



**Disability Justice Centre**

# Annual Report 2022-23

-----

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

Hon Donald Punch MLA  
**MINISTER FOR DISABILITY SERVICES**

In accordance with section 56(3) of the *Declared Places (Mentally Impaired Accused) Act 2015*, I submit for your information and presentation to Parliament the annual report of the Chief Advocate for the financial year ending 30 June 2023.

The report records the activities of the Advocates who provided services to residents of the Bennett Brook Disability Justice Centre, a declared place, during the 2022-23 year.



Dr Sarah Pollock  
**CHIEF ADVOCATE**

*October 2023*

# Contents

---

<b>Foreword by the Chief Advocate</b>	<b>2</b>
<b>Right of Residents of a Declared Place to Advocacy Services</b>	<b>3</b>
What is a 'declared place'?	3
Who are the residents of a 'declared place'?	3
Criteria and process for admission	4
Leave of absence orders	5
Community reintegration	5
<b>The Advocacy Service</b>	<b>6</b>
Role of the Advocates	6
Powers of the Advocates	7
Who are the Advocates?	7
<b>Residents' Other Rights</b>	<b>8</b>
<b>Activities of Advocates</b>	<b>9</b>
Visits and notifications	9
Individual Development Plans (IDP)	9
Reviews by the Mentally Impaired Accused Review Board	9
<b>Other Advocacy Issues</b>	<b>10</b>
Lack of psychiatric services	10
Emergency restraint and seclusion	10
Permission to reside at the Disability Justice Centre	10
Community support services	11
<b>COVID-19</b>	<b>12</b>
<b>Meetings with the Minister</b>	<b>12</b>
<b>Reforms of the Criminal Law (Mentally Impaired Accused) Act 1996</b>	<b>12</b>
<b>Cost of the Advocacy Services</b>	<b>13</b>
<b>Glossary</b>	<b>14</b>

## Foreword by the Chief Advocate

The Bennett Brook Disability Justice Centre (DJC) provides a safe and welcoming environment to a group of people with complex support needs, offering an effective program to build their skills for community living. Advocates are involved with individual development planning for each resident, and report the benefits of the supports provided by staff with specialised skills working within well-structured guidelines.

To ensure resident confidentiality and privacy, the report is confined to the legislative and structural framework around admission to the DJC and the advocacy services. The report highlights issues with arrangements that potentially impact current and prospective residents.

My main concern remains the level of utilisation of the DJC. Last year, there were three residents out of a possible ten. Under current legislation, people may be detained at the DJC if the predominant reason for their disability is not a mental illness. In practice, this excludes any person with psychosocial disability or dual disability including psychosocial, regardless of how well their mental illness is managed and the risk profile they present.

The Minister for Disability Services must currently consent to placement at the DJC. Minister Punch has assured us he wishes to see the DJC fully utilised. Last year no-one was recommended for placement, nor assessed as being unsuitable. The Department of Communities is confident that numbers will increase as the mental impairment reforms are implemented. I look forward to this but seek equity for people with psychosocial disability.

Last year I reported my concerns about the length of time it was taking to ensure that DJC residents could promptly access psychiatric services. I am pleased that this matter is now largely settled, although I am disappointed that an agreement on the provision of access to and funding for forensic psychiatric reports is outstanding.

Finally, this year we saw what can happen when people transition into the community with supports provided through the NDIS. Despite the best efforts of the DJC staff and input from the Department of Communities, it is evident that further sector development is required to ensure there is a sufficiently capable workforce that understands how to balance control and choice and health and wellbeing outcomes essential to independent community living.

I would like to thank the Senior Advocate and Advocates who have supported residents at the Centre for their commitment and expertise in ensuring residents have access to their rights.



Dr Sarah Pollock  
**CHIEF ADVOCATE**

*October 2023*



# Right of Residents of a Declared Place to Advocacy Services

---

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

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

People detained in psychiatric wards in authorised hospitals and prisoners in jail similarly have legislation which provides them with a level of protection<sup>1</sup>. This is because detention is by its very nature disempowering and isolating for the person detained and can lead to abuse.

