

**Declared Places (Mentally Impaired Accused)
Bill 2013**

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Defined terms

Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

**Declared Places (Mentally Impaired Accused)
Bill 2013**

A Bill for

An Act to make provision for matters relating to places established by the Disability Services Commission for the detention, habilitation and rehabilitation of mentally impaired accused, and as a consequence to amend —

- **the *Criminal Law (Mentally Impaired Accused) Act 1996*; and**
- **the *Disability Services Act 1993*; and**
- **certain other Acts.**

The Parliament of Western Australia enacts as follows:

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Part 1 — Preliminary

1. Short title

This is the *Declared Places (Mentally Impaired Accused) Act 2013*.

2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

In this Act, unless the contrary intention appears —

- adult* means a person who has reached 18 years of age;
- advocate* has the meaning given in section 51;
- authorised hospital* has the meaning given in the MIA Act section 23;
- Board* has the meaning given in the MIA Act section 3;
- carer* has the meaning given in the *Carers Recognition Act 2004* section 5;
- CEO* means the chief executive officer of the Commission;
- chief advocate* has the meaning given in section 51;
- Commission* means the Disability Services Commission referred to in the *Disability Services Act 1993* section 6;
- contractor* means a person who has entered into a contract with the CEO under section 44;
- declared place* means a place —
 - (a) that is a declared place as defined in the MIA Act section 23; and

- 1 (b) that is controlled and managed by or on behalf of the
2 Commission;
- 3 **declared place**, in relation to a resident, means the declared
4 place in which the resident is detained under a determination
5 made by the Board under the MIA Act Part 5;
- 6 **declared place services** means the services provided under a
7 contract entered into under section 44;
- 8 **detention centre** has the meaning given in the *Young Offenders*
9 *Act 1994* section 3;
- 10 **enduring guardian** has the meaning given in the GAA Act
11 section 3(1);
- 12 **GAA Act** means the *Guardianship and Administration*
13 *Act 1990*;
- 14 **guardian** —
- 15 (a) in relation to a resident who is not an adult, means a
16 person who at law has parental responsibility, as defined
17 in the *Family Court Act 1997* section 68, for the
18 resident; and
- 19 (b) in relation to an adult resident, means a guardian as
20 defined in the GAA Act section 3(1);
- 21 **individual development plan**, in relation to a resident at a
22 particular time, means the individual development plan in effect
23 under Part 4 for that person at that time;
- 24 **mentally impaired accused** has the meaning given in the MIA
25 Act section 23;
- 26 **MIA Act** means the *Criminal Law (Mentally Impaired Accused)*
27 *Act 1996*;
- 28 **prison** has the meaning given in the *Prisons Act 1981*
29 section 3(1);
- 30 **regulated behaviour management** has the meaning given in
31 section 37;
- 32 **resident** means a mentally impaired accused who is detained,
33 under a determination made by the Board under the MIA Act

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1 Part 5, in a declared place that is controlled and managed by or
2 on behalf of the Commission;

3 *subcontractor* means a subcontractor of a contractor and
4 includes a person with whom a subcontractor contracts and a
5 person with whom that person contracts.

6 **4. Act binds Crown**

7 This Act binds the Crown in right of the State and also, so far as
8 the legislative power of the State extends, in all its other
9 capacities.

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Part 2 — Principles and objectives

5. Principles applicable to residents

- (1) These are the paramount considerations in performing a function under this Act, in order of priority —
 - (a) the protection and safety of the community;
 - (b) the protection and safety of residents;
 - (c) the best interests of residents who are not adults.
- (2) Residents are to be provided the best possible training, including development programmes that promote their physical, mental, social and vocational abilities.
- (3) Residents are to have access to appropriate care in relation to their physical, medical and dental health needs, including substance abuse problems and associated health conditions.
- (4) A person performing a function under this Act must have regard to the principles set out in subsections (1) to (3).

6. Objectives for programmes and services

- (1) Programmes and services for residents are to be designed and administered so as to respect the rights of residents to be treated —
 - (a) with dignity, courtesy and compassion; and
 - (b) without discrimination or stigma; and
 - (c) with equality of opportunity.
- (2) Programmes and services for residents are to be designed and administered so as to be sensitive and responsive to the diverse and individual circumstances and needs of residents taking into account their age, gender, spiritual beliefs, cultural or linguistic background, family and lifestyle choices.

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- 1 (3) Programmes and services for residents who are not adults are to
2 be designed and administered giving high importance to the best
3 interests of the residents.
- 4 (4) Programmes and services for residents are to be based on
5 empirical evidence and are to be designed and administered so
6 as to —
- 7 (a) reduce the risk of residents offending or re-offending;
8 and
- 9 (b) assist residents to live, work and participate in the
10 community and be as independent as possible; and
- 11 (c) maximise quality of life for residents.
- 12 (5) Programmes and services for Aboriginal or Torres Strait
13 Islander residents are to be designed and administered so as to
14 be appropriate to, and consistent with, their cultural beliefs,
15 mores and practices taking into account the views of their
16 families and communities.
- 17 (6) Programmes and services for residents are to be designed and
18 administered so as to assist residents to be trained, developed
19 and cared for in a manner that is the least restrictive option in
20 the circumstances taking into account the need for the protection
21 and safety of residents and the community.
- 22 (7) Programmes and services are to provide residents and their
23 families, carers and advocates with opportunities for
24 participating in the planning and provision of services received
25 by residents.
- 26 (8) A person performing a function under this Act must have regard
27 to the objectives set out in subsections (1) to (7).

Part 3 — Residents' rights

7. Rights under other laws

(1) This Part is in addition to any law that confers rights on a person.

(2) This Act does not affect a resident's rights under any other law, except to the extent it does so expressly.

8. Explanation of resident's rights

(1) The CEO must ensure that each resident in a declared place is given an explanation of the resident's rights under this Act, the *Freedom of Information Act 1992* and any other written law that applies to the declared place.

(2) The CEO must ensure that, if a resident has an enduring guardian or a guardian —

(a) the enduring guardian or guardian is also given an explanation of the resident's rights; and

(b) if the resident is not an adult, the resident's guardian is also given a written explanation of the resident's rights.

(3) The CEO must ensure that one adult who the CEO is aware has a close personal relationship with a resident is also given an explanation of the resident's rights.

(4) The CEO must ensure that an explanation is given in a manner which is likely to be understood by the resident or other person to whom it is given.

9. Freedom of lawful communication

(1) This section is subject to section 10.

(2) A resident has the right to freedom of lawful communication.

(3) A resident's right to freedom of lawful communication includes the right to do any or all of these —

(a) to communicate with other residents in the resident's declared place to the extent it is reasonable;

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- 1 (b) to send and receive uncensored communications;
- 2 (c) to receive at any time visits from, or otherwise have
- 3 contact with, the resident's advocate, enduring guardian,
- 4 guardian or lawyer;
- 5 (d) to receive at all reasonable times visits from, or
- 6 otherwise have contact with, other people;
- 7 (e) to have access to mail and telephone services for the
- 8 purposes of paragraphs (c) and (d);
- 9 (f) to have access at reasonable times to newspapers, radio
- 10 and television.

11 **10. Restricting freedom of communication**

- 12 (1) The CEO may make an order —
- 13 (a) prohibiting a resident from exercising a right under
- 14 section 9 for a period specified in the order; or
- 15 (b) limiting the extent to which a resident can exercise such
- 16 a right for a period specified in the order.
- 17 (2) The CEO cannot make an order under subsection (1) that affects
- 18 the right of a resident to receive at any time visits from, or
- 19 otherwise have contact with, the resident's advocate, enduring
- 20 guardian, guardian or lawyer.
- 21 (3) The CEO cannot make an order under subsection (1) unless
- 22 satisfied that —
- 23 (a) it is in the best interests of the resident to do so; or
- 24 (b) it is necessary to do so to protect other persons in the
- 25 resident's declared place or in the community; or
- 26 (c) it is necessary to do so to ensure the proper operation,
- 27 control, management, security or good order of the
- 28 resident's declared place.
- 29 (4) The CEO may vary or cancel an order made under
- 30 subsection (1).
- 31 (5) An order under subsection (1) or (4) must be in writing.

- 1 (6) The CEO must ensure —
- 2 (a) that the records of a declared place relating to a resident
- 3 include these —
- 4 (i) any document created under this section in
- 5 relation to the resident;
- 6 (ii) written reasons for a decision made under
- 7 subsection (1) or (4) in relation to the resident;
- 8 and
- 9 (b) that each of these people is given a copy of the records
- 10 listed in paragraph (a)(i) and (ii) —
- 11 (i) the resident;
- 12 (ii) the resident's advocate, enduring guardian,
- 13 guardian or lawyer;
- 14 (iii) one adult who the CEO is aware has a close
- 15 personal relationship with the resident.

