

Annual Report 2021-22

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 2022.

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 2021-22 year.

Dr Sarah Pollock
CHIEF ADVOCATE

October 2022

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Foreword by the Chief Advocate

The Bennett Brook Disability Justice Centre provides a safe and welcoming environment to a group of people with complex support needs, offering an effective program to help build their skills for independent community living. During the past year Advocates have reported the positive impacts of improved individual development planning, and it has been pleasing to see some residents transition to greater independence through leaves of absence.

To ensure resident confidentiality and privacy, the report is confined to the legislative and structural framework around admission to the Centre and the advocacy services: we are not able to showcase the work done with, and by the residents. The report highlights major issues with current arrangements that potentially impact current and prospective residents.

It is unfortunate that this purpose-built environment and specialised program is not accessible to more people who appear to be eligible for its services. Although the Centre can accommodate ten people, it has catered for a maximum of three people at any one time during the past year. The under-utilisation has been consistent since the Centre was opened in 2015, only ever having housed up to four residents at the same time. We are disappointed that few people on custody orders have been able to take advantage of

the opportunities and resources that the Centre offers. Too many remain in prison or on a forensic mental health ward, neither of which offer the targeted care and support for independent community living.

In last year's report, I raised an issue with the lack of access to emergency and ongoing psychiatric treatment for residents who might need it, including the provision of specialist assessments and reports for Mentally Impaired Accused Review Board hearings. Despite reporting that an agreement had been reached and its finalisation was imminent we are still waiting for this to happen. It is hard to understand this delay in resolution.

This year's report raises the issue of the lack of transparency of the Centre's referral and assessment processes. It considers the exclusion of people with a 'primary' mental illness who have co-occurring learning disabilities. I hope current developments will shift focus from diagnostic labelling to contemporary evidence on supporting people with complex needs. I would like to thank the Senior Advocates and Advocates who have supported residents at the Centre navigating the requirements placed on services because of the COVID-19 pandemic, to ensure that residents had access to advocacy.



Dr Sarah Pollock
CHIEF ADVOCATE

October 2022



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 protection¹. 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 2021-22 period a total of four residents lived at the Disability Justice Centre with between two and three individuals living there at any given time. 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.

A 'disability' as defined in the *Disability Services Act 1993* means that only people on a custody order with a disability attributable to an intellectual, cognitive, neurological, sensory, or physical impairment (or a combination of those impairments) can be eligible for a place in the Disability Justice Centre. Those people on a custody order due to a mental illness alone, or whose primary diagnosis is a mental illness, are not eligible.

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 Source: CLMIA Act, section 24(5A).

The aim of the Disability Justice Centre is to provide a detention option that is appropriate and rehabilitative for people with intellectual or cognitive disability, or autism, as an alternative to prison and to help prepare them for release into the community. This is why the Disability Justice Centre is managed and funded by the 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 2022, there were 55 custody orders in force (see table 1):

- three were detained in the Disability Justice Centre
- 28 were detained in an authorised hospital
- 10 were in prison
- 14 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 55 over the past four years. During 2021-22 there were seven new Custody Orders⁶ 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 steadily decreasing (see table 2).

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 any mentally impaired accused person who they are considering for placement at the Disability Justice Centre. 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 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.

Table 1. Mentally Impaired Accused Persons' place of custody as at 30 June - 2018 to 2022³

Location	Number of custody orders as at June 30				
	2018	2019	2020	2021	2022
Authorised Hospital⁴	9	11	22	29	28
Community	17	18	15	10	14
<i>Subject to a condition they undergo treatment for a mental illness</i>		15	12	7	10
<i>Not subject to conditions about treatment for a mental illness</i>		3	3	3	4
Declared Place	2	3	2	3	3
Prison⁵	10	10	11	10	10
TOTAL	38	42	50	52	55

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

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

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

⁶ Source: MIAR Board letter of 3 August 2022.

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.

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).

Table 2. Five-year trend in the number of new custody orders and discharged orders⁷

	New custody orders	Discharged orders
2017-18	4	6 ⁸
2018-19	8	4
2019-20	11	3
2020-21	6	4
2021-22	7	2 ⁹

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.

⁷ 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.

⁸ One mentally impaired accused person received two custody orders.

⁹ 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.

At the start of 2021-22 the Senior Advocate retired and the existing Advocate was appointed to the senior role. The new Senior Advocate has been visiting the Disability Justice Centre since it opened and continued to perform functions as an Advocate. During the year four people were engaged by the Chief Advocate under the *Mental Health Act 2014* to work as Advocates under the Act (including the retired Senior Advocate). 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.

