emergency seclusion must conform to the general requirements governing regulated behaviour management detailed in Clauses 40 and 41 (1) as in sub clause 2.

Subclause 3 requires any person responsible for managing or controlling a resident to remove a resident from seclusion if it is no longer necessary or if ordered by the CEO.

Clause 36: Records about seclusion

Sets out all the matters which should be recorded on a resident file for each use of seclusion. This includes all matters covered in the authorisation, the identities of each person who placed a resident in seclusion or released or returned a resident to seclusion, those who observed and the person who assessed the health and welfare of the resident at the conclusion of seclusion. Dates, time, duration and results of these activities must be recorded. If seclusion was used in an emergency then the time and details of the notification of the CEO must also be included and any matters prescribed by regulation.

Division 4 General provisions about regulated behaviour management

Clause 37: Terms used: regulated behaviour management

Defines regulated behaviour management to be the use of medication as specified in Clause 25, use of restraint as specified in Clause 28 and seclusion as specified in Clause 33.

Clause 38: Police officers' powers not affected

Clarifies that these provisions do not apply to any police officer acting in the course of duty.

Clause 39: Consent not required

Establishes that a resident's consent is not required for the use of restraint, seclusion or behaviour management medication. Residents are held in custody under orders issued by the Mentally Impaired Accused Review Board and may as a result of their mental impairment behave in a manner that may harm themselves or others.

Clause 40: General restrictions on regulated behaviour management

Requires that any use of behaviour management medication, seclusion or restraint must not involve use of more force than is reasonable, no more measures than are reasonable, not more restrictive than necessary or longer than necessary. They may be used outside of a declared place to provide for residents on supervised leave of absence undertaking community based activities or receiving health or medical services.

Clause 41: Welfare of residents during and after regulated behaviour management

Subclause 1 ensures that each resident during any application of regulated behaviour management is provided with the necessities of life.

Subclause 2 stipulates that upon the cessation of any regulated behaviour management the resident will have their health and welfare reviewed by a suitably qualified or experienced person as soon as practicable and no later than two (2) hours after cessation.

Clause 42: Chief advocate to receive information about regulated behaviour management

Requires the CEO to send to the chief advocate all records of use of behaviour management medication, restraint and seclusion each three (3) months. This requirement relates to Clause 53 (d) which empowers advocates to monitor all use of regulated behaviour management.

Clause 43: Reporting and review of records

Requires the CEO to ensure the use of regulated behaviour management on any resident is reviewed by someone suitably qualified or experience, at least every three months and if directed more frequently. Such reviews will assess the appropriateness of the measures used and comment on further use. All review reports must be placed on residents' files.

Part 9- Contracts for declared place services

Clause 44: Contracts for declared place services

Empowers the CEO to enter a contract with a person or organisation to operate a declared place. Such a contract cannot include those functions detailed in Clause 20(6) such as receiving reports of certain incidents, (Clause 15) reviewing regulated behaviour management practices, or reporting to the Mentally Impaired Accused Review Board. This power to contract does not affect any existing provisions which govern the Disability Services Commission's contracting responsibilities.

Clause 45: Minimum matters to be included in contracts

Requires any contract for the operation of a declared place to provide for all matters listed. These include ensuring proper accountability and compliance of the contractor, reporting arrangements, and the provision of indemnity. Contracts must require notification of any change of ownership or control, specify fees, costs and charges paid to or by the contractor and procedures for investigations and dispute resolution. Compliance with any code of ethics or conduct approved by the CEO and the observation of standards are mandatory. The circumstances where the CEO may intervene, suspend or terminate a contract must be specified. The office holder is considered to be the principle officer of the contractor for purposes of complying with State laws to which the contractor is bound. These include the *Corruption and Crime Commission Act 2003*, *Freedom of Information Act 1992*, and the *Parliamentary Commissioner Act 1971*. These provisions are similar to those detailed in *S 38 Court Security and Custodial Services Act 1999*.