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Part 4 — Individual development plans

11. Residents to have individual development plans

- (1) The CEO must ensure that —
 - (a) an individual development plan is prepared for each resident in accordance with this Part; and
 - (b) each resident is managed, and receives care, support and protection, as required under the resident’s individual development plan; and
 - (c) any assessment of a resident that is conducted as required under the resident’s individual development plan is recorded in the resident’s file.
- (2) The purposes of a resident’s individual development plan are —
 - (a) to promote the resident’s development, habilitation and rehabilitation through training and other programmes appropriate to the resident; and
 - (b) to provide for the resident’s management, care, support and protection; and
 - (c) if appropriate, to support the resident’s reintegration into the community.

12. Preparation, review, change of individual development plan

- (1) The CEO must ensure that for the preparation of a resident’s individual development plan, the resident is assessed by 2 or more persons —
 - (a) with the qualifications or experience appropriate, in the CEO’s opinion, to conduct the assessment; and
 - (b) whose qualifications or experience are in different disciplines.
- (2) The CEO must ensure that any positive behaviour support component of a resident’s individual development plan is assessed by a qualified behavioural support specialist.

- 1 (3) An individual development plan must be prepared having regard
2 to any relevant policies and procedures about the management,
3 care, support and protection of residents issued by the CEO for
4 the purposes of this Act.
- 5 (4) The CEO must ensure that for the preparation of a resident's
6 individual development plan, the following people are
7 consulted —
- 8 (a) the resident;
- 9 (b) the resident's advocate, enduring guardian or guardian;
- 10 (c) a carer, or member of the resident's family who, in the
11 CEO's opinion, is integral to the plan's preparation and
12 available to participate.
- 13 (5) A resident's individual development plan must take into account
14 any current document by which another person has power to
15 make decisions on behalf of the resident.
- 16 (6) This section applies to the review of, and proposals to change,
17 an individual development plan in the same way that it applies
18 to the preparation of the plan.

19 **13. Content of individual development plans**

20 A resident's individual development plan must be in writing and
21 include —

- 22 (a) an outline of the proposed arrangements for the
23 provision of programmes or services for —
- 24 (i) promoting the resident's development,
25 habilitation, rehabilitation and quality of life; and
- 26 (ii) providing for the resident's management, care,
27 support and protection; and
- 28 (iii) reducing the intensity, frequency and duration of
29 the resident's behaviour that places at risk the
30 health or safety of the resident or others,
31 including positive behaviour support; and

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- 1 (iv) supporting the resident's reintegration into the
2 community;
- 3 and
- 4 (b) an outline of the proposed plan for the resident's
5 transition to participation and inclusion in the
6 community; and
- 7 (c) details of any medication prescribed for the health care
8 of the resident by a person registered under the *Health
9 Practitioner Regulation National Law (Western
10 Australia)* in a health profession; and
- 11 (d) provision for the review of the resident's health care
12 medication; and
- 13 (e) provision as to the resident's further assessment; and
- 14 (f) what constitutes appropriate or inappropriate regulated
15 behaviour management in the resident's case; and
- 16 (g) details of any medication prescribed for the resident as
17 behaviour management medication, as required under
18 section 27(1)(b); and
- 19 (h) details mentioned in section 31(1)(b) or 35(1)(b), as is
20 applicable in the case, of each emergency when a
21 restraint was used on the resident or the resident was
22 placed in or returned to seclusion; and
- 23 (i) strategies for avoiding, reducing and eliminating any
24 further use of a regulated behaviour management that
25 has been used in the resident's case; and
- 26 (j) any other information prescribed by regulation.

27 **14. Review of individual development plans**

- 28 (1) The CEO must ensure that each resident's individual
29 development plan —
- 30 (a) is reviewed before the expiry of 6 months after it is first
31 prepared and then every 12 months; and

- 1 (b) is reviewed as soon as practicable after the resident
2 requests a review because the resident's circumstances
3 have changed since the plan was prepared or most
4 recently reviewed.
- 5 (2) The CEO must provide a copy of a resident's reviewed
6 individual development plan —
- 7 (a) on request of the resident, to the resident or the
8 resident's advocate or lawyer; and
- 9 (b) on request of the resident or the resident's enduring
10 guardian or guardian, to the enduring guardian or
11 guardian.

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Part 5 — Protection of residents

15. Certain incidents to be reported

- (1) In this section —
- reportable incident*, in relation to a resident, means —
- (a) any ill-treatment or wilful neglect of the resident; or
 - (b) any unlawful sexual contact with the resident; or
 - (c) any unreasonable use of force on the resident;
- work*, in a declared place, means to provide services at the place —
- (a) under a contract of service or a contract for services; or
 - (b) voluntarily.
- (2) A person who works in a declared place and who reasonably suspects a reportable incident has occurred in relation to a resident must report the suspicion to at least one of the following —
- (a) the CEO;
 - (b) a person who is nominated by the CEO for the purposes of this section;
 - (c) a person who is nominated by the Commission for the purposes of this section;
 - (d) the Director as defined in the *Health and Disability Services (Complaints) Act 1995* section 3(1);
 - (e) a police officer.

Penalty: a fine of \$5 000.

16. Residents not to be ill-treated

- (1) In this section —
- ill-treat* includes to wilfully neglect;

1 *person responsible*, for a resident, means any person whose
2 duties, directly or indirectly, are or include caring for, providing
3 services to or supervising, managing or controlling the resident.

4 (2) A person responsible for a resident must not ill-treat the
5 resident.

6 Penalty: a fine of \$24 000 or imprisonment for 2 years.

7 **17. Treatment decisions on behalf of residents**

8 (1) In this section —

9 *treatment* means —

10 (a) medical or surgical treatment, including —

11 (i) a life sustaining measure; and

12 (ii) palliative care;

13 or

14 (b) dental treatment; or

15 (c) other health care;

16 *treatment decision*, in relation to a person, means a decision to
17 consent or refuse consent to the commencement or continuation
18 of any treatment of the person.

19 (2) The CEO may make a treatment decision in respect of a
20 resident's treatment if —

21 (a) the resident needs treatment; and

22 (b) the resident is unable to make reasonable judgments in
23 respect of the treatment proposed to be provided to the
24 resident; and

25 (c) there is no person who —

26 (i) at law may make a treatment decision in respect
27 of the treatment; and

28 (ii) is reasonably available; and

29 (iii) is willing to make a treatment decision in respect
30 of the treatment.

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- 1 (3) When making a treatment decision in respect of a resident's
2 treatment the CEO must act according to the CEO's opinion of
3 the best interests of the resident.
- 4 (4) After making a treatment decision in respect of a resident's
5 treatment the CEO must take such action as the CEO considers
6 appropriate in relation to the appointment of a guardian to make
7 treatment decisions for the resident.
- 8 (5) The CEO must ensure, if a health professional provides urgent
9 treatment to a resident in accordance with the GAA Act
10 section 110ZI, that there is recorded in the resident's file —
11 (a) details of the treatment; and
12 (b) why it was not practicable for the health professional to
13 obtain a treatment decision in respect of the treatment
14 from the resident's guardian or enduring guardian or the
15 person responsible for the resident as a patient under the
16 GAA Act section 110ZD.
- 17 (6) The CEO must ensure, if a health professional provides urgent
18 treatment to a resident in accordance with the GAA Act
19 section 110ZI or 110ZIA, that the resident's guardian or
20 enduring guardian or the person responsible for the resident as a
21 patient under the GAA Act section 110ZD is informed of the
22 treatment.

Part 6 — Functions of CEO

18. CEO's functions as to residents

If under the MIA Act Part 5 the Board determines that a mentally impaired accused (the *resident*) is to be detained in a declared place that is controlled and managed by or on behalf of the Commission then, while that determination has effect —

- (a) the resident is taken to be in the custody of the CEO; and
- (b) the CEO is responsible for the resident's welfare and safe custody.

19. CEO's functions as to declared places

- (1) Subject to the control of the Commission, the CEO is responsible to the Commission for the proper operation, control, management and security and for the good order of each declared place.
- (2) If a resident dies, or is absent without leave from a declared place, the CEO must as soon as practicable notify the resident's enduring guardian or guardian and the Commission, the Board and the Commissioner of Police.
- (3) For the purposes of subsection (2), a resident is *absent without leave* from a declared place if the resident —
 - (a) is away from the place without having been given leave of absence by the Board under the MIA Act section 28; or
 - (b) having been away from the place on leave of absence, fails to return to the place or another place to which the person has been transferred when the leave expires or is cancelled by the Board under the MIA Act section 29.
- (4) If a resident is absent from a declared place because he or she is receiving medical treatment elsewhere the CEO must as soon as practicable notify the resident's enduring guardian or guardian.

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1 (5) The CEO must as soon as practicable notify the Commission
2 after the occurrence of an accident, serious irregularity or other
3 unusual event that adversely affects the good order or security
4 of a declared place.

5 (6) This section does not affect the obligations that the CEO has
6 under the *Coroners Act 1996* as a person who holds a resident in
7 care.

8 **20. Delegation of CEO's functions**

9 (1) The CEO may delegate to another person, whether or not the
10 person is a public service officer, any power or duty of the CEO
11 under another provision of this Act but subject to subsection (6).

12 (2) The delegation must be in writing signed by the CEO but, in an
13 emergency, may be done orally, in which case it must be
14 confirmed subsequently in writing.

15 (3) The delegation may expressly authorise the delegate to further
16 delegate the power or duty.