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, 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:
 - a) incident reporting
 - b) regulation of behaviour management including seclusion and restraint and notifying the Chief Advocate
 - c) searching residents.

Activities of Advocates

Visits and notifications

In accordance with the requirements of the Act:

- each resident received four visits during the year¹⁰ 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.

Advocates contributed to the IDPs in various ways including advocating for culturally appropriate care and programs. Processes are in place to ensure that all IDP reviews are held within the 12-month period of the plan. The Advocates have reported continued greater level of detail in the documentation of the IDP plans. This is welcomed.

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.

¹⁰ 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

Psychiatric services

Although residents of the Disability Justice Centre must have a disability (which is not principally a mental illness), it is not uncommon for eligible residents to have a diagnosed mental illness and 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.

The Advocacy Service reported on the problems accessing psychiatric services for residents in last year's annual report. Services were withdrawn by Statewide Forensic Mental Health Service (SFMHS) from April 2020 in the absence of a funding agreement and the Advocacy Service has been seeking assurance since then that residents can access:

- acute psychiatric treatment and care in urgent/emergency situations
- routine, regular and ongoing psychiatric care
- assessment and reports for the MIAR Board.

As at 30 June last year (2021) no sustainable solution for psychiatric services had been identified. We reported last year that an interim arrangement had been made for Legal Aid to temporarily pay for private psychiatry services. If emergency psychiatric care was required, then a nurse could administer non-scheduled medication (PRN) and/or the resident must be taken to a local hospital emergency department. No arrangements were in place for ongoing psychiatric care. The Department of Communities advised they would meet with the Mental Health Commission to develop a service agreement. After 30 June 2021, but while writing the annual report, the Advocacy Service was assured that the Department had reached an agreement with the Mental Health Commission, and this was acknowledged in the Foreword to our last annual report.

A year later, as at 30 June 2022 still no agreement was in place. Again, at the time of writing the annual report the Department of Communities have given assurance that signing the Agreement is imminent.

During the past year the Advocacy Service has continued to seek reinstatement of psychiatric services. Despite the goodwill of the parties there are no defined pathways for psychiatric services for people with complex needs trying to reintegrate into the community nor guaranteed provision of reports for MIAR Board reviews.

The Advocacy Service wrote to both the Minister for Mental Health and the Minister for Disability Services in August 2021 seeking intervention as we considered at that stage the matter had become protracted. We were assured in October 2021 that the Department of Communities, Mental Health Commission and North Metropolitan Health Service were working closely together on a service level agreement. The Minister for Disability Services advised that the Directors General would meet to agree a way forward. The Minister for Mental Health advised the Mental Health Commission would advise us of the resolution.

We wrote to the Director General of the Department of Communities in October 2021 with concerns about a specific resident's care as well as lack of assessments for MIAR Board. We were advised by the Department that a clear way forward has been developed following a series of meetings. The intention was to "expediently finalise an agreement" such that a local Community Mental Health Service will support up to 10 residents with:

- acute and emergency care
- ongoing care including monthly reviews
- priority care during and after transition from the Disability Justice Centre.

The Department's letter went on to advise that the Mental Health Commission receives funding from the Department of Justice for psychiatric risk reports required by the MIAR Board. We were also assured that the concerns for the individual's care we raised had been attended to.

We reiterated our concerns over residents' access to psychiatric services in a meeting with the Minister for Disability Services in December 2021; the underutilisation of the service was also noted.

The Advocacy Service became aware in February 2022 there was a problem finding agreement on the provision of psychiatric assessments and reports for the MIAR Board. We followed up with the Mental Health Commission and were told that all issues have been sorted with the exception of reports for the MIAR Board. We sought an update at a meeting with the Director General of the Department of Communities in March 2022 where it was acknowledged there was further discussion about who would pay for reports to the MIAR Board but also there appeared to be an issue with who would provide ongoing psychiatric services. We followed up in April and were told a meeting had occurred between Department of Communities and East Metropolitan Health Service who agreed to explore the issue further and design an enhanced approach for each resident.

The ongoing delays and inability to reach agreement across agencies is staggering. The need for psychiatric services must have been known when the service was established and even over two years after the withdrawal of psychiatric services (and counting) a formal agreement cannot be reached. Residents have complex needs that do not fit neatly into one state government agency and are probably least well equipped to navigate the multiple agencies needed to support them. Until our system governance is addressed so that agencies work together to help people recover and live well in the community, unfortunately more people are likely to need the services of the Disability Justice Centre. This is foreboding for the reforms of the Criminal Law (Mentally Impaired Accused) Act 1996 should more accused persons with dual disabilities take the custody order route. We urge government to consider who arbitrates when people slip between the gaps.