Clause 46: Minimum standards

Requires the CEO to establish minimum standards for the provision of declared place services, to amend those standards and for the Minister to table those standards in both Houses within 14 days of the standard's establishment or amendment.

Clause 47: Penalty for breach

Allows for contracts for the operation of declared places to include penalties for any breach of contract, such penalties may be increased for each day of being in breach and provides for the recovery of such penalties even though no damage may be suffered or the penalty is unrelated to any damage.

Clause 48: Commission, CEO etc may have access to certain declared places, persons and documents

Permits the CEO or any person appointed by the CEO to access any declared place, resident, person working there or any document for the purposes of ensuring compliance with this Act or the contract or to ensure services are being properly provided. CEO authorisations must be in writing and may include conditions or limitations and a person must not hinder an authorised person, the penalty for which is a fine of \$20,000. This provision does not limit in any way the rights a person may have under other laws to access declared places, residents, staff or documents.

Clause 49: Annual reports and tabling of contracts

Requires the CEO to report to the Minister by September 30 each year on each contractor delivering declared place services. Such a report must include information that will allow the Minister to make an informed assessment of the operations of each contractor and their contractual compliance. These reports must be tabled in each House within 14 days of receipt. Each contract or amended contract must be similarly tabled.

Clause 50: No contracting out

Ensures that no contract may include provisions that conflict with or override this Part.

Part 10- Advocacy services for residents

Clause 51: Terms used

Defines the terms advocate and chief advocate as either those persons as provided for in the Mental Health Act 1996 that is Council of Official Visitors and the Head of that Council or anticipating that the Mental Health Act 1996 may have been replaced before this Bill is introduced, persons prescribed by regulation. This action is necessary because the Council of Official Visitors may not exist at some future point and the replacement of this body cannot be anticipated.

Clause 52: Residents' rights as to visits or other contact

Stipulates that the CEO must notify the chief advocate as soon as practicable as and no later than 48 hours of the arrival of a resident. Each resident must receive a visit from an advocate within seven (7) days of arrival, and as soon as practicable but not later than 72 hours after a request for a visit from the resident or a person requesting on behalf of the resident. Residents must receive at least four (4) visits per year. They have a right to decline to be contacted by an advocate and may withhold consent from advocates accessing their records.

Clause 53: Advocate functions

Sets out the functions of each advocate which, in addition to visiting or contacting residents, include the responsibility to act as a personal advocate for the resident; to monitor orders restricting resident communication (Clause 10); the use of regulated behaviour management; investigate any matters related to residents' health, safety or wellbeing, and investigate the provision of residents' explanation of rights (Clause 8) and the degree to which those rights are being observed. Advocates will liaise with an enduring guardian or guardian.

Advocates will assist residents to protect and enforce their rights, hear and seek to resolve resident complaints, make formal complaints under Part 6 of the *Disability Services Act 1993* on behalf of residents and act as their representative.

Advocates may assist residents to access legal services, refer unresolved issues to others including the chief advocate, and participate in any planning for residents including the preparation of their individual development plan.

Clause 54: Advocate powers

Subclause 1 defines work in this Part to include those that work under a contract of service or for services but excludes volunteers which are in scope in other Parts of this bill.

Subclause 2 provides advocates with a general power to do anything necessary or convenient in the performance of their functions.

Subclause 3 ensures that advocates are responsible to and subject to the direction of the chief advocate.

Subclause 4 authorises advocates to visit any part of a declared places and visit or have contact with residents at any time, for any length of time, without giving notice of such visits or contact. Residents have a right to decline any contact by advocates.

Subclause 5 permits advocates to ask anyone who works at a declared place any questions concerning the welfare, health, care, training, management or security of a resident. They may also enquire about the operation, control, management and operation of the declared place but only to the extent that such matters are relevant to the welfare, health, care, training, management or security of residents.

Subclause 6 allows advocates to inspect and copy any document related to the declared place.

