Review of the Bennett Brook Disability Justice Centre

October 2017

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Executive Summary

The location of the Declared Place at Bennett Brook has been the subject of significant local community criticism. This review has established that there is clear agreement from all stakeholders that there is a need for a “Declared Place” to support the transition of people with an intellectual disability or cognitive impairment who have come into contact with the justice system, back into the community.

The contentious issue of the location of the facility has remained problematic. The desire of clinicians and case management staff for the facility to be located in a community and not adjacent to, or part of, a prison or correctional facility or on the outskirts of the metropolitan area informed the decision to place it in its current location.

The timing of the processes to determine the location of the Declared Place was not ideal given the proximity to the State Election in March 2013 and so the process quickly became embroiled in political controversy. The politicisation of the process created a situation in which the community engagement about the location of the Disability Justice Centre was limited and therefore the announcement of the finally selected site created substantial community opposition.

There are important lessons to be learned about the need for community engagement and the use of transparent processes for site selection and these should be developed and adopted as public policy guidelines to avoid a repeat of this situation.

Community opposition was heightened after the “escape” of the two residents from the Centre on New Year’s Eve 2015 and the inappropriate response by the Police. These shortcomings have been overcome through security upgrades and a more appropriate Memorandum of Understanding with the WA Police. There are lessons to be learned, however, about the challenges faced by Disability Services in undertaking an initiative such as the establishment and management of a Declared Place without specific experience in running such a facility.

Notwithstanding these early problems the Centre is now operating well although the small number of residents minimises opportunities for better outcomes and the delivery of a wider range of services to residents in the Centre. Community safety is still a paramount consideration in the operations of the Centre and evidence has confirmed that internal processes in relation to Leaves of Absence are working well with no breaches recorded in the past 15 months.

The Centre could provide greater value to the community if there are some key changes that focus on law reform. This may include better engagement with the legal community about the value of the Centre for people with an intellectual disability or cognitive impairment who have come into contact with the justice system.

It is recommended that for the moment, the current site should remain as a Declared Place but this needs to be reconsidered after a range of other variables such as law reform and the potential for a network of Regional Declared Places are resolved.
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 InReach 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.
Background

This Review was initiated by the Minister for Disability Services, the Hon. Stephen Dawson MLC.

The Terms of Reference for the Review are as follows:

- The extent to which the Centre is fulfilling its purpose as a Declared Place, as specified by the Declared Places (Mentally Impaired Accused) Act 2015;
- The appropriateness of the Centre's location and the processes used to engage the local community in the establishment of the 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 Centre; and
- Options available to the State Government in relation to the future of the Centre.

Approach

The approach taken for this Review was driven partly by the reality that there have already been two external reports completed in relation to issues associated with the Centre. Many of the issues to be examined in this Review have been dealt with in part in these earlier reviews and this Report will build on that existing work. The other major factor influencing the approach adopted for this Review is the fact that none of the earlier Reviews incorporated any significant level of stakeholder and community engagement. A large number of community members and stakeholders were therefore consulted as part of this Review to ensure that as many perspectives were incorporated into the Review as possible.

Evidence Base

There is a substantial amount of research and reports in relation to people with an intellectual disability and the justice system, both nationally and more specifically in relation to Western Australia. A list of the key reports and documents that have been considered as part of this Review are outlined in the References section in Appendix 1 of this Report.

It is worth noting that there have been 2 recent Federal Parliamentary Committee Inquiries into related matters, with the following reports tabled in the Parliament within the past 12 months:

1. The Senate Community Affairs References Committee Inquiry into “Indefinite detention of people with cognitive and psychiatric impairment in Australia” (November 2016).
2. The Joint Standing Committee on the National Disability Insurance Scheme’s Inquiry into the “Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition” (August 2017).
The broad issues associated with people with an intellectual disability and their interaction with the Criminal Justice System has been the subject of a range of academic and law reform reports and inquiries. These include:


As outlined above, there have been two external reports prepared on specific aspects of the Bennett Brook Disability Justice Centre subsequent to its establishment. They are:

1. An Independent Analysis of the Bennett Brook Disability Justice Centre by Hon. Peter Blaxell and Professor Colleen Hayward in January 2016 with a focus on individual plans, programs and services for the residents and the management of Leaves of Absence.
2. The Bennett Brook Disability Justice Centre Security Review in January/February 2016

There are also a number of reports by statutory bodies in Western Australia that either directly or indirectly relate to matters that are the subject of this Review. They include:

1. The Annual Reports of the Mentally Impaired Accused Review Board
2. The Annual Reports of the Chief Advocate for Residents of Declared Places under the Declared Places (Mentally Impaired Accused) Act 2015
3. Reports by the Office of the Inspector of Custodial Services but particularly, the Report produced in April 2014 on “Mentally impaired accused on ‘custody orders’: Not guilty, but incarcerated indefinitely”

Stakeholder & Community Engagement
There has been significant community criticism of the Centre, but there has also been significant support in the legal, academic and disability advocacy sectors for the establishment of a Declared Place.