17 (4) A person exercising or performing a power or duty that has been
18 delegated to the person under this section is taken to do so in
19 accordance with the terms of the delegation unless the contrary
20 is shown.

21 (5) This section does not limit the ability of a person to perform a
22 function through an officer or agent.

23 (6) The CEO cannot delegate a function that the CEO has under a
24 provision of this Act set out in the Table to a person who is or
25 that is —

26 (a) a contractor or an employee or agent of a contractor; or

27 (b) a subcontractor or an employee or agent of a
28 subcontractor.

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Table

Provision	Function
s. 14(1)	Reviewing individual development plans
s. 15(2)	Receiving reports about suspicions of reportable incidents
s. 42	Ensuring chief advocate receives information about use of regulated behaviour management
s. 43(1), (2)	Ensuring review of use of regulated behaviour management
s. 49(1)	Preparing, delivering annual reports on contractors
s. 57(1), (2)	Giving information, reports to the Board
s. 58(1), (2)	Requesting the provision of information or giving information on request

1 **Part 7 — Management of declared places**

2 **21. Terms used**

3 In this Part, unless the contrary intention appears —

4 *intoxicant* means any of the following —

- 5 (a) alcohol;
- 6 (b) a drug capable of intoxicating a person;
- 7 (c) a substance that produces a vapour at room temperature
- 8 and that is capable of intoxicating a person;
- 9 (d) any other substance capable of intoxicating a person;

10 *prohibited thing*, in relation to a declared place, means anything

11 that —

- 12 (a) is an intoxicant; or
- 13 (b) might reasonably be a threat to the security or good
- 14 order of the place or to the health or safety of any person
- 15 in the place; or
- 16 (c) is prescribed by regulation as being not permitted in the
- 17 place or is not permitted in the place except under
- 18 conditions prescribed by regulation.

19 **22. Powers to control and manage declared places**

20 The CEO may do any or all of the following for the purpose of

21 controlling and managing a declared place —

- 22 (a) prevent people entering the place;
- 23 (b) refuse entry to the place by a person carrying any
- 24 prohibited thing;
- 25 (c) search any person who wishes to enter, or is in, the place
- 26 and anything the person is carrying if there is a
- 27 reasonable suspicion that a prohibited thing is on, or
- 28 being carried by, the person;
- 29 (d) refuse entry to, or remove from, the place a person who
- 30 does not consent to a search under paragraph (c);

- 1 (e) search anything in the place that is not being carried by
2 a person;
3 (f) seize any prohibited thing found during a search or in
4 the place.

5 **23. General powers in relation to residents**

6 The CEO may do any or all of the following for the purpose of
7 detaining a resident in a declared place or of controlling or
8 managing a resident, whether the resident is at the time in or
9 outside the place —

- 10 (a) give the resident reasonable orders and enforce them;
11 (b) search the resident, the resident's property and any room
12 or other place occupied or used by the resident;
13 (c) seize any prohibited thing in the resident's possession.

14 **24. Searching people and seizing things**

15 (1) This section applies to any search of a person done, and to
16 anything seized, under section 22 or 23.

17 (2) The searcher must, if practicable, be a person of the same
18 gender as the person being searched if the person being
19 searched is an adult.

20 (3) If the person being searched is not an adult —

- 21 (a) the searcher must be a person of the same gender as the
22 person being searched; and
23 (b) another adult must be present during the search.

24 (4) The searcher may do all or any of these things —

- 25 (a) scan the person with an electronic or mechanical device,
26 whether hand held or not, to detect any thing;
27 (b) remove the person's headwear, gloves, footwear or outer
28 clothing (such as a coat or jacket), but not the person's
29 inner clothing or underwear, in order to facilitate a frisk
30 search;

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- 1 (c) frisk search the person by quickly and methodically
2 running the hands over the outside of the person's
3 clothing;
- 4 (d) search any article removed under paragraph (b).
- 5 (5) The searcher may do any or all of these things for the purpose of
6 conducting the search —
- 7 (a) search any thing being carried by, or under the
8 immediate control of, the person;
- 9 (b) order the person to remove any thing that might injure
10 the person conducting the search from any article that
11 the person is wearing;
- 12 (c) photograph part or all of the search while it is being
13 done;
- 14 (d) order the person to do anything reasonable to facilitate
15 the exercise by the person conducting the search of any
16 power in this section.
- 17 (6) The search must be conducted as follows —
- 18 (a) the search must be done as quickly as is reasonably
19 practicable;
- 20 (b) the search must not be any more intrusive than is
21 reasonably necessary in the circumstances;
- 22 (c) if the person conducting the search proposes to remove
23 any article that the person is wearing, the person
24 conducting the search must tell the person why it is
25 considered necessary to do so;
- 26 (d) the person must be allowed to dress as soon as the
27 search is finished;
- 28 (e) the person must be provided with a reasonably adequate
29 replacement for any article of clothing or footwear
30 seized if, due to the seizure, the person is left without
31 adequate clothing or footwear in the circumstances.

- 1 (7) A seized thing —
2 (a) must be kept in safe custody and returned to the person
3 from whom it was seized when the person leaves the
4 declared place; or
5 (b) if an intoxicant, may be destroyed unless it is a drug
6 prescribed for the person from whom it was seized; or
7 (c) must otherwise be dealt with according to law.
- 8 (8) The CEO must ensure a record is kept of things seized and dealt
9 with under this Act.

1 **Part 8 — Regulation of behaviour management**

2 **Division 1 — Behaviour management medication**

3 **25. Terms used**

4 In this Division —

5 *authorisation*, under section 30 or 34, includes an authorisation
6 as varied from time to time;

7 *behaviour management medication* means medication for the
8 primary purpose of controlling a resident's behaviour but does
9 not include medication for the resident's health care;

10 *doctor* means a person who is registered under the *Health*
11 *Practitioner Regulation National Law (Western Australia)* in
12 the medical profession;

13 *nurse* means a person registered under the *Health Practitioner*
14 *Regulation National Law (Western Australia)* —

15 (a) whose name is entered on the Register of Nurses kept
16 under that Law as being qualified to practise as a nurse
17 practitioner; or

18 (b) in the nursing and midwifery profession whose name is
19 entered on Division 1 of the Register of Nurses kept
20 under that Law as a registered nurse;

21 *work*, in a declared place, means to provide services at the
22 place —

23 (a) under a contract of service or a contract for services; or

24 (b) voluntarily.

25 **26. Administration of behaviour management medication**

26 (1) A doctor must not prescribe medication for the primary purpose
27 of controlling a resident's behaviour unless satisfied that —

28 (a) it is in the best interests of the resident to do so; or

29 (b) it is the least restrictive way to protect the resident's
30 health and safety or to protect others.

- 1 (2) A person must not administer behaviour management
2 medication to a resident unless —
- 3 (a) a doctor prescribes the medication for the primary
4 purpose of controlling the resident's behaviour; and
- 5 (b) the person administering the medication is —
- 6 (i) a doctor; or
- 7 (ii) a nurse acting under the direction of a doctor;
- 8 and
- 9 (c) the medication is administered in accordance with the
10 prescribing doctor's directions, including directions
11 about the dose, route and frequency of the medication
12 and any restrictions on its use; and
- 13 (d) the person administering the medication is satisfied that
14 the resident will be observed in accordance with the
15 prescribing doctor's directions.
- 16 (3) Sections 40 and 41(1) apply in relation to behaviour
17 management medication.

18 **27. Records of behaviour management medication**

- 19 (1) The CEO must ensure that details of any medication prescribed
20 for a resident as behaviour management medication are included
21 in —
- 22 (a) the resident's file; and
- 23 (b) the resident's individual development plan.
- 24 (2) A person who administers, or directs the administration of,
25 behaviour management medication to a resident must ensure
26 that the following details are recorded in the resident's file —
- 27 (a) the name and amount of the medication administered;
- 28 (b) the time or times at which it was administered and the
29 reason for administering it at each time;
- 30 (c) the person who administered it;

- 1 (d) the person who prescribed it and the time and date of
2 prescription;
- 3 (e) if the medication was prescribed to be administered as
4 and when needed, the circumstances in which it was
5 administered;
- 6 (f) the name of each person who made each observation of
7 the resident after the medication was administered,
8 whether in accordance with or in addition to the
9 prescribing doctor's directions, and the date, time,
10 duration and results of each observation;
- 11 (g) the name of the person who reviewed the resident's
12 health and welfare under section 41(2)(a) and the date,
13 time, duration and results of the review;
- 14 (h) any other information prescribed by regulation.

15 **Division 2 — Restraint**

16 **28. Term used: restraint**

17 In this Division —

18 ***restraint*** means using bodily force or a device to physically
19 prevent the free movement of the body or a part of the body of a
20 resident for the primary purpose of controlling the resident's
21 behaviour but does not include —

- 22 (a) the provision of physical support or assistance in daily
23 living activities; or
- 24 (b) the use of a surgical or medical appliance for the proper
25 treatment of physical disease or injury.

26 **29. Approval of restraint devices**

27 The CEO must —

- 28 (a) approve the devices that may be used for the restraint of
29 residents; and
- 30 (b) specify the approved devices in a policy or procedure
31 issued to each declared place.