We will continue to seek clear pathways for residents who are detained by the State to receive access to vital health care and treatment, when and as needed, and their progress is not delayed because of the failure to provide detailed psychiatric reports to the MIAR Board to allow them to make informed determinations about LOA or release orders.

Emergency restraint and seclusion

The Chief Advocate was notified of two emergency restraints during the year, and no seclusions. It has been previously reported¹¹ 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 is not always complied with. The Department of Communities had assured the Chief Advocate that processes were in place to ensure that the requirement is met in future¹².

Permission to reside at the Disability Justice Centre

On request of the MIAR Board, the Department of Communities assesses a mentally impaired accused person's suitability for placement at the Disability Justice Centre, but the Minister for Disability Services must ultimately give consent for a person to reside there¹³. The Advocacy Service has been concerned about the under-utilisation of the Disability Justice Centre and was aware of similar concerns being raised. At a meeting with the Minister for Disability Services in December 2021 we were advised that reconsideration would be given to some mentally impaired accused persons who had been assessed as suitable yet not been given consent to reside at the Disability Justice Centre by previous Ministers.

During 2021-22 the Minister consented to the detention of two people and withheld consent for another person to reside at the Disability Justice Centre¹⁴.

Referrals by MIAR Board to the Disability Justice Centre

Data was not available this year on the number of people referred for assessment for placement at the Disability Justice Centre or the outcomes of those assessments.

¹¹ Annual Report 2018-19 and 2019-20.

¹² Letter from Director, Disability Justice Service, 17 February 2020.

¹³ Under section 24(5C) of the CLMIA Act.

¹⁴ One person is no longer subject to detention.

Service model issues restricting admissions

As reported in the 2019-20 annual report, the Chief Advocate raised concerns with the Department of Communities about the service model. The Disability Justice Centre is not catering for the diversity of people on Custody Orders. Some people who could benefit are apparently being excluded, even though the Act clearly contemplates and makes provision for them to be admitted. The current model of care and associated staffing appear not to allow for this.

This means the 10 bed Disability Justice Centre is not being fully utilised. Mentally impaired accused people on custody orders who might otherwise meet the criteria in the Act are continuing to be detained in prison or the forensic mental health secure ward, the Frankland Centre. The Frankland Centre does not provide the type of rehabilitative or habilitative care that can be provided at the Disability Justice Centre. Moreover, the Frankland Centre has an increasing bed shortage with people in prison needing an inpatient bed waiting months, if they are admitted at all¹⁵.

The Chief Advocate reiterated these concerns with the Minister for Disability Services in December 2021 and asked for an evaluation of the outcomes the program is currently achieving and for whom as the basis for further development.

COVID-19

COVID-19 restrictions, when mandated, continued to be managed by the Disability Justice Centre. Residents who had been granted LOA orders had some restrictions imposed during periods when the State's Framework for System Alert and Response (SAR) was Code Red or during lockdowns. There were restrictions on overnight leave and access to external services such as gyms or pools stopped consistent with State government requirements. When NDIS support services were either reduced or ceased, Disability Justice Centre staff provided additional support and accompanied residents on some outings. All residents experienced some restrictions as in-reach services were stopped and visitor numbers were reduced at times.

COVID-19 vaccinations commenced for residents in 2020-21 and were offered to residents in 2021-22.

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 can draft written submissions or, with the permission of the MIAR Board, attend review hearings. The Advocates contacted the residents prior to hearings and reviewed documentation sent to the MIAR Board. Advocates attended five hearings in 2021-22 and made oral submissions at these hearings.

Meetings with the Minister

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

¹⁵ In September 2018 it was reported by the Inspector of Custodial Services that one third of prisoners who were referred for inpatient care to the Frankland Centre never got there, and 61% of all referrals lapsed without a hospital placement; the reason was a lack of beds. The situation has since been compounded by a greater number of people detained by order of the MIAR Board to the Frankland Centre: this has increased from 9 as at 30 June 2018 to 28 as at 30 June 2022.

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 2021-22 was \$16,888.



Glossary

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

The artwork used on the front cover of the Annual Report is of a Wandjina man. The artwork is kindly reproduced with the permission of the artist.