Given the lack of extensive community and stakeholder engagement about the establishment and operation of the Centre, it was important that the Review incorporate extensive consultation. This included discussions with a broad range of people in the community adjacent to the Centre as well as with key stakeholders in the political, judicial, legal, disability advocacy, academic, psychiatric and psychological fields.

Developing conclusions & recommendations
Conclusions and recommendations emerged as the research and stakeholder engagement was undertaken. A range of hypotheses emerged and these were explored and tested in discussions with stakeholders.
Context

The issues associated with people who are found unfit to stand trial due to an intellectual disability are common throughout Australia. The New South Wales Law Reform Commission, for example, undertook an Inquiry into “People with an Intellectual Disability and the Criminal Justice System” in 1996. The Executive Summary stated:

“The Commission’s inquiry into this particularly vulnerable group of people arose from concerns about their overrepresentation and unfair treatment in the criminal justice system. In submissions and consultations there was general acceptance by criminal justice system personnel and disability representatives that people with an intellectual disability were disadvantaged in the criminal justice system and that their appropriate treatment raised dilemmas for the system as a whole. As victims, they were not able to bring their abusers to justice and as offenders, they were not receiving appropriate recognition for their intellectual condition.”

These issues were also examined in a project undertaken by Dr Judith Cockram from the Centre for Social Research at Edith Cowan University in 2005. This project was undertaken in partnership with the Activ Foundation Inc; Developmental Disability Council of WA; People with Disabilities WA; Department of Justice; and the Disability Services Commission. Dr Cockram pointed to the challenges for people with an intellectual disability in the justice system:

“However, the appropriate place of detention for prisoners with an intellectual disability found unfit to plead and ordered to remain in detention, remains a contentious issue. The mental health system has demonstrated quite clearly that it would not accommodate persons other than those who have a diagnosable and treatable condition. There is no indication of any change in this policy even with the building of a forensic unit within the mental health system. The Disability Services Commission maintains that they do not have the capacity, nor the statutory duty, to provide custodial care or detention for people with an intellectual disability who offend. It would seem, therefore, that persons with an intellectual disability who are unfit to plead or are acquitted on account of unsoundness of mind, and given a custodial order, will continue to be held in the prison system until it is appropriate for the person to be released by the Governor in Executive Council.”

Dr Cockram makes reference to an independent review of the Mental Health Act 1996 and the Criminal Law (Mentally Impaired Defendants) Act 1996 by Professor D’Arcy Holman in 2002. In his Report, Professor Holman is damning in relation to the inaction in relation to the provision of a Declared Place as an option for this cohort:

“5.2 Although section 24(1) of part 5 of the CLMID Act provides for a MID who is subject to a custody order to be detained in a declared place, and section 23 defines a declared place as “a place declared to be a place for the detention of MIDs by the Governor by an order

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1 Executive Summary, NSW Law Reform Commission Report 80 (1996) – People with an intellectual disability and the criminal justice system
2 The Experiences and Needs of Repeat Offenders with Intellectual Disability in Western Australia”, Centre for Social Research, Edith Cowan University, September 2005, pp15-16.
published in the Gazette", no such place has ever been gazetted. This fact was the object of universal condemnation by the Stakeholder Committee, CLMIDWP and many individual respondents and participants to the review. The result is that in making an order to detain a MID, a judicial officer has only two choices: an authorized hospital or a prison/detention centre. The abhorrent result is that a large number of MIDs are sent to prison, where due to their vulnerable mental state or intellectual disability, they are at much increased risk of being physically, sexually or mentally abused. The review regards this situation as deplorable and considers that it is an abuse of fundamental human rights to commit a person with mental impairment to a custodial environment where their safety is severely compromised and prospects for rehabilitation are slim.