1 **30. Restraint to be authorised**

2 (1) The CEO may authorise the use of restraint on a resident, and
3 vary an authorisation, but only —

- 4 (a) after having regard to the resident’s individual
5 development plan; and
6 (b) if satisfied it is the least restrictive way to protect the
7 resident’s health and safety or to protect others; and
8 (c) if the restraint is to be by way of a device, if the device
9 is approved under section 29.

10 (2) The authorisation must be in writing given to each person
11 whose duties are or include controlling or managing the resident
12 and state the following —

- 13 (a) each type of restraint authorised to be used;
14 (b) the reasons for the restraint;
15 (c) any restrictions on the circumstances in which the
16 restraint may be used;
17 (d) the maximum period or periods for which the restraint
18 may be used;
19 (e) the intervals at which the resident must be observed
20 while restrained, which must not be longer than
21 15 minutes;
22 (f) any special measures necessary to ensure the resident’s
23 proper care and support while restrained;
24 (g) the date and time the authorisation is made and its
25 duration;
26 (h) any other information prescribed by regulation.

27 **31. Restraint to be in accordance with authorisation**

28 (1) A person must not use restraint on a resident unless —

- 29 (a) the person does so in accordance with an authorisation
30 under section 30; or

- 1 (b) in an emergency, it is not practicable to get an
2 authorisation and the person notifies the CEO, as soon
3 as practicable afterwards, of the restraint used, the
4 reasons for using it and the reasons for not getting the
5 authorisation.
- 6 (2) Sections 40 and 41(1) apply in relation to restraint.
- 7 (3) A person whose duties are or include controlling or managing a
8 resident must immediately remove a restraint from the resident
9 if —
- 10 (a) the person is satisfied care and support can be safely
11 provided to the resident without the restraint; or
- 12 (b) the CEO orders the person to remove the restraint.
- 13 **32. Records about restraint**
- 14 The CEO must ensure that —
- 15 (a) a copy of an authorisation under section 30 is included
16 in the resident’s file; and
- 17 (b) the following details are recorded in the resident’s
18 file —
- 19 (i) each type of restraint used on the resident,
20 whether under an authorisation, by way of
21 emergency or in any other circumstance;
- 22 (ii) if the authorisation states any restriction on the
23 circumstances in which a restraint may be used,
24 the circumstances in which the restraint was
25 used;
- 26 (iii) the time or times at which each restraint was
27 applied and the reason for doing so at each time;
- 28 (iv) each person who applied each restraint;
- 29 (v) the duration of each restraint;
- 30 (vi) if the restraint was by way of a device, the
31 person who removed the restraint;

- 1 (vii) the name of each person who made each
2 observation of the resident while the restraint
3 was used and the date, time, duration and results
4 of each observation;
- 5 (viii) the name of the person who reviewed the
6 resident's health and welfare under
7 section 41(2)(b) and the date, time, duration and
8 results of the review;
- 9 (ix) if the restraint was used in an emergency, the
10 time at which the CEO was notified under
11 section 31(1)(b), and the matters notified;
- 12 (x) any other information prescribed by regulation.

13 **Division 3 — Seclusion**

14 **33. Term used: seclusion**

15 In this Division —

16 *seclusion* means the confinement of a resident at any time of the
17 day or night alone in a room or area from which the resident's
18 free exit is prevented for the primary purpose of controlling a
19 resident's behaviour but does not include locking a resident's
20 bedroom door at night for security purposes.

21 **34. Seclusion to be authorised**

22 (1) The CEO may authorise the placing of a resident in seclusion
23 and the return of a resident to seclusion, and vary an
24 authorisation, but only —

- 25 (a) after having regard to the resident's individual
26 development plan; and
- 27 (b) if satisfied that seclusion is necessary to protect the
28 resident or other people from imminent physical harm;
29 and

- 1 (c) if satisfied that seclusion is the least restrictive way to
2 protect the resident's health and safety or to protect
3 others.
- 4 (2) The authorisation must be in writing given to each person
5 whose duties are or include controlling or managing the resident
6 and state the following —
- 7 (a) the reasons for the seclusion;
- 8 (b) the date and time the authorisation is made and its
9 duration;
- 10 (c) the maximum period or periods of the resident's
11 seclusion, each of which must not be longer than the
12 period, if any, prescribed by regulation;
- 13 (d) any special measures necessary to ensure the resident's
14 proper care and support while secluded;
- 15 (e) whether the resident is to be continually observed while
16 secluded or, if not, the intervals at which the resident
17 must be observed while secluded, which must not be
18 longer than 15 minutes;
- 19 (f) any other information prescribed by regulation.

20 **35. Seclusion to be in accordance with authorisation**

- 21 (1) A person must not place a resident in seclusion or return a
22 resident to seclusion unless —
- 23 (a) the person does so in accordance with an authorisation
24 under section 34; or
- 25 (b) in an emergency, it is not practicable to get an
26 authorisation and the person notifies the CEO, as soon
27 as practicable afterwards, of the seclusion, the reasons
28 for the seclusion and the reasons for not getting the
29 authorisation.
- 30 (2) Sections 40 and 41(1) apply in relation to seclusion.

- 1 (3) A person whose duties are or include controlling or managing a
2 resident must immediately remove a resident from seclusion
3 if —
4 (a) the person is satisfied that the resident’s seclusion is no
5 longer necessary; or
6 (b) the CEO orders the person to remove the resident from
7 seclusion.

8 **36. Records about seclusion**

9 The CEO must ensure that —

- 10 (a) a copy of an authorisation under section 34 is included
11 in the resident’s file; and
12 (b) the following details are recorded in the resident’s
13 file —
14 (i) each time at which the resident is placed in,
15 released from, and returned to, seclusion,
16 whether under an authorisation, by way of
17 emergency or in any other circumstance;
18 (ii) each person who placed the resident in, released
19 the resident from, and returned the resident to,
20 seclusion;
21 (iii) the reasons for each release from, or return to,
22 seclusion;
23 (iv) the name of each person who made each
24 observation of the resident during seclusion and
25 the date, time, duration and results of each
26 observation;
27 (v) the name of the person who reviewed the
28 resident’s health and welfare under
29 section 41(2)(c) and the date, time, duration and
30 results of the review;
31 (vi) if the resident was placed in, or returned to,
32 seclusion in an emergency, the time at which the

- 1 CEO was notified under section 35(1)(b), and the
2 matters notified;
3 (vii) any other information prescribed by regulation.

4 **Division 4 — General provisions about regulated**
5 **behaviour management**

6 **37. Term used: regulated behaviour management**

7 In this Division —

8 *regulated behaviour management* means any of the
9 following —

- 10 (a) behaviour management medication as defined in
11 section 25;
12 (b) restraint as defined in section 28;
13 (c) seclusion as defined in section 33.

14 **38. Police officers' powers not affected**

15 This Part does not apply to a police officer acting in the course
16 of duty.

17 **39. Consent not required**

18 It is not necessary to obtain a resident's consent to the use,
19 under this Part, of regulated behaviour management in the
20 resident's case.

21 **40. General restrictions on regulated behaviour management**

22 Regulated behaviour management —

- 23 (a) must not involve the use of more force than is
24 reasonable; and
25 (b) must not involve the use of more measures than is
26 reasonable; and
27 (c) must not be more restrictive or intrusive than is
28 necessary; and

- 1 (d) must not be used for longer than is necessary; and
2 (e) may be used whether the resident is in or outside a
3 declared place unless to do so is inconsistent with an
4 authorisation under section 30 or 34.

5 **41. Welfare of residents during and after regulated behaviour**
6 **management**

- 7 (1) During the use of regulated behaviour management in a
8 resident's case, the resident must have —
9 (a) sufficient food and fluids; and
10 (b) sufficient bedding and clothing; and
11 (c) access to toilet facilities; and
12 (d) access to medication prescribed for the resident for
13 medical treatment.
- 14 (2) The CEO must ensure that as soon as practicable after, but not
15 more than 2 hours after —
16 (a) a resident is administered behaviour management
17 medication; or
18 (b) the removal of a restraint from a resident; or
19 (c) the release of a resident from seclusion,
20 the resident's health and welfare are reviewed by a person who,
21 in the opinion of the CEO, is suitably qualified or experienced
22 to do so.

23 **42. Chief advocate to receive information about regulated**
24 **behaviour management**

- 25 The CEO must ensure that, every 3 months, each document
26 included, and the information recorded, in a resident's file under
27 section 27, 32 or 36 within that period are provided to the chief
28 advocate.

1 **43. Review of use of regulated behaviour management**

2 (1) The CEO must ensure that, every 3 months and any other time
3 as directed by the CEO, the use of regulated behaviour
4 management on any resident is reviewed by a person who, in
5 the opinion of the CEO, is suitably qualified or experienced to
6 do so.

7 (2) The CEO must ensure that —

8 (a) the review addresses the appropriateness or otherwise of
9 the use and any further use of regulated behaviour
10 management on each resident who is the subject of the
11 review; and

12 (b) there is recorded in the file of each resident who is a
13 subject of the review, details of the review relating to
14 the resident.