The advocacy services provided under the Act are aimed at providing rights protection while also fostering the development of the resident, with the Advocate working alongside the resident on their individual development plan (IDP) as described in the Act.

## What is a 'declared place'?

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

There is only one declared place in Western Australia — the Bennett Brook Disability Justice Centre (Disability Justice Centre) in Caversham. It is a residential-style facility that can accommodate 10 mentally impaired accused persons, hereafter referred to as residents. The Disability Justice Centre was originally established by the Disability Services Commission (DSC) under the Act. From 1 July 2017 the DSC has become a part of the Department of Communities and is known as Department of Communities (Disability Services) although the

Act continues to refer to the DSC. The Disability Justice Service which is a part of the Department of Communities (Disability Services) manages the Disability Justice Centre.

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

During the 2022-23 period a total of three residents lived at the Disability Justice Centre. Under the CLMIA Act the only people eligible for detention in a declared place are those who:

- are a mentally impaired accused on a custody order
- have reached 16 years of age
- have a disability as defined in the *Disability Services Act 1993* and the predominant reason for the disability is not mental illness.

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

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

Eligibility for the Disability Justice Centre<sup>2</sup> is based on the definition of 'disability' as defined in the *Disability Services Act 1993*, namely people with a disability "attributable to intellectual, psychiatric, cognitive, neurological, sensory or physical impairment or a combination of those impairments". However, the

---

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

<sup>2</sup> Source: CLMIA Act, section 24(5A).

CLMIA Act (and the new, anticipated *Criminal Law (Mental Impairment) Act 2023*) exclude those people for whom the predominant reason for the disability is a mental illness. Further, those who have a dual disability (ie a combination of intellectual, cognitive, neurological, sensory, or physical impairment and a mental illness) are eligible only if the mental illness is not the predominant reason for their disability.

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

## Criteria and process for admission

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

As at 30 June 2023, there were 57 custody orders in force (see table 1):

- 3 were detained in the Disability Justice Centre
- 32 were detained in an authorised hospital
- 9 were in prison
- 13 were in the community on conditional release orders.

The number of custody orders in place at the end of the financial year has increased from 38 to 57 over the past five years. During 2022-23 there were five new Custody Orders made by the courts in Western Australia however the number of mentally impaired accused persons discharged from orders by Executive Government was two and has been less than the number of new orders made each year for many years (see table 2) resulting in a net increase in the total number of custody orders.

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

The MIAR Board first asks the Department of Communities (Disability Justice Service) to undertake a 'suitability for placement' assessment for a mentally impaired accused person who they are considering for placement at the Disability Justice Centre when making an initial 'place of custody order'. Disability Justice Service clinicians, in consultation with the mentally impaired accused person, their family and/or guardian and the Disability Justice Service Suitability Assessment Panel (the Panel) undertake the suitability for placement assessment.

The Disability Justice Service process is to produce an initial assessment which is then considered by the Panel comprising of the Director, Disability Justice Service, the Manager of the Disability Justice Centre (or delegate), the clinicians who carried out the assessment, and other relevant representatives. The Panel then makes a recommendation and briefs the Assistant Director

**Table 1. Mentally Impaired Accused Persons' place of custody as at 30 June - 2018 to 2023<sup>3</sup>**

Location	Number of custody orders as at June 30					
	2018	2019	2020	2021	2022	2023
<b>Authorised Hospital<sup>4</sup></b>	9	11	22	29	28	32
<b>Community</b>	17	18	15	10	14	13
<i>Subject to a condition they undergo treatment for a mental illness</i>		15	12	7	10	10
<i>Not subject to conditions about treatment for a mental illness</i>		3	3	3	4	3
<b>Declared Place</b>	2	3	2	3	3	3
<b>Prison<sup>5</sup></b>	10	10	11	10	10	9
<b>TOTAL</b>	<b>38</b>	<b>42</b>	<b>50</b>	<b>52</b>	<b>55</b>	<b>57</b>

<sup>3</sup> Source: correspondence with the MIAR Board with the exception of 2018 data which is from the MIAR Board Annual Report 2017-18.