Subclause 7 permits an advocate to inspect and copy any document concerning the resident including the resident's file, the individual development plan, restrictions of communication, and use of regulated behaviour management unless the advocate has been denied access by the resident.

Subclause 8 authorises advocates to require persons who work at a declared place to provide reasonable assistance to them in the performance of their functions.

Clause 55: Offences

Subclause 1 requires a person to answer a question asked by an advocate. Penalty a fine of \$6000.

Subclause 2 requires that a person must not answer an advocate's question in a manner that they know is false nor has reckless disregard for it being false or misleading. Penalty a fine of \$6000.

Subclause 3 requires that a person must not, without reasonable excuse, fail to provide assistance to an advocate. Penalty a fine of \$6000.

Subclause 4 requires a person not to hinder an advocate without reasonable excuse the proof of which is on the person. Penalty a fine of \$6000.

Subclause 5 ensures that a person is not excused from answering a question or rendering assistance on the grounds that such actions may incriminate them or expose them to a criminal penalty.

Subclause 6 prevents answers given or assistance provided by an individual being used in evidence in criminal proceedings against them other than proceeding for perjury or an offence under subclause 2.

Clause 56: Advocates report

Subclause 1 establishes that the following reporting obligations are in addition to reports that may be made under Clause 53(n) - obligations to report to the chief advocate or others.

Subclause 2 allows an advocate to report any matter considered appropriate to the CEO.

Subclause 3 requires the chief advocate to report to the Minister on all advocate activities as soon as practicable after the end of the financial year.

Subclause 4 limits information that may be given to the Minister to those matters that do not disclose the identity of a resident or might enable the identity of the resident to be disclosed.

Subclause 5 requires the Minister to table a copy of the report in both Houses of Parliament within 14 days.

Part 11- Miscellaneous matters

Clause 57: Board and Commission to share information about residents

Requires the Board and the Commission to give each other information that is relevant to the welfare, health, care, training, safety, management, or security of a resident and on receipt of a written request from the Board, the Commission must furnish a report to the Board on any of the above matters or any function of the Board under Part 5 of the *Mentally Impaired Accused Act 1996*.

Clause 58: provision of information about residents

Provides a discretionary power for a range of bodies to provide information to the Commission or for the Commission to provide information to those bodies, on receipt of a written request. Matters which may be disclosed concern residents' welfare, health, care, training, safety, management or security. Parties to this sharing of information include public sector bodies, the Commissioner for Police, superintendents of prisons or detention centres, persons in charge of authorised hospitals, and persons responsible for moving residents from a declared place, including a contractor or sub-contractor. The Clause make specific provision for the Commission to provide information to the Public Advocate as required under the *Guardian and Administration Act 1990 S 3(1)* for the purpose of S97 and S98 and to the CEO of the department administering the *Court Security and Custodial Services Act 1999*, *Prisons Act 1981* and the *Young Offenders Act 1994*.

Clause 59: Confidentiality of information about residents

Subclause 1 makes it an offence for a person to disclose records, use or disclose any information related to residents obtained in the course of duty or performing functions under this Act. This provision covers a member of the Board of the Commission, its CEO, Commission staff, persons employed or engaged by the Commission or subsequently employed or engaged by those persons, advocates and contractors or subcontractors. The penalty for a breach is a fine of \$2500.

Subclause 2 establishes that Subclause 1 does not apply in specified circumstances that include when a person has acted for purposes of performing functions under this Act, providing declared place services, as required by law or a court or law enforcement body, in the public interest or to comply with proceedings before the State Administrative Tribunal. Regulations may stipulate other exemptions. Personal information recorded used or disclosed with the consent of the resident or the resident's guardian.

Subclause 3 ensures that information given by a person in respect of Clause 57 (1) Clause 57 (2) and Clause 58 (1) or (2) does not incur any civil or criminal liability, or breach any duty of confidentiality or secrecy or commit any unprofessional conduct or breach any professional ethics or standards.