1 **Part 9 — Contracts for declared place services**

2 **44. Contracts for declared place services**

3 (1) The CEO may, for and on behalf of the Commission, enter into
4 a contract with a person for the person to operate, control,
5 manage and ensure the security and good order of a declared
6 place.

7 (2) The functions that can be performed under a contract are subject
8 to section 20(6).

9 (3) Subsection (1) does not affect —

- 10 (a) the powers that the Commission has under the *Disability*
11 *Services Act 1993* section 12A(1); or
12 (b) the constraints on the exercise of those powers under
13 section 12A(2) of that Act; or
14 (c) the obligation under section 21B of that Act of the
15 Commission to consult the Minister about certain action.

16 **45. Minimum matters to be included in contracts**

17 A contract under section 44 must provide for all of the
18 following —

- 19 (a) compliance by the contractor, any subcontractor and
20 their employees and agents with this Act and other
21 relevant written laws;
22 (b) compliance by the contractor with the obligations that
23 the contractor has under the *Coroners Act 1996* as a
24 person who holds a resident in care;
25 (c) objectives and performance standards in relation to the
26 provision of the declared place services;
27 (d) fees, costs and charges to be paid to and by the
28 contractor;
29 (e) compliance by the contractor, any subcontractor and
30 their employees and agents with the minimum standards

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- 1 established under section 46 in relation to the provision
2 of the declared place services;
- 3 (f) the submission of reports in relation to the contractor's
4 obligations under the contract;
- 5 (g) notification by the contractor of any change in the
6 control, management or ownership of —
- 7 (i) the contractor; or
8 (ii) a subcontractor, or a member of a class of
9 subcontractors, specified in the contract for the
10 purposes of this paragraph by the CEO;
- 11 (h) the circumstances in which the CEO can intervene in, or
12 suspend or terminate, a contract and requisition property
13 in the case of a terminated contract, and the financial
14 and other consequences of doing so;
- 15 (i) codes of ethics and conduct, as approved by the CEO, to
16 apply to the contractor, any subcontractor and their
17 employees and agents;
- 18 (j) reporting procedures to notify the CEO of the
19 following —
- 20 (i) the death of a resident;
21 (ii) a resident being absent without leave;
22 (iii) a resident being absent from a declared place
23 because he or she is receiving medical treatment
24 elsewhere;
- 25 (iv) the occurrence of an accident, serious irregularity
26 or other unusual event that adversely affects the
27 good order or security of a declared place;
- 28 (k) investigation procedures and dispute resolution
29 mechanisms for complaints about the provision of the
30 declared place services;
- 31 (l) an indemnity by the contractor in favour of the
32 Commission;

- 1 (m) the office the holder of which is to be the principal
2 officer of the contractor and the subcontractors under the
3 relevant contract for the purposes of the *Children and*
4 *Community Services Act 2004*, the *Corruption and*
5 *Crime Commission Act 2003*, the *Freedom of*
6 *Information Act 1992* and the *Parliamentary*
7 *Commissioner Act 1971*;
- 8 (n) any other matter prescribed by regulation.

9 **46. Minimum standards**

- 10 (1) The CEO must establish minimum standards applicable to the
11 provision of declared place services and the CEO may vary the
12 minimum standards.
- 13 (2) The Minister must, within 14 days after the minimum standards
14 are established or varied, cause a copy of the standards or the
15 variation to be laid before each House of Parliament or dealt
16 with under section 62.

17 **47. Penalty for breach**

- 18 (1) A contract under section 44 may provide for a party to the
19 contract to be liable to pay an amount determined under the
20 contract, by way of penalty, in respect of a breach of the
21 contract.
- 22 (2) The contract may provide for an increase in the amount of the
23 penalty because of each day or part of a day during which a
24 breach continues.
- 25 (3) A penalty provided for in accordance with this section is
26 recoverable even though no damage may have been suffered or
27 the penalty may be unrelated to the extent of any damage
28 suffered.

29 **48. Access to certain declared places, persons and documents**

- 30 (1) The Commission, the CEO and any person authorised by the
31 CEO have free and unfettered access at any time to a declared

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- 1 place, person or document referred to in subsection (2) for the
2 purpose of —
- 3 (a) ensuring compliance with this Act or a contract under
4 section 44; or
- 5 (b) ensuring that declared place services are being properly
6 provided.
- 7 (2) A person referred to in subsection (1) has access to —
- 8 (a) a declared place at which declared place services are
9 provided under a contract under section 44 or any part of
10 the declared place; and
- 11 (b) each resident in the declared place; and
- 12 (c) each person whose work is concerned with the declared
13 place; and
- 14 (d) each document in the possession or control of the
15 contractor or a subcontractor in relation to a declared
16 place service for the declared place.
- 17 (3) The CEO may authorise a person for the purposes of
18 subsection (1).
- 19 (4) An authorisation must be in writing and may be made subject to
20 such conditions and limitations specified in the authorisation as
21 the CEO thinks fit.
- 22 (5) A person must not hinder a person referred to in subsection (1)
23 when the person is exercising or attempting to exercise a power
24 under that subsection.
25 Penalty: a fine of \$20 000.
- 26 (6) This section does not limit any entitlement that a person has
27 under a law to access a place, person or document referred to in
28 subsection (2).

- 1 **49. Annual reports and tabling of contracts**
- 2 (1) The CEO must prepare and deliver to the Minister by
3 30 September each year a report on each contractor who
4 provided declared place services in the preceding 12 months.
- 5 (2) The report must contain such information as is required to be
6 included in the report by the Minister to enable an informed
7 assessment to be made of —
- 8 (a) the operations of each contractor; and
- 9 (b) the extent to which there has been compliance with each
10 contract.
- 11 (3) The Minister must, within 14 days after receiving a report,
12 cause a copy of the report to be laid before each House of
13 Parliament or dealt with under section 62.
- 14 (4) The Minister must, within 14 days after a contract or a variation
15 to a contract is executed, cause a copy of the contract or the
16 variation to be laid before each House of Parliament or dealt
17 with under section 62.
- 18 **50. No contracting out**
- 19 The provisions of this Part apply despite anything to the
20 contrary in a contract.

1 **Part 10 — Advocacy services for residents**

2 **51. Terms used**

3 In this Part —

4 ***advocate*** —

5 (a) if the *Mental Health Act 1996* Part 9 is in operation,
6 means a member of the Council of Official Visitors
7 established under section 176 of that Act; or

8 (b) if the *Mental Health Act 1996* Part 9 is no longer in
9 operation, means a person belonging to a class of
10 persons prescribed by regulation;

11 ***chief advocate*** —

12 (a) if the *Mental Health Act 1996* Part 9 is in operation,
13 means the Head of the Council of Official Visitors
14 appointed under section 177(1)(a) of that Act; or

15 (b) if the *Mental Health Act 1996* Part 9 is no longer in
16 operation, means the person prescribed by regulation.

17 **52. Residents' rights as to visits or other contact**

18 (1) The CEO must inform the chief advocate of the arrival of a new
19 resident as soon as practicable but no later than 48 hours after
20 the resident arrives at a declared place.

21 (2) The chief advocate is to ensure that each resident is visited or
22 otherwise contacted by an advocate —

23 (a) within 7 days of the resident's arrival at a declared
24 place; and

25 (b) as soon as practicable after the resident, or a person on
26 the resident's behalf, requests the CEO or an advocate to
27 arrange for the resident to be visited or otherwise
28 contacted by an advocate, and in any event, within
29 72 hours after that time; and

30 (c) at least 4 times a year, including each visit or contact
31 under paragraph (a) or (b).

- 1 (3) A resident has these rights —
- 2 (a) the right to decline to be visited or otherwise contacted
- 3 by an advocate;
- 4 (b) to not consent, or to withdraw consent, to an advocate's
- 5 having access to the records of a declared place about
- 6 the resident.

7 **53. Advocate functions**

- 8 Each advocate has these functions —
- 9 (a) visiting or otherwise contacting residents in accordance
- 10 with section 52;
- 11 (b) acting as the personal advocate of residents to safeguard
- 12 their health and safety and foster their development;
- 13 (c) monitoring orders under section 10 restricting freedom
- 14 of communication;
- 15 (d) monitoring the use of regulated behaviour management;
- 16 (e) inquiring into or investigating any matter relating to an
- 17 environmental condition of a declared place that is
- 18 adversely affecting, or is likely to adversely affect, the
- 19 health, safety or wellbeing of residents;
- 20 (f) inquiring into or investigating the extent to which
- 21 explanations of the rights of residents have been given
- 22 in accordance with section 8(1), (2), (3) and (4) and the
- 23 extent to which those rights are being, or have been,
- 24 observed;
- 25 (g) assisting residents to protect and enforce their rights
- 26 referred to in section 8(1);
- 27 (h) inquiring into, and seeking to resolve, complaints made
- 28 to advocates about the management or care of residents;
- 29 (i) assisting a resident to make a complaint to the person
- 30 who operates the declared place;
- 31 (j) assisting a resident to make a complaint under the
- 32 *Disability Services Act 1993* Part 6;

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- 1 (k) being a resident's representative in respect of a
2 complaint if recognised as the resident's representative
3 under the *Disability Services Act 1993* section 32(2);
4 (l) liaising with the resident's enduring guardian or
5 guardian;
6 (m) assisting residents to access legal services;
7 (n) referring any issues arising out of the performance of a
8 function of the advocate to the appropriate person to
9 deal with those issues, including to the chief advocate, if
10 the advocate cannot resolve the issue or otherwise
11 considers it appropriate to refer the matter;
12 (o) the functions given under other provisions of this Act,
13 including participating in the planning and provision of
14 services received by residents and the preparation of
15 individual development plans.