5.3 According to a paper presented to the review by Dr Neil Morgan and Ms Irene Morgan, debate about the lack of any ‘declared place’ has persisted for several years with no productive result. A plan to declare parts of Riverbank Prison as a declared place in 1999-2000 fell by the wayside. The Disability Service Commission is unable or unwilling to provide secure facilities for taking MIDs with intellectual disability into involuntary detention. The history is one of chronic ineffectual response by successive governments and the Stakeholder Committee feared that unless there was a very strong undertaking by the Government to implement declared places, meaningful reform of the administration of the CLMID Act would be thwarted. Accordingly, among the most significant proposals in this synthesis is the following proposal to remove the distinct option of any non-specific prison or detention centre being used for the deposition of MIDs”.

The Inspector of Custodial Services reported on these issues more recently in a 2014 Report, “Mentally impaired accused on ‘custody orders’: Not guilty, but incarcerated indefinitely”. The Report noted that:

“People with a cognitive impairment, such as an intellectual disability or acquired brain injury, are also over-represented in prison. While people with cognitive impairments are no more prone to arrest than the general population, they have a significantly higher rate of re--arrest and are more likely to receive a custodial sentence.”

The OICS Report neatly summarises the legal framework in Western Australia for people with a mental impairment who are accused of a crime and it is worth incorporating this entire section in the Report as it provides important context to the issues under consideration:

“In the 1990’s, legislation was introduced in a number of Australian states for the purpose of better addressing the complexities of the interactions with the criminal justice system for people with mental impairments. In Western Australia, the Criminal Law (Mentally Impaired Accused) Act 1996 outlines the policies and procedures to be followed in criminal proceedings against people with a mental impairment who are deemed of ‘unsound mind’ or ‘unfit to stand trial’.

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Under the Act, people who are of ‘unsound mind’ can be acquitted of a crime because at the time of the alleged offence they experienced some form of mental impairment which deprived them of the capacity to control or understand the implications of their actions. People in this category have been found to be well enough to stand trial. The focus of the court is on whether the prosecution can prove that they did the acts in question and had an appropriate mental capacity at the time of the alleged offence.

Conversely, people who are deemed unfit to stand trial are considered unable to follow the course of the trial and, overall, not to be in a position to properly defend themselves. The focus of the courts in such cases is on the person’s ability to understand the nature of the charges and the evidence at the time of the trial.

A person’s fitness to stand trial can be raised by any of the prosecution, defence, or presiding judicial officer. If sufficient concerns are raised, the case will be adjourned so independent expert advice can be sought (such as a psychiatric report). If, at the next hearing, it is believed that that the individual would become fit to stand trial within six months, then the trial will be further adjourned for this to occur. If not, then the court determines whether to release the individual or to make a custody order There are therefore some fundamental differences between those unfit to stand trial, and those acquitted due to unsound mind: To have been found not guilty on the grounds of unsoundness of mind, the court must have been satisfied beyond reasonable doubt that the person committed the acts making up the elements of the offence. If this is not proved, the person is entitled to an acquittal and the defence of unsoundness of mind is not relevant.

In the case of people deemed unfit to stand trial there has been no trial. While a court must have regard to the strength of evidence against the accused, it is never proved beyond reasonable doubt that they actually did the acts in question.

In the case of people who successfully plead unsoundness of mind, the verdict is one of ‘not guilty by reason of unsoundness of mind’. In the case of people who are found unfit to stand trial there can be no verdict: the person has not been placed on trial and is neither guilty nor not guilty.

However, regardless of whether an individual is acquitted due to unsound mind or deemed unfit to stand trial, the court may impose a ‘custody order’.

Where a person is found unfit to stand trial, the court only has two options open to it. The first is to make an order releasing the person without any conditions (‘unconditional release’). The second is to make a ‘custody order’ which will lead to the person being detained indefinitely in a prison, a juvenile detention centre or an authorised hospital. The legislation also refers to the option of a ‘declared place’ but after 17 years, no such places have been declared.5

In deciding which option to take, the court must consider the strength of the evidence, the nature and circumstances of the alleged offence, the defendant’s character, antecedents,

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5 Subsequent to the release of that Report, a “Declared Place” was established at Bennett Brook and that Facility is the subject of this Review. The processes to establish the Declared Place commenced in October 2011, following the decision of the Barnett Government to establish such a facility for mentally impaired people. The Bennett Brook Disability Justice Centre was formally opened on 4th August 2015. The processes that took place between September 2011 and August 2015 that lead to the opening of the Disability Justice Centre will be examined in this Report under Terms of Reference 1.
health and mental condition, and the ‘public interest’. In this context, the ‘public interest’ essentially means risk to the public.\(^6\)

It is also worth noting that despite repeated calls to reform the Criminal Law (Mentally Impaired Accused) Act 1996 so that, amongst other areas of reform, the judiciary have a greater range of options available to them, the Act has not been amended accordingly. At the time of this Review, however, the Attorney General is reportedly progressing the reform of the Act. This follows on from the Review of the Act by the Department of the Attorney General in April 2016 and the Final Report of the Criminal Law Mentally Impaired Accused (CLMIA) Working Group, which was Chaired by Hon Peter Blaxell, in December 2016.