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

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

General, Department of Communities, who approves the report and recommendation and sends the assessment to the MIAR Board stating whether the person is deemed suitable for placement.

The MIAR Board considers the report and determination along with any other materials or expert reports available to it. The CLMIA Act also requires that a person who works for the DSC, must be a member of the MIAR Board and be present when the MIAR Board is making a decision regarding any placement at the Bennett Brook Disability Justice Centre. In practical terms that person is from the Department of Communities (Disability Services). The Department of Communities (Disability Services) representative on the MIAR Board does not undertake the suitability for placement assessment.

**Table 2. Five-year trend in the number of new custody orders and discharged orders<sup>6</sup>**

	New custody orders	Discharged orders
2017-18	4	6
2018-19	8	4
2019-20	11	3
2020-21	6 <sup>8</sup>	4
2021-22	7	2 <sup>9</sup>
2022-23 <sup>7</sup>	5	2

If the MIAR Board decides to recommend the detention of the mentally impaired accused at the Disability Justice Centre it sends the Minister a statutory report containing a comprehensive and detailed summary of all the accused’s circumstances, and the MIAR Board’s reasons for recommending placement. The Minister then decides whether to consent to the placement. If consent is refused, the person is likely to remain in prison or an authorised hospital (if they also have a mental health condition and meet the criteria in the CLMIA Act).

### Leave of absence orders

Mentally impaired accused persons, whether in a declared place, authorised hospital or a prison, may be given leave of absence (LOA) orders. The LOA orders are granted by the MIAR Board following approval by

the Governor. They cannot exceed 14 days and the MIAR Board is to have regard to risk and compliance factors. LOA orders are relied on by the Disability Justice Centre as central to the programs used to assist with preparing residents for reintegration into the community and ultimate release. LOA orders may enable the provision of National Disability Insurance Scheme (NDIS) supports, if the mentally impaired accused person has an NDIS package with appropriate supports. Residents can therefore spend a considerable amount of time outside the Disability Justice Centre on day and overnight leave as determined by the MIAR Board’s LOA orders. Consent to placement in the Disability Justice Centre includes consideration of risk to the community in providing LOA orders.

### Community reintegration

The MIAR Board periodically reviews the status of each resident. The reviews are required to be conducted within eight weeks of the custody order being made and at least annually so that reports may be made to the Minister (as required by s33 of the CLMIA Act) but reviews may be conducted more frequently. The Board may make recommendations to the Minister that a resident be granted a leave of absence to engage in community activities and/or transition to living outside of the Declared Place.

As residents of the Disability Justice Centre are assessed as having a disability, they are generally eligible for support services and funding under the NDIS. This Scheme grants the resident funding to engage a support service provider who will support them during their transition and beyond.

During the 2022-23 year, all three residents of the DJC engaged service providers who were trained by the Disability Justice Centre staff to provide the services unique to each resident.

There is, in our view, a mismatch between the ethos and laws that impact on the residents in the justice system, and the ethos and laws that surround the provision of services to people with disabilities through the NDIS. The former requires reasonably stringent guidelines and rules. The latter are based squarely in agency and autonomy of the individual, expressed in NDIS services as “control and choice”. NDIS requires that the person receiving the service must want the service and can direct supports to their preferences.

<sup>6</sup> Source: new custody order data is sourced from MIAR Board annual reports. The number of mentally impaired accused persons discharged is an assumption based on the net change in total custody orders between successive years taking into account new orders made. The exception is 2021-22 data which is based on correspondence with the MIAR Board on 3 August and 5 September 2022.

<sup>7</sup> Source: correspondence with the MIAR Board.

<sup>8</sup> One mentally impaired accused person received two custody orders.