16 **54. Advocate powers**

- 17 (1) In this section —
18 **work**, in a declared place, means to provide services at the place
19 under a contract of service or a contract for services.
20 (2) An advocate may do anything necessary or convenient for the
21 performance of the advocate's functions under this Act.
22 (3) The performance of any function under this Act of an advocate
23 is subject to the direction of the chief advocate.
24 (4) An advocate may, with or without notice, at any time, and for
25 any length of time, do these things —
26 (a) visit a declared place and inspect any part of the place;
27 (b) visit, or otherwise have contact with, any one or more
28 residents, except a resident who has declined to be
29 contacted by an advocate.

- 1 (5) An advocate may ask a person who works at a declared place
2 questions about any of these matters —
- 3 (a) the welfare, health, care, training, safety, management or
4 security of any resident;
- 5 (b) the operation, control, management, security and good
6 order of a declared place, but only to the extent to which
7 the matter is relevant to a matter mentioned in
8 paragraph (a).
- 9 (6) An advocate may inspect and copy any document at a declared
10 place relating to the place.
- 11 (7) An advocate who is visiting or otherwise contacting a resident
12 may inspect and copy any of the following documents,
13 wherever held, except a document to which the advocate has
14 been denied access by the resident —
- 15 (a) the resident’s individual development plan;
- 16 (b) any other document included, and the information
17 recorded, in the resident’s file;
- 18 (c) any of the records listed in section 10(6)(a)(i) and (ii)
19 that relate to the resident;
- 20 (d) any other document in the possession or control of the
21 person who operates the declared place that relates to the
22 resident.
- 23 (8) An advocate may require a person who works at a declared
24 place to give reasonable assistance to the advocate for the
25 purpose of the performance of the advocate’s functions under
26 this Act.

27 **55. Offences**

- 28 (1) A person who is asked a question by an advocate under
29 section 54(5) must answer the question.
30 Penalty: a fine of \$6 000.

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- 1 (2) A person who is asked a question by an advocate under
2 section 54(5) must not give an answer that the person knows is,
3 or has reckless disregard as to whether the answer is, false or
4 misleading in a material particular.
5 Penalty: a fine of \$6 000.
- 6 (3) A person must not fail without reasonable excuse (proof of
7 which is on the person) to give assistance that is required under
8 section 54(8).
9 Penalty: a fine of \$6 000.
- 10 (4) A person must not, without reasonable excuse (proof of which is
11 on the person), hinder an advocate in the performance of the
12 advocate's functions under this Act.
13 Penalty: a fine of \$6 000.
- 14 (5) An individual is not excused from complying with
15 subsection (1) or (3) on the ground that the answer to a question
16 or the provision of assistance might tend to incriminate the
17 individual or expose the individual to a criminal penalty.
- 18 (6) If an individual complies with subsection (1) or (3) neither —
19 (a) an answer given by the individual that was given to
20 comply with subsection (1); or
21 (b) the fact that the assistance given by the individual to
22 comply with subsection (3) was given,
23 is admissible in evidence in any criminal proceedings against
24 the individual other than proceedings for perjury or for an
25 offence under subsection (2).
- 26 **56. Advocate reports**
- 27 (1) The functions in this section are in addition to the function
28 referred to in section 53(n).
- 29 (2) An advocate who considers that a matter should be considered
30 by the CEO may report the matter to the CEO.

- 1 (3) As soon as practicable after the end of a financial year, the chief
2 advocate must report to the Minister on the activities of all
3 advocates during that year.
- 4 (4) The Minister is not entitled to have information under this
5 section in a form that —
- 6 (a) discloses the identity of a resident; or
7 (b) might enable the identity of a resident to be ascertained,
8 unless the resident or the resident's enduring guardian or
9 guardian has consented to the disclosure.
- 10 (5) The Minister must, within 14 days after receiving a report,
11 cause a copy of the report to be laid before each House of
12 Parliament or dealt with under section 62.

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Part 11 — Miscellaneous matters

57. Provision of information about residents: Board and CEO

- (1) The Board and the CEO may give each other information that is relevant to the welfare, health, care, training, safety, management or security of a resident.
- (2) The CEO must, on the written request of the Board, prepare and give the Board a report about any matter that relates to —
 - (a) the welfare, health, care, training, safety, management or security of a resident; or
 - (b) any function the Board has under the MIA Act Part 5 in relation to a resident.

58. Provision of information about residents: CEO and others

- (1) The following persons may, on the written request of the CEO, give the CEO information that relates to a resident’s welfare, health, care, training, safety, management or security —
 - (a) a public sector body as defined in the *Public Sector Management Act 1994* section 3(1);
 - (b) the Commissioner of Police;
 - (c) a superintendent of a prison or detention centre in which the resident has been detained;
 - (d) the person in charge of an authorised hospital in which the resident has been detained;
 - (e) a person who takes charge of a resident for the purpose of moving the resident to or from a declared place;
 - (f) a contractor or a subcontractor that is or has been responsible for the resident under a contract under section 44.
- (2) The CEO may, on the written request of any of the following persons, give the person information that relates to a resident’s

- 1 welfare, health, care, training, safety, management and
 2 security —
- 3 (a) the Public Advocate, as defined in the GAA Act
 4 section 3(1), for the purposes of performing functions
 5 under the GAA Act sections 97 and 98;
- 6 (b) the Commissioner of Police;
- 7 (c) the chief executive officer of the department of the
 8 Public Service principally assisting the Minister
 9 responsible for the administration of the *Children and*
 10 *Community Services Act 2004*, the *Court Security and*
 11 *Custodial Services Act 1999*, the *Prisons Act 1981* or the
 12 *Young Offenders Act 1994*;
- 13 (d) a superintendent of a prison or detention centre in which
 14 the resident has been, or is to be, detained;
- 15 (e) the person in charge of an authorised hospital in which
 16 the resident has been, or is to be, detained;
- 17 (f) a person who takes charge of a resident for the purpose
 18 of moving the resident to or from a declared place.

19 **59. Confidentiality of information about residents**

- 20 (1) A person must not, directly or indirectly, record, use or disclose
 21 information that relates to a resident and that was obtained by
 22 the person when performing a function under this Act or in the
 23 course of duty in the provision of declared place services.
 24 Penalty: a fine of \$2 500.
- 25 (2) Subsection (1) does not apply to the recording, use or disclosure
 26 of information —
- 27 (a) for the purpose of performing a function that the person
 28 has or had under this Act; or
- 29 (b) for the purpose of providing declared place services; or
- 30 (c) as required or allowed under this Act or another law; or
- 31 (d) under the order of a court or a person acting judicially;
 32 or

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- 1 (e) for the purpose of proceedings before the State
2 Administrative Tribunal commenced under the
3 GAA Act; or
4 (f) for the purpose of giving information to a law
5 enforcement body in connection with an offence
6 allegedly committed by or against a resident; or
7 (g) in the public interest to protect the physical safety of an
8 individual; or
9 (h) if the information is personal information, with the
10 consent of the person or the person's enduring guardian
11 or guardian; or
12 (i) in circumstances prescribed by regulation.
- 13 (3) A person does not, by giving information under section 57(1) or
14 by complying with a request made under section 57(2) or 58(1)
15 or (2) —
16 (a) incur civil or criminal liability in respect of the
17 disclosure; or
18 (b) breach any duty of confidentiality or secrecy imposed by
19 any law; or
20 (c) commit unprofessional conduct or breach professional
21 ethics or standards or any principles of conduct
22 applicable to a person's employment.

23 **60. Reports about declared places**

24 The CEO must include in the Commission's annual report
25 required under the *Financial Management Act 2006* Part 5 a
26 report on these matters for the relevant financial year in relation
27 to each declared place —

- 28 (a) the operations of the place;
29 (b) the number of people admitted to the place as residents;
30 (c) the number of people who ceased to be residents of the
31 place;
32 (d) any other matter prescribed by regulation.

1 **61. Protection from personal liability**

2 (1) In this section, a reference to the doing of anything includes a
3 reference to the omission to do anything.

4 (2) An action in tort does not lie against a person (except a
5 contractor or a subcontractor) for anything that the person has
6 done, in good faith —

7 (a) when performing or purporting to perform a function
8 under this Act; or

9 (b) in assisting a person to perform or purportedly perform a
10 function under this Act.

11 (3) The protection given by subsection (2) applies even though the
12 thing done as described in that subsection may have been
13 capable of being done whether or not this Act had been enacted.