**SUMMARY: WHAT ARE THE KEY ISSUES IN RELATION TO CONTEXT?**

1. The management and support of people with an intellectual disability or cognitive impairment in the justice system is a significant human rights issue for all communities;

2. The legal framework in WA does not currently support good outcomes for most people who have an intellectual disability or cognitive impairment;

3. Law reform is urgently required for the Criminal Law (Mentally Impaired Accused) Act 1996 and potentially consequential amendments to other legislation;

4. It took many years to get a commitment from key players, including the Disability Services Commission, and from political leaders to establish a Declared Place in WA;

5. The Declared Place at Bennett Brook has only been in full operation for approximately 2 years despite repeated calls for such a facility over many years.

\(^6\) (Office of the Inspector of Custodial Services, "Mentally impaired accused on ‘custody orders’: Not guilty, but incarcerated indefinitely", (April 2014), pp 2-4)
Terms of Reference 1:
The appropriateness of the Centre's location and the processes used to engage the local community in the establishment of the Centre.

Location:

After many years of advocacy by a wide range of stakeholders, the Barnett Government made a decision in October 2011 to establish a "Declared Place" consistent with the principles outlined in the Criminal Law (Mentally Impaired Accused) Act 1996. In that Act, a "declared place means a place declared to be a place for the detention of mentally impaired accused by the Governor by an order published in the Gazette".

It is important to stress that one of the key motivations behind the establishment of a Declared Place is that it is not in or adjacent to an existing Corrective Services facility or in a location that is remote from the community. The then Director General of the Disability Services Commission, Dr Ron Chalmers, outlined this issue in his evidence before the Senate Community Affairs References Committee:

"The community expectation has a number of dimensions to it. The community of Western Australia, if you like, were seeking over a number of years an alternative to prison for people with intellectual disability and cognitive impairment, so at that level having a declared place in existence now is a direct response to the community saying they wanted alternatives. So that is at one level. The other level, I guess, is that from the very outset it was determined by government that the declared place would operate within a community setting and that it would not be built within the walls of an existing prison, because you may as well just have a prison. Or it should not be built somewhere out in the sticks. So, if you are going to run a model that says, 'This is all about therapeutic approach, rehabilitative approach and making sure that people have a common sense pathway back to community life,' then the view was that this needs to be built and operate within the community itself so people can access the community and start to rebuild their lives."

During the course of this Review a consistent message from many stakeholders was that an important consideration in relation to the location of a Declared Place should also be the normal place of residence of the person under consideration for placement at the Centre or of their family. Given the high proportion of Aboriginal and Torres Strait Islander people in the justice system relative to their population numbers and the higher likelihood that these people would also have a cognitive disability, it is likely that a relatively large proportion of potential residents at a Declared Place will be of Aboriginal and Torres Strait Islander descent and that their "country" would be in a regional location.

It was therefore suggested by some stakeholders that if these Aboriginal and Torres Strait Islander people would ultimately return to live in a regional or remote location, there was little value in transitioning them into an urban setting. It was pointed out, for example, that providing training and support in relation to the use of buses and trains would be of little

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7 (Official Committee Hansard, Senate Community Affairs Reference Committee, Inquiry into "Indefinite detention of people with cognitive and psychiatric impairment in Australia", pp42-43)
value if there is no public transport service in their home town. This issue will be addressed in more detail elsewhere in the Report.

**Process:**

In July 2012 potential sites were identified at Kenwick and Herne Hill but following strong community opposition the Government indicated that Local Government zoning issues precluded these sites being used to build the new Centre.

The Shadow Minister for Disability Services, the Hon. Stephen Dawson, pointed to the poor community consultation in relation to those sites during debate on the Declared Places Bill in 2015, he stated:

"These are incredibly important centres, and this is progressive legislation. The opposition will support it, because it will make a difference. However, there is no doubt that there has been some concern, particularly about the process for the establishment of the centres. The Leader of the Opposition went through a number of the benefits of these centres, so I will not re-cover old ground, but I want to make sure that my concerns about the process around the siting of these centres are placed on the record. The siting of these centres was originally announced in 2012. As the Leader of the Opposition mentioned, one centre was planned for Kenwick and the other for Herne Hill. Of course, 2012 was before the last state election, and when these centres were announced, because the government had not undertaken proper consultation with the local community, there was absolute uproar. It may have been the case that local residents did not really know what these centres were, but they were certainly concerned that people who had committed a crime, a violent crime in many cases, would be placed close to them. As the Leader of the Opposition said, it is very hard to get every local resident or neighbour onside to support these centres, but I think the state government failed to properly consult, or at least have a proper conversation with local communities about what these centres were, what they meant for the local communities, and what safeguards would be put in place."  