<sup>9</sup> In addition to the two people discharged from custody orders during 2021-22, there were two people who were no longer subject to custody orders.

# The Advocacy Service

---

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

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

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

## Role of the Advocates

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

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

- a) visiting or otherwise contacting residents
- b) acting as the personal Advocate of residents to safeguard their health and safety and foster their development
- c) monitoring orders under section 10 of the Act restricting freedom of communication
- d) monitoring the use of regulated behaviour management
- e) inquiring into or investigating any matter relating to an environmental condition of the declared place that is adversely affecting, or is likely to adversely affect, the health, safety or wellbeing of residents
- f) inquiring into or investigating the extent to which explanations of the rights of residents have been given in accordance with the Act and the extent to which those rights are being, or have been, observed
- g) assisting residents to protect and enforce their rights
- h) inquiring into, and seeking to resolve, complaints made to Advocates about the management or care of residents
- i) assisting a resident to make a complaint to the person who operates the declared place
- j) assisting a resident to make a complaint under the *Disability Services Act 1993*
- k) being a resident's representative in respect of a complaint if recognised as the resident's representative under the *Disability Services Act 1993*
- l) liaising with the resident's enduring guardian or guardian
- m) assisting residents to access legal services
- n) referring any issues arising out of the performance of a function of the Advocate to the appropriate person to deal with those issues, including to the Chief Advocate, if the Advocate cannot resolve the issue or otherwise considers it appropriate to refer the matter
- o) participating in the planning and provision of services received by residents and the preparation of their IDPs.

## Powers of the Advocates

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

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

- with or without notice, at any time, and for any length of time —
  - a) visit a declared place and inspect any part of the place
  - b) visit, or otherwise have contact with, any one or more residents, except a resident who has declined to be contacted by an Advocate
- ask a person who works at a declared place questions about any of these matters —
  - a) the welfare, health, care, training, safety, management or security of any resident
  - b) the operation, control, management, security and good order of a declared place, to the extent to which the matter is relevant to a matter mentioned in paragraph (a)
- inspect and copy any document at a declared place relating to the place
- inspect and copy any of the following documents, wherever held, except a document to which the Advocate has been denied access by the resident —
  - a) the resident's IDP
  - b) any other document included, and the information recorded, in the resident's file

- c) any of the records listed in section 10(6)(a)(i) and (ii) of the Act that relate to the resident
  - d) any other document in the possession or control of the person who operates the declared place that relates to the resident
- require a person who works at a declared place to give reasonable assistance to the Advocate for the performance of the Advocate's functions under this Act.

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

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

## Who are the Advocates?

The Declared Places (Mentally Impaired Accused) Regulations 2015 prescribe that the Chief Mental Health Advocate and Mental Health Advocates as defined in the *Mental Health Act 2014* are the Chief Advocate and Advocates for the Act. The functions and powers of Mental Health Advocates under the *Mental Health Act 2014* are very similar to the functions and powers of Advocates under the Act including advocacy and rights protection services for people who are on custody orders due primarily to a mental illness and who are in an authorised hospital or on a conditional release order receiving treatment.

During 2022-23 there were only three residents at the Disability Justice Centre. They were supported by two Advocates engaged under the *Mental Health Act 2014* to perform all the functions under the Act. One was the Senior Advocate, who was also the Advocate for a resident.

# Other Residents' Rights

---

During the year, Advocates received training on the Act and continue to ensure their skills on and knowledge of issues to do with advocacy under the Act remain current.

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

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

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

The Act also stipulates that an IDP is to be prepared for each resident, the resident's plan is to be managed and they are to receive 'care, support and protection' as required by that plan. The Advocate must be consulted as part of the preparation, review and proposals for change of a resident's IDP and this is a major part of their work with residents.