Clause 60: Reports about declared places

Requires the CEO to include in the Commission's annual report a report on each declared place that details the operations, the number of residents admitted, the number of people who ceased to be residents and any other matters required by regulation.

Clause 61: Protection from personal liability

Provides for protection from an action in tort for a person, other than a contractor or subcontractor (as defined by Clause 3), who does anything in good faith in the performance, or purported performance, of a function under this Act. A reference to the doing of anything includes the omission of doing anything. The State of Western Australia is not, however, relieved from liability in relation to the above.

Clause 62: Laying documents before Parliament

Requires the Minister to send to the Clerk of each House a copy of any report required to be laid in that House when that House is not sitting and will not sit in the required period. A report so sent will be considered to have been laid and the action must be recorded in the Minutes or Votes and Proceedings of the House on the first day of sitting.

Clause 63: Regulations

Provides for the making of regulations by the Governor that may be required or necessary for the declared places. Regulations may be applied to some or all declared places.

Clause 64: Review of this Act

Requires the Minister to review the operation and effectiveness of this Act within the first three (3) years from enactment and there after each five (5) year period. A report of each review must be laid before each House as soon as practicable.

Part 12- Consequential amendments to other Acts

Division 1- *Criminal Law (Mentally Impaired Accused) Act 1996*

Clause 65: Act amended

Establishes that this Division amends the *Criminal Law (Mentally Impaired Accused) Act 1996*.

Clause 66: Section 24 amended

Inserts after S24 (4) a definition of which mentally impaired accused are to be detained in a declared place. It requires the Board to be satisfied that persons have a disability as defined by the *Disability Services Act 1993* and that the predominant disability is not a mental illness. The accused must have reached 16 years of age.

The Board must have regard to the degree of risk that the accused's detention in a declared place presents to the safety of the community or of any individual in the community.

The Board may only determine that an accused be detained in a declared place when the Board member appointed under S 42(1)(b) that is, a person who works for the Commission is present.

At the request of the Attorney General, an additional safeguard 5(c) has been included. This provides for the situation if the Mentally Impaired Accused Review Board determines that a mentally impaired accused should be detained in a DSC declared place, then the accused is not to be detained in the declared place without the consent of the Minister to whom the *Disability Services Act 1993* is for the time being committed.

This subclause enables the relevant Minister to veto the administrative decision of the Board. The wording provided by Parliamentary Counsel attempts to account for any future potential allocation of Ministerial portfolios and to cover all eventualities.

Clause 67: Section 42 amended

Subclause 1 provides for the appointment of a deputy chairperson of the Mentally Impaired Accused Review Board and a person employed by the Commission.

Subclause 2 requires that the Minister when nominating a deputy chairperson must be of the opinion that the person has extensive or special knowledge of the Board's functions. The amendment provides for the deputy chairperson to perform the functions of chairperson when the chairperson is unavailable or the position is vacant and specifies that the Board member appointed as a person who works for the Commission, is a member only when so employed.

Subclause 3 deletes from S 42(5) reference to a psychiatrist and inserts deputy chairperson and psychiatrist.

Clause 68: Section 50A inserted

Inserts after S49, a provision which provides the same protection from personal liability for the Board and staff for performing in good faith functions under the *Criminal Law (Mentally Impaired Accused) Act 1996*, as provided in clause 61 for persons carrying out functions in declared places.

Division 2- Disability Services Act amended

Clause 69: Act amended

Provides for the amendment of the *Disability Services Act 1993*.

Clause 70: Section 3 amended

Inserts the definition of a declared place and resident as provided by the *Declared Places (Mentally Impaired Accused) Act 2013*.

Clause 71: Section 12 amended

Subclause 1 inserts a new function for the Commission S 12 (1) (m) to establish operate, control, and manage declared places as defined by the *Criminal Law (Mentally Impaired Accused) Act 1996 S 23* and subject to the *Declared Places (Mentally Impaired Accused) Act 2013*.