The Minister’s response during that debate provides some insight to the political imperatives that were driving the decision making, particularly given the timing of the announcement in the lead up to a State Election in March 2013. In response to questions from the Opposition about the decision announced on 1 August 2012 not to proceed with the options previously outlined in Herne Hill and Kenwick, she stated:

"Without WA Planning Commission support, an application for a control area would have been most unlikely to succeed, so I did not proceed with that. Some eight months later, an election was held. The opposition suggested that somehow or other the new sites were determined prior to the election, but that is not true. An election was held some seven months later, rather. I was told, however, that much later, after the election, there was a skip bin full of discarded placards that the Labor Party had prepared to protest with against the disability justice centres in a number of electorates. These kinds of behaviours, actions, thoughts et cetera were with me while we were approaching the second round. This time we

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8 Extract from Hansard [COUNCIL— Thursday, 19 February 2015] p376c-400a
had the planning information in place—what would be needed to build a declared place and the type of land zoning required.\footnote{Extract from \textit{Hansard} [COUNCIL— Tuesday, 24 February 2015] p499a-504a}

After the rejection of the Herne Hill and Kenwick Sites in July 2012, the WA Planning Commission were asked in August 2012 to identify possible sites using eight “criteria”. These criteria were apparently not intended as a prescriptive list of conditions but to inform identification and the process of shortlisting sites. The Minister outlined these criteria in a letter to the Member for Bassendean, Mr Dave Kelly MLA on 14th June 2013:

1. Land size – minimum block size of 7,000 square metres
2. Flat block with capacity for landscaping
3. Reasonable access to public transport
4. Not in close proximity to schools, kindergartens, child care centres
5. Reasonable distance from neighbours
6. Reasonable proximity to shops/community amenities
7. Not in industrial areas
8. Location likely to be acceptable to local councils

In that letter, the Minister went on to outline the roles of the WA Planning Commission (WAPC) and Local Government in relation to planning approvals and in particular the role of the WAPC in declaring a Planning Control Area over the sites that were selected where land is required for “public purposes of the State”.

The Department of Planning identified 11 possible sites that met the criteria in Cockburn, Cottesloe, Dalkeith, Dianella, Gosnells, Haynes, Seville Grove, Yangebup, South Yangebup, Kiara and Bennett Brook. The Disability Services Commission then undertook an assessment of these 11 sites using desktop analysis, google maps, drive by viewing and walking around the sites and area in the vicinity. Following consultation with the Minister for Disability Services, the Director General of Disability Services Commission, the Minister for Planning and the WAPC 9 of the 11 sites were eliminated on the basis of a variety of reasons with only Bennett Brook and Kiara being deemed to be acceptable in relation to the criteria.

No further action was taken as the State Government headed towards an Election scheduled for March 2013. Following the Election and the subsequent announcement in June 2013 that the sites at Bennett Brook and Kiara had been selected, these “criteria” and the processes and timing of the decision became a source of debate in the Parliament by the Member for Bassendean, Mr Dave Kelly

In a Grievance Debate in the Legislative Assembly on 8th August 2013, Mr Kelly stated:

“The local and broader community and I agree that disability justice centres are, in principle, preferable to general prisons for people with an intellectual disability. But I believe the Premier knows that the real question is not whether we need these centres. The real questions are: where should they be and do the sites chosen meet the government’s criteria? I believe that the Premier in his public comments has avoided answering those two questions of where the disability justice centres should be sited; and, importantly, whether the sites
chosen meet the government’s own criteria. The local residents are upset about the lack of process and they believe the chosen sites do not meet the government’s own criteria.”

The then Premier, Colin Barnett, responded:

“As the member said, the two centres are at Lockridge and Kiara. Last year the City of Swan indicated its support for these centres. One of the criteria is that we need large blocks of land. These sites meet that criterion. The siting of the entrance is important. There are parking requirements. There will be an appropriate buffer zone between the site and housing. There need to be community links and programs in the area. The Lockridge site is already a Disability Services Commission property. The existing buildings will be demolished and a new, more secure facility will be built on that site. That facility is already used for people with a disability.”

