

2018 ANNUAL REPORT

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





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Hon Stephen Noel Dawson MLC
MINISTER FOR DISABILITY SERVICES

In accordance with section 56(3) of the *Declared Places (Mentally Impaired Accused) Act 2015*, I submit for your information and presentation to Parliament the Annual Report of the Chief Advocate for the financial year ending 30 June 2018.

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 2017-18 year.



Debora Colvin

CHIEF ADVOCATE

October 2018

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Foreword by the Chief Advocate

After some turbulent times in previous years it would appear that the Bennett Brook Disability Justice Centre (the Disability Justice Centre) is enjoying a period of relative stability. Steady progress has been made by residents throughout the year and it is very encouraging to see one resident securing a property and beginning their slow transition back into the community.

The Carter Review, released in January 2018, made 13 recommendations. It highlighted that there is agreement from all stakeholders that a Declared Place is needed in order to assist the transition of individuals with an intellectual disability or cognitive impairment who have come into contact with the justice system back into the community.

Also noted was the sense that the Disability Justice Centre could provide greater value to the community if the *Criminal Law Mentally Impaired Accused Act 1996* was amended and a comprehensive education package developed to inform the legal profession about these amendments and the potential of the Disability Justice Centre.

I agree that there remains an urgent need for the *Criminal Law Mentally Impaired Accused Act 1996* to be amended. I have been advocating in this regard for several years and I have been informed that this much needed work is currently underway.

It is hoped that the amendments will eventually lead to increased opportunity for those requiring the services of the Disability Justice Centre which clearly remains underutilised.

It is understood that there are other mentally impaired accused people in prison and inappropriately placed in authorised hospitals who could be referred. It is therefore concerning that there have been no new admissions to the Disability Justice Centre since 2015.

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

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

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



Debora Colvin
CHIEF ADVOCATE

Right of Residents of a Declared Place to Advocacy Services

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

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

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

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

What is a 'declared place'?

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

There is only one declared place in Western Australia - the Disability Justice Centre in Caversham, established and managed by the Disability Services Commission (DSC)² pursuant to the Act. It is a residential-style facility which can accommodate 10 mentally impaired accused, hereafter referred to as residents.

Who are the residents of a 'declared place'?

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

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

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

² From 1 July 2017 DSC has been part of the Department of Communities.

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

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

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

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

During 2017-18 there were still only two residents in the Disability Justice Centre although it can cater for 10 people.

Criteria and Process for Admission

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

As at 30 June 2017, according to the Annual Report of the MIAR Board, there were 40 mentally impaired accused under the MIAR Board's statutory authority, one more than the 39 under the MIAR Board's statutory authority at 30 June 2016.

- 7 of those individuals were detained in an authorised hospital (or participating in leaves of absence from an authorised hospital)
- 2 were in a declared place
- 12 were in prison (or participating from leaves of absence from prison)
- 19 were in the community subject to a Conditional Release Order.

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

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

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

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

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

Leave of Absence Orders

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

The Advocacy Service

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

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

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

Role of the Advocates

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

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

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

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

Powers of the Advocates

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

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

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

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

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

Who are the Advocates?

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

Currently, two Advocates and a Senior Advocate engaged by the Chief Advocate under the *Mental Health Act 2014* work as Advocates under the Act. Both Advocates received training on the Act prior to the Disability Justice Centre opening and continue to stay current with issues to do with advocacy under the Act. A new Senior Advocate has been introduced to the Disability Justice Centre following the resignation of the previous Senior Advocate.

Other Residents' Rights

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

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

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

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

Other rights include:

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

Activities of Advocates

Although the Disability Justice Centre has a capacity of 10, no new residents were admitted during the 2017-18 year. The last new resident to move into the Disability Justice Centre was therefore in December 2015.