Subclause 2 sets out those provisions of the *Disability Services Act 1993* that do not apply to the Commission when it is performing its function under S 12(1) (m). These are;

- S 12(3) Principles and Objectives which are inappropriate for persons held in custody and have been replaced by this Bill's Principles and Objectives.
- Part 4 Grants to disability service providers.
- Part 4A Contracting provisions for disability services providers.
- S 51 Protection from personal liability replaced by Clause 61.
- S 52 Confidentiality replaced by Clause 59.
- S 53 Offence of ill treatment replaced by Clause 16.
- S 54 Prosecution of offences no longer required.
- S 56 Regulations provided for in Clause 63.
- S 57 Review of Act replaced by Clause 64.

Clause 72: Section 21 amended

Amends the provision limiting the Minister's access to information by deleting "For parliamentary purposes" and adding a separate provision for residents of declared places. This ensures both people with disability and residents are within the scope of the provision. This action updates the *Disability Services Act* providing for the most recent version of this standard provision.

Clause 73: Part 6 heading amended

Provides for complaints provision to be applicable to both people with disability and residents of declared places.

Clause 74: Section 30 amended

Provides for complaints to be made by residents of declared places or their representative by inserting appropriate definitions of a declared place, representative and the range of services and functions of the declared place. Advocacy services as provided in Part 10 have been removed from the functions and services of declared places for this Part, as the Health and Disability Services Complaints Office cannot accept complaints about this service.

As the *Disability Services Act* uses the term advocate for a person who complains on behalf of a person with disability and the Declared Places (Mentally Impaired Accused) Bill uses advocate for a specific service as provided for in Part 10, the term representative has replaced advocate in Part 6 to ensure consistent use.

Service provider has been defined broadly to provide for complaints about the Commission, a contractor or subcontractor, or any person providing resident services.

Clause 75: Section 32 amended

Amends section 32 replacing the term advocate with the term representative.

Clause 76: Section 33 amended

Amends the section providing for who and what can be complained about by providing a right to complain about the provider of a resident service defined as the provider of services and functions to declared places. Separate grounds of complaint about a resident service to those provided to people with disability S 33(2) are necessary. While most of the grounds of complaint are similar, being held in custody gives rise to different matters for complaint. These include:

- A failure to give an explanation of rights as required in section 8(1), (2), (3) or a failure to give the explanation in a manner required by section 8 (4).
- Acting unreasonably in making an order under section 10 (1) or (4) to restrict freedom of communication.
- Acted unreasonably in relation to regulated behaviour management as defined in section 3.

Clause 77: Section 38 amended

Authorises the Director of the Health and Disability Services Complaints Office to reject any complaint which in their opinion the complainant has not taken reasonable steps to resolve the matter with the respondent.

Clause 78: Section 39 amended

Replaces the reference to advocate with representative.

Clause 79: Section 40 amended

Provides for the Director to investigate complaints about resident services by adding section 32 (4) and inserting different matters for the Director to have regard to when investigating such complaints. As the Principles, Objectives and Standards of the *Disability Services Act* do not apply to resident services they have been replaced by the Principles and Objectives of the *Declared Places (Mentally Impaired Accused) Bill*, the individual development plan as defined in clause 3 any applicable standard under clause 46 and any provisions of a relevant contract.

Clause 80: Section 41 amended

Replaces reference to advocate with the term representative.

Clause 81: Section 46 amended

Provides for the Minister to refer matters concerning resident services to the Director for investigation.

Division 3- Amendments to other Acts

Clause 82 *Children and Community Services Act 2004* amended

Broadens the definition of prescribed authority in section 24A (1) to include a contractor as defined in the *Court Security and Custodial Services Act 1999* section 3, the *Declared Places (Mentally Impaired Accused) Act 2013* section 3 or the *Prisons Act 1981* section 3(1). Currently prescribed authorities such as the Commission can freely exchange information concerning the wellbeing of a child with other prescribed authorities and the CEO of the Department of Child Protection and Family Support. As children may be residents of declared places it is appropriate that a contractor operating a declared place should be considered a prescribed authority. This will grant protection from criminal and civil liability for communication of information without consent that is undertaken in good faith.