In Estimates Committee in May 2014, the Member for Bassendean raised issues about the timing of the decision:

“Through freedom of information I have received a document from the Western Australian Planning Commission dated 26 April 2013. It identifies that after consideration, two preferred sites have been located, one being the Bennett Brook hostel on Lord Street and the other being surplus WAPC land adjacent to Lockridge Senior High School Farm.”

There does not appear to have been a well-documented and transparent methodology for undertaking this comparative evaluation of the different site options and whilst the final site selected at Bennett Brook may well be the best option available, the Government left itself open to criticism when the site selection process was open to public and political scrutiny.

Concurrent to the process to determine a location for a “Declared Place”, the enabling legislation, the Declared Places (Mentally Impaired Accused) Bill 2013, was introduced to the Legislative Assembly in the WA Parliament on 17th October 2013. The Second Reading Speech by Ms Andrea Mitchell, the Parliamentary Secretary, stated:

“The purpose of this bill is to enable the Disability Services Commission to operate Western Australia’s first declared place that will provide accommodation and support services for people with intellectual or cognitive disability who have been accused but not convicted of a crime. It will provide, for the first time, an appropriate alternative to custody in prison—one which is designed and staffed to provide a therapeutic environment that can provide social support and life skills training, while providing levels of security that are required to ensure community safety.”

Prior to the announcement of the sites, the Minister and the Disability Services Commission made the decision to conduct a letterbox drop of “Letters to the Resident” in the suburbs surrounding the proposed sites. They indicated that there would be community information

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10 (Extract from Hansard [ASSEMBLY— Thursday, 8 August 2013] p3072b-3074a)
11 (Extract from Hansard [ASSEMBLY— Thursday, 8 August 2013] p3072b-3074a)
12 (Extract from Hansard [ASSEMBLY — Tuesday, 20 May 2014] p196b-203a Dr Tony Buti; Ms Andrea Mitchell; Mr Dave Kelly; Ms Josie Farrer; Mr Ian Norberger; Mr Matt Taylor; Mr Paul Miles)
13 (Extract from Hansard [ASSEMBLY — Thursday, 17 October 2013] p5160c-5163a Ms Andrea Mitchell)
sessions in the following days. During debate on the Declared Places Bill, the Minister explained:

We provided a letter drop to residents on 11 June 2013 to 2 200 nearby residents. That same week those residents were given two options for obtaining further information. Disability Services Commission staff were available to answer questions from six to nine on the Wednesday evening, the following day, and at a two-hour afternoon seminar on Saturday, 15 June. The Disability Services Commission set up both the evening meeting and the Saturday afternoon meeting so that staff could speak with individuals or small groups and provide information and answer questions. Displays and poster boards were set up showing the designs of the proposed buildings and containing fact sheets and question and answer sheets and the opportunity for people to sign up there and then to become involved in the local community liaison group.”