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

Examples of assistance provided to residents during the year included:

- consistently advocating for an external specialist counsellor to be utilised for a specific area of need with one resident. This has now been actioned and is in place
- a resident complaint to the Advocate about bad spirits at the Disability Justice Centre resulting in the Advocate suggesting that a smoking ceremony be performed. This was arranged by Disability Justice Centre staff and the resident expressed that this was beneficial and exactly what was needed
- reinforcing the progress made by a resident and advocating for that progress to be recognised through formal channels and translated to greater independence. The resident is now beginning a slow transition to a house in the community.

Issues reported by Advocates included:

- social friction due to there being so few other residents
- residents' desire to live outside the Disability Justice Centre
- residents' desire to have stronger connection with family members.

Advocate Visits and Contacts

During the period 1 July 2017 to 30 June 2018, Advocates made 14 visits to the Disability Justice Centre and met with residents on 11 occasions.

Advocates' work during visits included maintaining a supportive and professional relationship with the residents, working with them on their IDPs, attending IDP reviews meetings and assisting with MIAR Board reviews.

Reports to the Chief Advocate

Section 42 of the Act requires that the Chief Executive Officer (CEO) of DSC ensure that every three months the Chief Advocate is notified about any and all residents' records of behaviour management medication, restraint and seclusion. Four quarterly reports from the CEO were received.

Individual Development Plans

The Act stipulates that programs and services at the Disability Justice Centre are to be delivered in accordance with the IDP for each resident. The plan, which must be in writing, must be reviewed before the expiry of six months after it is first prepared and then every 12 months. Residents can also request a review because of changed circumstances. Advocates were involved in three IDP review meetings for residents during the period to 30 June 2018.

The main role of Advocates in relation to residents' IDPs, has been to make sure the IDPs are outcomes-focused with programs suiting individual resident needs, and that recommendations of the Blaxell Hayward Report³, commissioned in January 2017 by the then Minister, continued to be followed. The report was an independent analysis of the IDPs, programs and services for residents of the Disability Justice Centre, which resulted in a number of recommendations to improve the IDPs which were accepted by the Minister. See annexure 1.

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

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

In addition the IDP must include:

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

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

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

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

Advocates reported that:

- residents' activities were linked to goals in the IDP and concentrated on activities that excited their interest
- the residents' IDPs continued to take into account recommendations 1, 2 and 3 of the Blaxell Hayward Report
- there was linkage between the IDP and residents' LOAs such that the LOAs were linked to the IDP goals/outcomes
- goals were linked with outcomes and could be amended over time
- goals outlined in the IDP were captured in the words of the resident and were also reflected pictorially which allowed for greater resident understanding and ownership of the IDP.

Advocates contributed to the IDPs in various ways including:

- communicating the wishes and perspectives of the residents during the planning process
- making suggestions regarding activities which were more appropriate for the goals of the individual resident
- ensuring that the IDPs were as individualised as possible
- using their experience with mental health issues to suggest mental health consultations and reviews of medication and other therapies.

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

It is noted that cultural competence at the Disability Justice Centre has improved to a very high standard and this is reflected in the IDPs. Work has been done to proactively support residents in maintaining connections with family, culture and religious expression.

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

Advocates were involved in one MIAR Board review for residents during the period to 30 June 2018. Written submissions were also provided to the MIAR Board.

Other Legal Issues

In addition to advocating for residents in relation to their MIAR Board reviews, Advocates can assist residents by explaining their rights when they are under guardianship and administration orders by the State Administrative Tribunal. Advocates also made direct contact with residents' lawyers, guardians and public trust managers across a spectrum of issues of mutual interest during the year including transition planning, accommodation options, roles and responsibilities, cultural issues and benefit entitlements. Guardians were involved with the IDP process and their input was sought for the measurement and monitoring of achievements towards goals.

Systemic Advocacy

Addressing Community Concerns

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

The Chief Advocate spoke out at the time and continues to speak out in strong support of the Disability Justice Centre on the basis that the concerns were caused by misunderstandings and miscommunication. Residents are no risk to public safety, more especially since the security upgrade made over a year ago since which there have not been any incidences of residents absconding from the Disability Justice Centre. There is also a rigorous screening process before admission.