Clause 83: *Coroners Act 1996* amended

Amends the *Coroners Act* section 3 to include in the definition of person held in care, a resident of a declared place. This will require the Commission or a contractor to report the death of a resident to the Coroner's Office.

Clause 84: *Corruption and Crime Commission Act 2003* amended

Amends the *Corruption and Crime Commission Act* by inserting the *Declared Places (Mentally Impaired Accused) Act 2013* in the definition of contractor section 3(1) and in the definition in section 31(a). This will ensure that both a contractor and the CEO of the Commission are within scope of the powers of the Corruption and Crime Commission.

Clause 85: *Court Security and Custodial Services Act 1999* amended

Sub clause 1 amends the *Court Security and Custodial Services Act*

Subclause 2 inserts in section 3 a definition of a place attended by a resident as defined in the *Declared Places (Mentally Impaired Accused) Act 2013* section 3 under the resident's individual development plan, to ensure that in any actions performed under the *Court Security and Custodial Services Act* are informed by the individual development plan.

Subclause 3 inserts a reference to the Act in section 16(2) (b) which permits transport services for residents of declared places between places of custody, to places for medical treatment and to community facilities.

Subclause 4 inserts the definition of the Children and Community Services Act 2004 in section 38 (1) to provide for contractors being a prescribed authority under the Children and Community Services Act 2004 S 24 A.

Subclause 5 inserts a definition of contractor for a declared place service in section 96 allowing the CEO of the department responsible for the Court Security and Custodial Services Act 1999 to access information from the contractor.

Clause 86: Freedom of Information Act 1992 amended

Amends section 63(3) (aa) inserting the *Declared Places (Mentally Impaired Accused) Act 2013*. This ensures that if the Commissioner found a breach of the provisions of the Act or misconduct, he or she would be empowered to report this to the Minister responsible. The *Freedom of Information Act 1992* currently lists the *Court Security and Custodial Services Act 1999* and the *Prisons Act 1981*.

Clause 87: Parliamentary Commissioner Act 1971 amended

Subclause 1 provides for the amendment of the *Parliamentary Commissioner Act 1971*.

Subclause 2 amends section 4 by inserting under contractor, responsible Minister and subcontractor the *Declared Places (Mentally Impaired Accused) Act 2013*. This brings a contractor responsible for declared place services within the scope of the Act.

Subclause 3 inserts in section 17A(4) the CEO as defined in the *Declared Places (Mentally Impaired Accused) Act 2013* providing identical complaint rights to persons held under the *Prisons Act 1981* and *Court Security and Custodial Services Act 1999*.

Subclause 4 inserts in section 19(7) (b) the *Declared Places (Mentally Impaired Accused) Act 2013* providing that where the Commissioner following the conduct of an investigation has evidence of a breach or misconduct under the Act, he or she can notify the Minister responsible for a contractor appointed under the *Declared Places (Mentally Impaired Accused) Act 2013*.

Clause 88: Prisons Act 1981 amended

Subclause 1 provides for the amendment of the *Prisons Act 1981*.

Subclause 2 inserts in section 15C (1) the *Children and Community Services Act 2004* acknowledging that contractors are prescribed authority under that Act.

Subclause 3 inserts in section 113(1) a definition of contractor as defined by the *Declared Places (Mentally Impaired Accused) Act 2013*.

Clause 89: Young Offenders Act 1994 amended

Subclause 1 provides for the amendment of the *Young Offenders Act 1994*.

Subclause 2 inserts in section 16(1) a definition of contractor as defined in the *Declared Places (Mentally Impaired Accused) Act 2013* section 3.