Other rights include:

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

# Activities of Advocates

---

## Visits and notifications

In accordance with the requirements of the Act:

- each resident received four visits during the year<sup>10</sup> or the equivalent proportion
- the Chief Advocate received quarterly reports for each resident as to whether there had been any regulated behaviour management pursuant to sections 27, 32 or 36 (behaviour management medication, restraint and seclusion).

## Individual Development Plans (IDP)

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

- promote the resident's development, habilitation (focussing on learning new skills), rehabilitation (focussing on regaining skills lost) and quality of life
- reduce the intensity, frequency and duration of the resident's behaviour that places at risk the health or safety of the resident or others, including positive behaviour support
- support the resident's reintegration into the community and include an outline of the proposed plan for the resident's transition to participation and inclusion in the community.

Some residents had LOA orders made by the MIAR Board which allowed the IDPs to include a program of absences from the Disability Justice Centre. The objective of the LOA orders is to give a staged, gradual and supervised transition back into the community, which is the goal for all residents. Where residents did not have an LOA they were receiving in-reach services.

During 2022-23, Advocates contributed to the IDPs for all residents and in various ways including advocating for culturally appropriate care and programs and appropriate goals and actions. Processes are in place to ensure that all IDP reviews are held within the 12-month period of the plan.

In addition, the IDP must include:

- what constitutes appropriate or inappropriate regulated behaviour management for the resident's case
- details of any medication prescribed as behaviour management medication
- details of each emergency when a restraint was used on the resident or the resident was placed in, or returned to, seclusion
- strategies for avoiding, reducing and eliminating any further use of a regulated behaviour management.

## Reviews by the Mentally Impaired Accused Review Board

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

Advocates draft written submissions or, with the permission of the MIAR Board, attend review hearings. The Advocates contact the residents prior to hearings and review documentation sent to the MIAR Board. In 2022-23 Advocates attended six hearings for three residents, and made oral submissions as requested by the residents.

---

<sup>10</sup> Section 52 of the Act requires the Chief Advocate to ensure that each resident is visited or otherwise contacted within seven days of the resident's arrival at a declared place and 'at least' four times a year. The Chief Advocate has determined that the four visits are to be counted in each reporting year which means between the 12 months between 1 July and 30 June and, if a resident arrives or departs from the declared place within that period, the Chief has determined the number of visits required is based on the proportion of the resident's stay in the 12-month period.

# Other Advocacy Issues

---

## Lack of psychiatric services

Although residents of the Disability Justice Centre must have a disability (which is not predominantly a mental illness), it is not uncommon for eligible residents to have a diagnosed mental illness. Nor is it uncommon for them to have had in-patient admission(s) for a mental illness including at the Frankland Centre which provides care and treatment for forensic patients. Residents' individual development plans must include provision for reviews of their health care and where prescribed, details of medication which may include medication for mental illness. The MIAR Board must also make recommendations to the Minister about the ongoing detention, with consideration of the degree of risk amongst other things, which may require psychiatric reports about the risks assessment.

Following my report in the previous financial year (2021-22), the referral process for ordinary and regular psychiatric, including acute, services has been settled to a workable process following the finalisation of a Service Level Agreement negotiated by the Mental Health Commission with the Department of Communities. However, the Mental Health Advocacy Service continues to have concerns about access to forensic psychiatric services and reports, particularly for reviews by the MIAR Board.

The current process is that staff at the Disability Justice Centre refer any changes in behaviour or deterioration in mental state of a resident to the GP responsible for healthcare of the resident. The GP may make a referral to Midland Community Mental Health Services and a psychiatrist from that service will attend and examine the resident. It is incumbent on that psychiatrist to arrange for necessary treatment.

Psychiatric reports to the MIAR Board, which determine the progress of a resident on the order of detention, are currently arranged via either the Department of Justice, or obtained from a private psychiatrist in some instances. For one resident, this process caused delay where a MIAR Board hearing was adjourned for over a month due to the lack of a forensic report. The Advocate attended stakeholder meetings and pressed for prompt completion of a forensic report.