14 (4) Despite subsection (2), the State, a contractor or a subcontractor
15 is not relieved of any liability that the State, the contractor or the
16 subcontractor might have for another person having done
17 something as described in that subsection.

18 **62. Laying documents before Parliament**

19 (1) If section 46(2), 49(3) or (4) or 56(5) requires the Minister to
20 cause the a copy of a document to be laid before each House of
21 Parliament, or dealt with under this section, within a period
22 and —

23 (a) at the commencement of the period, a House of
24 Parliament is not sitting; and

25 (b) the Minister is of the opinion that the House will not sit
26 during that period,

27 the Minister must transmit a copy of the document to the Clerk
28 of that House.

29 (2) A copy of a document transmitted to the Clerk of a House is to
30 be regarded as having been laid before that House.

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- 1 (3) The laying of a copy of a document that is to be regarded as
2 having occurred under subsection (2) must be recorded in the
3 Minutes, or Votes and Proceedings, of the House on the first
4 sitting day of the House after the Clerk received the copy.

5 **63. Regulations**

- 6 (1) The Governor may make regulations prescribing all matters that
7 are required or permitted by this Act to be prescribed, or are
8 necessary or convenient to be prescribed for giving effect to this
9 Act.
- 10 (2) The regulations prescribe or adopt standards that apply to
11 people when performing functions under this Act in relation to
12 residents.

13 **64. Review of this Act**

- 14 (1) The Minister must review the operation and effectiveness of this
15 Act as soon as practicable after —
- 16 (a) the third anniversary of the day on which this section
17 comes into operation; and
- 18 (b) each 5 year period after that anniversary.
- 19 (2) The Minister must cause a report on each review to be laid
20 before each House of Parliament as soon as practicable after the
21 review is done.

1 **Part 12 — Consequential amendments to other Acts**

2 **Division 1 — *Criminal Law (Mentally Impaired Accused)***
3 ***Act 1996* amended**

4 **65. Act amended**

5 This Division amends the *Criminal Law (Mentally Impaired*
6 *Accused) Act 1996*.

7 **66. Section 24 amended**

8 After section 24(4) insert:

- 9
- 10 (5A) A mentally impaired accused is not to be detained in a
11 declared place that is established by the Disability
12 Services Commission under the *Disability Services*
13 *Act 1993* (a ***DSC declared place***) unless the Board —
- 14 (a) is satisfied that the accused is a person with
15 disability as defined in the *Disability Services*
16 *Act 1993* section 3 and the predominant reason
17 for the disability is not mental illness; and
- 18 (b) is satisfied that the accused has reached
19 16 years of age; and
- 20 (c) has regard to the degree of risk that the
21 accused’s detention in the declared place
22 appears to present to the personal safety of
23 people in the community or of any individual in
24 the community.
- 25 (5B) The Board may determine that a mentally impaired
26 accused be detained in a DSC declared place only if the
27 member referred to in section 42(1)(bb) is present at
28 the meeting at which the custody order is made.
- 29 (5C) Despite subsection (1), even if the Board determines
30 that a mentally impaired accused should be detained in

1 a DSC declared place, the accused is not to be detained
2 in a DSC declared place without the consent of the
3 Minister to whom the *Disability Services Act 1993* is
4 for the time being committed.
5

6 **67. Section 42 amended**

7 (1) In section 42(1):

8 (a) delete “are —” and insert:

9

10 are as follows —

11

12 (b) after paragraph (a) insert:

13

14 (ba) a deputy chairperson, to be nominated by the
15 Minister and appointed by the Governor;

16 (bb) a person who, under the *Disability Services*
17 *Act 1993* section 9 or 10, works for the
18 Disability Services Commission, appointed by
19 the Commission;
20

21 (c) in paragraph (c) delete “Governor; and” and insert:

22

23 Governor;

24

25 (2) After section 42(3) insert:

26

27 (4A) The Minister must not nominate a person as a deputy
28 chairperson unless the person has, in the Minister’s
29 opinion, extensive or special knowledge of matters
30 involved in the performance of the Board’s functions.

- 1 (4B) The deputy chairperson must perform the functions of
2 the chairperson —
3 (a) when the chairperson is unable to act because
4 of illness, absence or other cause; or
5 (b) during any vacancy in the office of chairperson.
- 6 (4C) The member of the Board referred to in
7 subsection (1)(bb) is a member only while the person
8 works for the Disability Services Commission under
9 the *Disability Services Act 1993* section 9 or 10.
10
- 11 (3) In section 42(5) delete “psychiatrist” and insert:
12
13 deputy chairperson, the psychiatrist
14

15 **68. Section 50A inserted**

16 After section 49 insert:
17

18 **50A. Protection from personal liability**

- 19 (1) In this section, a reference to the doing of anything
20 includes a reference to the omission to do anything.
- 21 (2) An action in tort does not lie against a person for
22 anything that the person has done, in good faith —
23 (a) when performing or purporting to perform a
24 function under this Act; or
25 (b) in assisting a person to perform or purportedly
26 perform a function under this Act.
- 27 (3) The protection given by subsection (2) applies even
28 though the thing done as described in that subsection
29 may have been capable of being done whether or not
30 this Act had been enacted.

- 1 (4) Despite subsection (2), the State is not relieved of any
2 liability that it might have for another person having
3 done something as described in that subsection.
4

5 **Division 2 — Disability Services Act 1993 amended**

6 **69. Act amended**

7 This Division amends the *Disability Services Act 1993*.

8 **70. Section 3 amended**

9 In section 3 insert in alphabetical order:
10

11 *Declared Places Act* means the *Declared Places*
12 *(Mentally Impaired Accused) Act 2013*;

13 *resident* means a resident as defined in the Declared
14 Places Act section 3;
15

16 **71. Section 12 amended**

17 (1) In section 12(1):

18 (a) in paragraph (i) delete “as prescribed,” and insert —
19

20 as prescribed in relation to people with disability other
21 than residents,
22

23 (b) in paragraph (l) delete “functions.” and insert:
24

25 functions; and
26

27 (c) after paragraph (l) insert:
28

29 (m) subject to the Declared Places Act, to establish,
30 operate, control, manage and ensure the
31 security and good order of each declared place,

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as defined in the *Criminal Law (Mentally Impaired Accused) Act 1996* section 23, that is for the detention of those mentally impaired accused who are mentioned in section 24(5A) of that Act.

(2) After section 12(3) insert:

(4) The provisions of this Act set out in the Table do not apply to the Commission in performing its functions under subsection (1)(m).

Table

Provision	Provision
s. 12(3)	Part 4
Part 4A	s. 51
s. 52	s. 53
s. 54	s. 56
s. 57	

72. Section 21 amended

(1) In section 21(1) delete “For parliamentary purposes or for the proper conduct of the Minister’s business, the” and insert:

The

- 1 (2) In section 21(4)(a) delete “disability; or” and insert:
2
3 disability other than a resident; or
4
- 5 (3) After section 21(4) insert:
6
- 7 (5A) The Minister is not entitled to have information under
8 this section in a form that —
9 (a) discloses the identity of a resident involved in a
10 particular application, complaint or proceeding;
11 or
12 (b) might enable the identity of any such resident
13 to be ascertained,
14 unless the resident or the resident’s enduring guardian
15 or guardian (as those terms are defined in the *Declared*
16 *Places (Mentally Impaired Accused) Act 2013*
17 section 3) has consented to the disclosure.
18
- 19 (4) In section 21(5) delete the definition of *parliamentary*
20 *purposes*.
- 21 (5) In section 21(5) in the definition of *information* delete
22 “Commission;” and insert:
23
24 Commission.
25
- 26 **73. Part 6 heading amended**
- 27 In the heading to Part 6 after “**services**” insert:
28
29 **and resident services**
30

1 **74. Section 30 amended**

2 (1) In section 30 insert in alphabetical order:

3

4 *declared place* means a declared place as defined in the
5 Declared Places Act section 3;

6 *representative*, in relation to a person with a disability,
7 means the person’s representative recognised under
8 section 32(2);

9 *resident service* means any of the following —

- 10 (a) the operation, control, management and
11 ensuring of the security and good order of a
12 declared place;
- 13 (b) any service related to a matter mentioned in
14 paragraph (a);
- 15 (c) providing for the care, protection and safety of
16 residents;
- 17 (d) providing programmes for, and other training
18 of, residents;
- 19 (e) any other service that the Declared Places Act
20 requires to be provided to residents,

21 but does not include an advocacy service for a resident
22 or a service prescribed by regulation;

23 *service provider*, in relation to the provision of a
24 resident service, means —

- 25 (a) the Commission; or
- 26 (b) a contractor or subcontractor as defined in the
27 Declared Places Act section 3; or
- 28 (c) any other person that renders or provides
29 resident services,

30 but does not include a service prescribed by regulation.