14 Extract from Hansard [COUNCIL — Tuesday, 24 February 2015] p499a-504a Hon Helen Morton
## Timeline:

<table>
<thead>
<tr>
<th>Date</th>
<th>Action</th>
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<tbody>
<tr>
<td>October 2011</td>
<td>Barnett Government commits to establishing a “Declared Place” consistent with the Criminal Law (Mentally Impaired Accused) Act 1996</td>
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<tr>
<td>2012</td>
<td>The WA Planning Commission shortlisted a number of different sites which could be considered for the location of the Declared Place</td>
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<td>Oct/Nov 2012</td>
<td>Analysis of site undertaken using desk-top analysis and a walk around each of the proposed sites</td>
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<td>9 March 2013</td>
<td>State Election held and Barnett Government re-elected.</td>
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<td>April 2013</td>
<td>Decision made to locate 2 Declared Places – one at Bennett Brook and the other nearby at Kiara</td>
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<td>11 June 2013</td>
<td>Letter drop to local community announcing that Declared Place facilities will be established at Bennett Brook and Kiara and inviting them to public meetings the 2 days later and on the following Saturday</td>
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<td>12 June 2013</td>
<td>Sites at Bennett Brook and Kiara are publicly announced as the locations for the 2 proposed Declared Places</td>
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<tr>
<td>15 June 2013</td>
<td>Large numbers of local residents attend Public Meeting to protest at the decision to locate the Disability Justice Centre at Bennett Brook</td>
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<tr>
<td>May 2014</td>
<td>Government indicates that it will assess the operation of the Disability Justice Centre at Bennett Brook before proceeding to establish the proposed DIC at Kiara.</td>
</tr>
<tr>
<td>Late 2014</td>
<td>Local Community Liaison Group (LCLG) established to provide opportunity for communication between the Project Team and the local community</td>
</tr>
<tr>
<td>17 June 2015</td>
<td>Declared Places (Mentally Impaired Accused) Act 2015 is proclaimed.</td>
</tr>
<tr>
<td>4 August 2015</td>
<td>Bennett Brook Disability Justice Centre officially opened</td>
</tr>
<tr>
<td>31 December 2015</td>
<td>The 2 residents at the Bennett Brook Disability Justice Centre abscond on New Year’s Eve</td>
</tr>
<tr>
<td>January 2016</td>
<td>A Security Review is undertaken at the Bennett Brook Disability Justice Centre</td>
</tr>
<tr>
<td>January 2016</td>
<td>Independent Analysis of the individual plans, programs and services for residents of the Bennett Brook Disability Justice Centre is undertaken by The Hon. Peter Blaxell and Professor Colleen Hayward</td>
</tr>
<tr>
<td>May – August 2016</td>
<td>Security Upgrades undertaken in line with recommendations in the Security Review. The 2 Residents are transferred back into the Correctional System for the period of the upgrade</td>
</tr>
<tr>
<td>September 2016</td>
<td>Residents returned to Bennett Brook Disability Justice Centre</td>
</tr>
<tr>
<td>November 2016</td>
<td>Disability Justice Centre Community Engagement Group established to build and maintain strong links between the Commission, the local community and core services 9eg. WA Police)</td>
</tr>
<tr>
<td>December 2016</td>
<td>Annual Review of the policies and procedures at the Bennett Brook Disability Justice Centre undertaken by Ms Wendy Murray</td>
</tr>
</tbody>
</table>
Community & Stakeholder Engagement

The issue of gaining community support for facilities such as the Bennett Brook Disability Justice Centre are not unique to Australia. In the article “In Our Backyard”: Overcoming Community Resistance to Re-entry Housing”, the authors explore the issue of housing for former prisoners in the United States as they reintegrate back into the community. They state:

“Siting” or “locational” conflicts occur when residents of a neighbourhood attempt to protect against unwelcome developments, fearing that they will lower property values, threaten their safety and/or adversely affect neighbourhood amenity... In common language, this is referred to as the “Not in My Backyard” or “NIMBY” Syndrome. Given that one’s home represents safety, it is no surprise that strong protectionist emotions and concerns will surface in opposition to any perceived threat to that safety... Research demonstrates that NIMBY reactions are greater when the local stakeholders lack participation in the proposed project, lack accurate information about the clients and/or the problems they face, and fear for their safety .... These fears are dramatically heightened when the proposed development is a residential facility for people with criminal records or other troubled and/or socially stigmatized individuals (e.g., recovering drug addicts, mentally ill individuals, people with HIV/AIDS — all of whom are represented in the population of people with criminal records)... In a study of seven communities which had experienced the siting or attempted siting of residences for the formerly incarcerated, researchers Doble and Lindsay (2003) found that the community members expressed understanding of the importance of housing and rehabilitation services for the formerly incarcerated, but nonetheless felt an overriding concern for their safety in being near such a facility and expressed “pure, unrequited fear” about the proposed residents. These fears typically escalated in accordance with the size of the facility and number of residents to be served, the seriousness of the potential residents’ criminal histories, and the likelihood that the facility’s neighbours would encounter the residents in public spaces and on public transportation.... Levels of fear were elevated when the neighbours were unfamiliar with the organization proposing the program.... An additional exacerbating factor is when the community feels exploited by an unequal distribution of social service programs in their neighbourhood....

As outlined in the comments in relation to the First Term of Reference, this description fairly accurately describes the concerns of residents in the suburbs adjacent to the Bennett Brook Disability Justice Centre. Sadly, the community engagement approach that was adopted for this development was not successful as evidenced by a Petition with approximately 6,000 signatures presented to Parliament opposing the location of the Declared Place at Lord Street, Bennett Brook.

There is still strong community opposition to the location of the Centre in Lockridge as evidenced by the fact that approximately 60 people attended the Alice Daveron Centre in Lockridge as part of the consultation for this Review and they continue to express their

15 John Jay College of Criminal Justice, the City University of New York, “In Our Backyard: Overcoming Community Resistance to Reentry Housing (A NIMBY Toolkit)”, 2011, p.5
opposition to the Centre. There is also a perception in some of the community that the original proposal to establish a second Declared Place nearby on the ground of the Kiara College is still possible and they are concerned that this will increase the risk to their community.