The Chief Advocate considers that a reliable method of providing this essential service needs to be established and provided so that forensic psychiatric reports can be promptly provided. Given the reports

are a requirement of the MIAR Board process, this service must be funded by government so there is no cost impost on the resident. The Chief Advocate is disappointed that the protracted process to establish the service level agreement to cover the provision of psychiatric services did not extend to the provision of these required and specialised reports.

We will continue to monitor the impact of the lack of a timely service on the pathways for residents to return to the community and take action when this occurs.

## Emergency restraint and seclusion

The Chief Advocate was not notified of any emergency restraints during the year, and no seclusions. It was previously reported<sup>11</sup> that section 41(2) of the Act requiring a suitably qualified person review the health and welfare of a resident within two hours of a restraint or seclusion was not always complied with. As it has been two years since the issue has occurred, the Chief Advocate is confident that the Department of Communities now has processes in place to ensure that the requirement is routinely met<sup>12</sup>.

## Permission to reside at the Disability Justice Centre

The MIAR Board advised the Chief Advocate that no one was recommended for placement at the Disability Justice Centre during the 2022-23 year. In addition, they advised that no one was assessed as unsuitable. There were also no recommendations pending consideration with the Minister (and no recommendations refused or consented by the Minister).<sup>13</sup>

The Chief Advocate continued to be concerned that the facility is under-utilised as the 10-bed facility has had at most 3 residents<sup>14</sup> since opening. The Chief Advocate raised the underutilisation with the Minister for Disability Services who provided assurances that he is keen to see the Centre utilised at greater capacity. A series of stakeholder meetings was held in 2022-23 to explore the barriers to greater utilisation. In these meetings, stakeholders stated that they were reluctant to refer, or had observed a reluctance, because of an apparent lack of success in the past.

In addition to the lack of referrals, the stakeholder meetings indicated that people on custody orders were

---

<sup>11</sup> Annual Report 2018-19 and 2019-20.

<sup>12</sup> Letter from Director, Disability Justice Service, 17 February 2020.

<sup>13</sup> All data provided by MIAR Board by email 10 August 2023.

<sup>14</sup> The Centre has had three residents for less than three of the eight years of its operation. Most of the time (over 4.5 years) there has been two residents, and at times (7 months) there has been one resident.

not typically reassessed for eligibility when their mental illness was well-managed and stabilised. The Advocacy Service understands that representatives could request reassessment through the MIAR Board.

The impact of this lack of movement in the system is exacerbated by the dire situation at the state forensic hospital, the Frankland Centre. There were 32 people subject to Custody Orders detained at the 34 bed Frankland Centre as of 30 June 2023 creating a bottleneck that prevents prisoners and people referred by courts on hospital orders from accessing inpatient mental health assessment and treatment. It must be asked whether some of the people at the Frankland Centre could be better supported at the Disability Justice Centre.

## Community support services

The majority of community support is provided to residents through packages funded by the NDIS. Throughout the year Advocates have been concerned about the quality of the coordination and delivery of NDIS funded services.

Despite considerable training and capacity building by the Disability Justice Centre and by other Department of Communities staff, there were multiple changes of service provider for some of the residents. Changes were driven by providers' inability to sustain services that met residents' needs, maintain the level of resourcing they had committed to, and/or respond appropriately to circumstances that impacted the health and wellbeing of residents.

Despite the best efforts of all concerned, there were at least two systemic failures of service provision during the year. On each occasion, the failure was due to an inability on the part of the service provider to either comprehend the needs of the resident, or adequately plan for the resourcing required to meet those needs. The result in both cases was the need to change service providers and reduced access to leave from the Centre. This caused considerable delays in the successful transition of residents to community living.

In response to these circumstances, Advocates were heavily involved in meetings with Centre staff, residents' service providers, guardians, lawyers, and other parties around the community supports for each resident. Advocates' role in these meetings was to highlight residents' preferences as documented in their Individual Development Plan and ensure that service provision was directed towards the achievement of their goals. They also identified situations in which residents' rights could be, or were breached, and sought prompt remedy when breaches of rights occurred.