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

Residents have made a positive contribution to community in the last year as illustrated by one resident having been a regular and active participant of a local sporting team and one resident attending a local dance class and establishing mutually beneficial friendships.

The residents have continued to utilise their woodwork skills to construct mud kitchens and bird feeders which have been donated to local schools. Construction of these products is further contributing to the residents' ongoing skill development. The techniques and quality of the products have increased over time

The Carter Review

On 4 August 2017 the Minister announced a review of the Disability Justice Centre by Alan Carter (the Carter Review⁴). The Chief Advocate and Advocates working with residents at the Disability Justice Centre were interviewed by Mr Carter as part of the review on 18 August 2017.

The terms of reference for the Carter Review were as follows:

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

⁴ A Review of the Bennett Brook Disability Justice Centre (October 2017) by Alan Carter - Principal, Alan Carter Consulting.

The Carter Review was released at a community meeting on 15 January 2018. It contains 13 recommendations (annexure 2) including a recommendation for DSC to work with Disability Advocates around community education about intellectual disability.

It also recommends that DSC should explore further options to rebuild community trust in the suburbs adjacent to the Disability Justice Centre and that the State Government should explore a 'whole of government' approach to the development of services and facilities in these suburbs to assist in overcoming the community perception that they lack easy access to government services.

It was not a recommendation of the Carter Review to move the location of the Disability Justice Centre and during a meeting with the Chief Advocate and the Minister in July 2018 it was confirmed that there are no current plans to do so.

Urgent need to amend the CLMIA Act

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

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

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

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

The Carter Review recommended that as a matter of priority the Attorney General amend the CLMIA Act to:

- eliminate indefinite detention
- provide the judiciary with the same options as exist under the *Sentencing Act 1995*
- remove the need for Ministerial consent to a recommendation by the MIAR Board for placement at the Disability Justice Centre.

During a meeting with the Chief Advocate and the Minister in July 2018 it was discussed that work is underway to progress the need to amend the CLMIA Act. The Chief Advocate looks forward to seeing the above amendments made to the CLMIA Act and hopes that this will lead to a greater utilisation of the supportive environment of the Disability Justice Centre for some of society's most vulnerable individuals.

Other Activities

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

- in accordance with the agreed funding arrangements, four invoices for advocacy services to the DSC during the 2017-18 financial year were prepared and sent, which the DSC paid
- one complaint was received regarding an Advocate working at the Disability Justice Centre which was investigated by the Chief Advocate. An apology was provided and the matter was resolved.

Annexure 1 - Blaxell Hayward Report

Recommendations

1. Goal setting in Individual Development Plans.

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

Response to (1) - accepted.

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

2. Timelines for completing Individual Development Plans.

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

Response to (2) - accepted.

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

3. Programmes of activities.

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

Response to (3) - accepted.

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

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

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

Government Response to (4) - accepted.

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

5. Continuous improvement in service delivery.

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

Government Response to (5) accepted.

The Disability Services Commission will conduct a formal internal review of the effectiveness of the Centre's operations on an annual basis, with the first review to be scheduled for January 2018.

Addendum to Report

Recommendation

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

Government Response to (5) - accepted.

The Disability Services Commission will liaise with Legal Aid WA.

Annexure 2 – Carter Review: Summary of recommendations

Recommendation 1: Community and Stakeholder Engagement

It is recommended that the Department of Communities should establish a set of best practice principles and guidelines in relation to community and stakeholder engagement, particularly where decisions that are being made which will impact specific communities adjacent to new facilities.

Recommendation 2: Clear and transparent procedures for site selection

It is recommended that the Department of Communities should establish clear and transparent procedures for processes such as the site selection for any new facilities such as the Declared Place. This should include the documentation of site identification and evaluation methodology, property value impact assessment and social impact assessment.

Recommendation 3: Partnership and Community Engagement

It is recommended that Disability Services should explore further options to rebuild community trust in the suburbs adjacent to the Centre through partnership and community engagement programs.