31

1 (2) In section 30 in the definition of *respondent* delete “made.” and
2 insert:

3

4 made;

5

6 **75. Section 32 amended**

7 (1) In section 32(1):

8 (a) after “section 33(1)” insert:

9

10 or (3)

11

12 (b) after “section 33(2)” insert:

13

14 or (4)

15

16 (c) in paragraph (b) delete “an advocate for the person; or”
17 and insert:

18

19 the person’s representative; or

20

21 (2) In section 32(2):

22 (a) delete “an advocate for” and insert:

23

24 a representative of

25

26 (b) in paragraph (b)(i) delete “advocate; and” and insert:

27

28 representative; and

29

- 1 (c) in paragraphs (b)(ii) and (c)(ii) delete “advocate” and
2 insert:
3
4 representative
5
- 6 (3) In section 32(3) delete “advocate.” and insert:
7
8 representative.
9
- 10 **76. Section 33 amended**
- 11 (1) In section 33(1) delete “only”.
- 12 (2) In section 33(2) after “A complaint” insert:
13
14 made under subsection (1)
15
- 16 (3) After section 33(2) insert:
17
- 18 (3) A complaint may be made about a service provider
19 that, at the time the subject matter of the complaint
20 arose, was providing or was required to provide a
21 resident service.
- 22 (4) A complaint made under subsection (3) may allege
23 only that the service provider —
- 24 (a) acted unreasonably by not providing a resident
25 service to the complainant; or
- 26 (b) acted unreasonably by providing a resident
27 service to the complainant, whether the service
28 was requested by the complainant or a third
29 party; or
- 30 (c) acted unreasonably in the manner of providing
31 a resident service to the complainant; or

Declared Places (Mentally Impaired Accused) Bill 2013

Part 12 Consequential amendments to other Acts

Division 2 Disability Services Act 1993 amended

s. 76

- 1 (d) acted unreasonably by denying or restricting
2 the complainant's access to records relating to
3 the complainant kept by the service provider; or
- 4 (e) acted unreasonably in disclosing records or
5 confidential information relating to the
6 complainant; or
- 7 (f) failed to have regard to the principles set out in
8 the Declared Places Act section 5(1) to (3) as
9 required by section 5(4) of that Act; or
- 10 (g) failed to have regard to the objectives set out in
11 the Declared Places Act section 6(1) to (7) as
12 required by section 6(8) of that Act; or
- 13 (h) failed to comply with the Carers Charter; or
- 14 (i) in respect of a complaint about a matter
15 mentioned in paragraphs (a) to (e) made to the
16 service provider by a resident, acted
17 unreasonably by —
- 18 (i) not properly investigating the complaint
19 or not causing it to be properly
20 investigated; or
- 21 (ii) not taking, or not causing to be taken,
22 proper action in relation to the
23 complaint;
- 24 or
- 25 (j) failed to give an explanation as required under
26 the Declared Places Act section 8(1), (2) or (3)
27 or failed to give an explanation in the manner
28 required by section 8(4) of that Act; or
- 29 (k) acted unreasonably in the making of an order
30 under the Declared Places Act section 10(1)
31 or (4); or

- 1 (l) acted unreasonably in relation to the regulated
2 behaviour management, as defined in the
3 Declared Places Act section 3, of a resident.
4

5 **77. Section 38 amended**

6 After section 38(1) insert:

- 7
8 (2A) The Director may reject a complaint if, in the
9 Director’s opinion, the complainant has not taken
10 reasonable steps to resolve the matter with the
11 respondent.
12

13 **78. Section 39 amended**

14 In section 39(3)(a) delete “advocate recognised under
15 section 32(2);” and insert:

16
17 representative;
18

19 **79. Section 40 amended**

20 In section 40(4):

21 (a) after “section 33(2)” insert:

22
23 or (4)
24

25 (b) after paragraph (a) insert:

26
27 (ba) in the case of an investigation in relation to the
28 provision of a resident service, the following —

29 (i) the principles and objectives set out in
30 the Declared Places Act Part 2;

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Part 12 Consequential amendments to other Acts

Division 3 Amendments to other Acts

s. 80

- 1 (ii) any relevant individual development
2 plan as defined in section 3 of that Act;
3 (iii) each applicable minimum standard
4 under section 46 of that Act;
5 (iv) the provisions of any relevant contract;
6

7 **80. Section 41 amended**

8 In section 41(1) in the definition of *the person's representative*
9 paragraph (a) delete “advocate” and insert:
10

11 representative
12

13 **81. Section 46 amended**

14 In section 46(b) after “services” insert:
15

16 or resident services
17

18 **Division 3 — Amendments to other Acts**

19 **82. Children and Community Services Act 2004 amended**

20 (1) This section amends the *Children and Community Services*
21 *Act 2004*.

22 (2) In section 24A(1) delete the definition of *prescribed authority*
23 and insert:
24

25 *prescribed authority* means —

- 26 (a) a public authority, other than the Department,
27 prescribed for the purposes of this definition; or

- 1 (b) a contractor as defined in the *Court Security*
2 *and Custodial Services Act 1999* section 3, the
3 *Declared Places (Mentally Impaired Accused)*
4 *Act 2013* section 3 or the *Prisons Act 1981*
5 section 3(1).
6
- 7 (3) In section 24A(1) in the definition of **CEO**:
8 (a) in paragraph (c) delete “holder;” and insert:
9
10 holder; or
11
- 12 (b) after paragraph (c) insert:
13
- 14 (d) for a person referred to in paragraph (b) of the
15 definition of **prescribed authority** — the holder
16 of the office specified in the relevant contract to
17 be the principal officer for the purposes of
18 this Act;
19

20 **83. Coroners Act 1996 amended**

- 21 (1) This section amends the *Coroners Act 1996*.
22 (2) In section 3 in the definition of **person held in care** after
23 paragraph (b) insert:
24
- 25 (ca) a resident as defined in the *Declared Places*
26 *(Mentally Impaired Accused) Act 2013*
27 section 3;
28

- 1 **84. *Corruption and Crime Commission Act 2003* amended**
- 2 (1) This section amends the *Corruption and Crime Commission*
- 3 *Act 2003*.
- 4 (2) In section 3(1) in the definitions of *contractor* and
- 5 *subcontractor* delete “1999 or” and insert:
- 6
- 7 *1999, the Declared Places (Mentally Impaired Accused)*
- 8 *Act 2013* or
- 9
- 10
- 11 (3) In section 31(a) delete “1999 or” and insert:
- 12
- 13 *1999, the CEO as defined in the Declared Places (Mentally*
- 14 *Impaired Accused) Act 2013* section 3, or
- 15
- 16 **85. *Court Security and Custodial Services Act 1999* amended**
- 17 (1) This section amends the *Court Security and Custodial Services*
- 18 *Act 1999*.
- 19 (2) In section 3 in the definition of *custodial place* after
- 20 paragraph (l) insert:
- 21
- 22 (m) a place attended by a resident, as defined in the
- 23 *Declared Places (Mentally Impaired Accused)*
- 24 *Act 2013* section 3, under the resident’s
- 25 individual development plan as defined in that
- 26 section;
- 27

1 (3) In section 16(2)(b) delete “1996” and insert:

2

3 *1996, the Declared Places (Mentally Impaired Accused)*
4 *Act 2013*

5

6 (4) In section 38(1) after “purposes of” insert:

7

8 the *Children and Community Services Act 2004*,

9

10 (5) In section 96(1) after “Crown” insert:

11

12 or a contractor as defined in the *Declared Places (Mentally*
13 *Impaired Accused) Act 2013* section 3

14

15 **86. *Freedom of Information Act 1992* amended**

16 (1) This section amends the *Freedom of Information Act 1992*.

17 (2) In section 63(3)(aa) delete “1999 or” and insert:

18

19 *1999, the Declared Places (Mentally Impaired Accused)*
20 *Act 2013* or

21

22 (3) In the Glossary clause 1 in the definitions of *contractor* and
23 *subcontractor* delete “1999 or” and insert:

24

25 *1999, the Declared Places (Mentally Impaired Accused) Act 2013* or

26

27 **87. *Parliamentary Commissioner Act 1971* amended**

28 (1) This section amends the *Parliamentary Commissioner Act 1971*.

- 1 (2) In section 4 in the definitions of *contractor, responsible*
2 *Minister* paragraph (b) and *subcontractor* delete “1999 or” and
3 insert:
4
5 *1999, the Declared Places (Mentally Impaired Accused)*
6 *Act 2013* or
7
- 8 (3) In section 17A(4) after “1999,” insert:
9
10 the CEO as defined in the *Declared Places (Mentally Impaired*
11 *Accused) Act 2013* section 3,
12
- 13 (4) In section 19(7)(b) delete “1999 or” and insert:
14
15 *1999, the Declared Places (Mentally Impaired Accused)*
16 *Act 2013* or
17
- 18 **88. Prisons Act 1981 amended**
- 19 (1) This section amends the *Prisons Act 1981*.
- 20 (2) In section 15C(l) after “purposes of” insert:
21
22 the *Children and Community Services Act 2004*,
23
- 24 (3) In section 113(1) delete the definition of *contractor* and insert:
25
26 *contractor* means —
27 (a) a contractor as defined in the *Court Security*
28 *and Custodial Services Act 1999* section 3; or

Defined terms

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
absent without leave.....	19(3)
adult	3
advocate	3, 51
authorisation.....	25
authorised hospital	3
behaviour management medication	25
Board.....	3
carer	3
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