# COVID-19

---

Residents at the Disability Justice Centre who chose to be, were fully vaccinated in prior years. When System Alert Response (SAR) restrictions were lifted for the State, residents resumed ordinary activities.

## Meetings with the Minister

---

The Chief Advocate had one meeting with the Minister for Disability Services during the year.

## Reforms of the Criminal Law (Mentally Impaired Accused) Act 1996

---

Reforms of the CLMIA Act have been proposed for many years, and in March 2023 legislation which will repeal the CLMIA Act was passed by Parliament. The *Criminal Law (Mental Impairment) Act 2023* (CLMI Act) was proclaimed but is yet to come into operation, however the reforms include the introduction of Community Supervision Orders which can be made by courts for people who were unfit to stand trial or acquitted on account of unsound mind and special provisions for the fair treatment of children with mental impairment under this Act.

While the principles of the new legislation state that detaining a child should only be used as a last resort, if a child over 16 years is detained, they should not share living quarters with an adult. It is anticipated that children with intellectual disability and/or autism will be subject to the CLMI Act and if detention orders are made, they may be eligible for the services at the Disability Justice Centre.

Inquiries have been made about provision for the suitable care of children aged 16 and 17 years at the Disability Justice Centre (as is provided for under the existing CLMIA Act and new CLMI Act). The CLMI Act states that a child should not be detained to a detention centre unless there is no available alternative. Arguably, the DJC could offer a more suitable option than detention at the Banksia Hill Detention Centre<sup>15</sup> for children with intellectual disability (this could possibly address the chronic under-utilisation of the Centre). The Department of Communities has advised this the detention of children being considered and is anticipated to be addressed in the Disability Justice Service model of services (which includes the Disability Justice Centre); we await further details.

The CLMI Act includes significant other reforms, such as the introduction of limiting terms (although they can be extended by the court on application) and statutory advocacy for all people subject to that Act but these are outside the scope of this annual report.

---

<sup>15</sup> Section 62(1) of the CLMI Act requires the Mental Impairment Review Tribunal to only consider a detention centre if it is satisfied there is no available alternative place of custody that would be suitable.

# Cost of the Advocacy Services

---

In accordance with the agreed funding arrangements, the Department of Communities is invoiced for advocacy services provided pursuant to the Act. The cost of the advocacy services in 2022-23 was \$14,528.40.

# Glossary

<b>The Act</b>	<i>Declared Places (Mentally Impaired Accused) Act 2015</i>
<b>CLMI Act</b>	<i>Criminal Law (Mental Impairment) Act 2023</i>
<b>CLMIA Act</b>	<i>Criminal Law (Mentally Impaired Accused) Act 1996</i>
<b>Disability Justice Centre</b>	The declared place in Caversham known as the Bennett Brook Disability Justice Centre
<b>IDP</b>	Individual Development Plan required by Part 4 of the Act to be prepared at regular intervals for all residents of a declared place
<b>LOA</b>	Leave of absence order made by the MIAR Board on approval of the Governor
<b>Minister</b>	Minister for Disability Services
<b>MIAR Board</b>	Mentally Impaired Accused Review Board
<b>NDIS</b>	National Disability Insurance Scheme
<b>Residents</b>	Mentally impaired accused persons (as defined in the Act) living at the Disability Justice Centre
<b>Statutory contact</b>	Contact by an Advocate within seven days of the resident's arrival as required by the Act





MENTAL HEALTH  
ADVOCACY SERVICE

**Unit 6, 18 Harvest Tce, West Perth WA 6005**

Post (*no stamp required*):

Reply Paid 84455 West Perth 6005

**T** (08) 6234 6300 or 1800 999 057

**F** (08) 9226 3977

**E** [contactus@mmas.wa.gov.au](mailto:contactus@mmas.wa.gov.au)

**[mmas.wa.gov.au](http://mmas.wa.gov.au)**