Recommendation 4: Eliminate Kiara Option

It is recommended that Disability Services should work with the WA Planning Commission and other relevant stakeholders to ensure that the option for a second Declared Place at Kiara is clearly ruled out.

Recommendation 5: Community Access to Services

It is recommended that the State Government should explore a “whole of government” approach to the development of services and facilities in the suburbs adjacent to the Centre that might assist in overcoming the community perception that they lack easy access to government services.

Recommendation 6: Continuous Improvement and OICS oversight role

It is recommended that the relevant legislation be amended to allow the OICS to undertake occasional reviews at a Declared Place.

Recommendation 7: Culturally appropriate and secure service delivery

It is recommended that the Disability Justice Service consult with Aboriginal Community Controlled Organisations about the delivery of culturally appropriate and secure services to Aboriginal and Torres Strait Islander residents at the Centre or those who receive services in custodial facilities as part of the In Reach program.

Recommendation 8: Reform of the Criminal law (Mentally Impaired Accused) Act 1996.

It is recommended that, as a matter of priority, the Attorney General amend the Criminal Law (Mentally Impaired Accused) Act 1996 to:

- a) Eliminate indefinite detention
- b) Provide the judiciary with the same options as exist under the Sentencing Act
- c) Remove the need for Ministerial consent to a recommendation by MIARB for placement at the Centre

Recommendation 9: Targeted training for legal professions in relation to intellectual disability and the value of a Declared Place

It is recommended that a comprehensive education package is developed for the legal profession about the changes to the Criminal Law (Mentally Impaired Accused) Act 1996 and the opportunities that this will provide at the Bennett Brook Disability Justice Centre for people who are found unfit to plead.

Recommendation 10: Cross agency team approach

It is recommended that the Government use the current Machinery of Government Reform process to explore opportunities for greater collaboration across Government and the Community Sector to ensure the delivery of properly integrated services that support Residents or prospective Residents at the Centre

Recommendation 11: Change the name of the Centre

It is recommended that consideration should be given to changing the name of the Centre to the Bennett Brook Centre.

Recommendation 12: Regional Declared Places

It is recommended that Disability Services work in partnership with other Government agencies and community service providers to develop a proposal for consideration by the Minister for Disability Services in relation to the establishment of a network of Declared Places in key Regional Centres.

Recommendation 13: Develop and implement a community education campaign about intellectual disability

It is recommended that Disability Services work with Disability Advocates to develop a proposal for consideration by the Minister for Disability Services of a campaign to educate the community about intellectual disability and cognitive impairment.

Glossary

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| The Act | <i>Declared Places (Mentally Impaired Accused) Act 2015</i> |
| Blaxell Hayward Report | Analysis of the individual plans, programs and services for residents of the Disability Justice Centre commissioned by the then Minister carried out by the Hon Peter Blaxell, retired Justice of the Supreme Court of Western Australia, and Professor Colleen Hayward AM of Edith Cowan University in 2017 |
| Carter Review | A Review of the Bennett Brook Disability Justice Centre (October 2017) by Alan Carter - Principal, Alan Carter Consulting |
| CLMIA Act | <i>Criminal Law (Mentally Impaired Accused) Act 1996</i> |
| Disability Justice Centre | The declared place in Caversham known as the Bennett Brook Disability Justice Centre |
| DSC | Disability Services Commission. Due to the Machinery of Government changes effective 1 July 2018, the DSC became part of the Department of Communities and is now known as Department of Communities, Disability Services |
| IDP | Individual Development Plan required by the Act to be prepared at regular intervals for all residents of a declared place |
| LOA | Leave of Absence Order made by the MIAR Board on approval of the Governor |
| Minister | Minister for Disability Services |
| MIAR Board | Mentally Impaired Accused Review Board |
| Residents | Mentally impaired accused (as defined in the Act) living at the Disability Justice Centre |
| Statutory contact | Contact by an Advocate within seven days of the resident's arrival as required by the Act |

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