A local community group, Concerned Citizens Against Residential Prisons (CCARP), summarises community concerns:

"We also feel let down by the lack of community consultation by the Government. In mid 2012 the Government attempted to locate these facilities in two different communities in Perth, Herne Hill and Kenwick. The Government was forced to reconsider the decision in light of an overwhelming backlash from the local community and planning issues. The Government then promised, in 2012, that new sites would be found, and that next time, there would be consultation with the local community, before a decision was made. Unfortunately this has not been the case, there has been no community consultation. It is through the Governments lack of consultation, withholding of information and broken promises that we are concerned about the facilities they are forcing onto our community. We ask the Government to please locate these facilities on, or next to, existing correctional facilities and not in residential areas."\(^{16}\)

It is important to note that the WA Planning Commission and the Department of Planning, Lands & Heritage do not see it as their role to determine the level of community consultation in relation to developments such as the Disability Justice Centre. They indicated that the decisions in that regard are clearly the responsibility of the “developer”, the Disability Services Commission, and/or the Minister for Disability Services.

Irrespective of who was accountable for community consultation about the location of the Centre, they should have been actively engaging with the community adjacent to the proposed Centre well before the final decision was made and publicly announced. The fundamental message that should have been conveyed was the strong commitment by MIARB and the Government to community safety and the reality that residents are in fact in transition to the community because they are deemed to be low risk. Chief Justice Wayne Martin summarised this issue well in his evidence before the Senate Community Affairs References Committee:

"Those people who were heading for release anyway had been assessed to be of sufficiently low risk to be released, so the idea was to manage their return into the community so that, for example, they could go out during the day. One of the advantages of having it close to a community is they can go out and work during the day and come back at night – that sort of thing – so you are gradually reintegrating them into the community. But, if that is the type of facility you are running, then you need to emphasise to the people amongst whom they will be moving that these are people who are destined for release and who would have otherwise been released anyway. I do not know if that message was conveyed. It certainly

\(^{16}\) CCARP Website: [https://ccarpactiongroup.wordpress.com](https://ccarpactiongroup.wordpress.com)
was not to the people who were standing behind the placards when I went out there for the opening.” ¹⁷

¹⁷ Official Committee Hansard, Senate Community Affairs Reference Committee, Inquiry into “Indefinite detention of people with cognitive and psychiatric impairment in Australia”, p.3
Terms of Reference 2:
The extent to which the Centre is fulfilling its purpose as aDeclared Place, as
specified by the Declared Placed (Mentally Impaired Accused) Act 2015.

The Declared Placed (Mentally Impaired Accused) Act 2015 defines the Principles and
Objectives of a Declared Place such as the Bennett Brook Disability Justice Centre in Part 2
of the Act and it is worth restating them here:

Part 2 — Principles and objectives

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

6. Objectives for programmes and services
   (1) Programmes and services for residents are to be designed and administered so as
       to respect the rights of residents to be treated —
       (a) with dignity, courtesy and compassion; and
       (b) without discrimination or stigma; and
       (c) with equality of opportunity.
   (2) Programmes and services for residents are to be designed and administered so as
       to be sensitive and responsive to the diverse and individual circumstances and
       needs of residents taking into account their age, gender, spiritual beliefs, cultural or
       linguistic background, family and lifestyle choices.
   (3) Programmes and services for residents who are not adults are to be designed and
       administered giving high importance to the best interests of the residents.
   (4) Programmes and services for residents are to be based on empirical evidence and
       are to be designed and administered so as to —
       (a) reduce the risk of residents offending or re-offending; and
       (b) assist residents to live, work and participate in the community and be as
           independent as possible; and
       (c) maximise quality of life for residents.
   (5) Programmes and services for Aboriginal or Torres Strait Islander residents are to be
       designed and administered so as to be appropriate to, and consistent with, their
       cultural beliefs, mores and practices taking into account the views of their families
       and communities.
(6) Programmes and services for residents are to be designed and administered so as to 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 the protection and safety of residents and the community.

(7) Programmes and services are to provide residents and their families, carers and advocates with opportunities for participating in the planning and provision of services received by residents.

(8) A person performing a function under this Act must have regard to the objectives set out in subsections (1) to (7).

The Parliamentary Secretary’s Second Reading Speech in relation to the Bill outlines this intent in simple language:

“It is essential that the purpose of a declared place be clearly articulated in this bill. Although it is important that vulnerable people with disability who have not been found guilty of a crime be separated from mainstream prisoners, the principles and objectives of the bill go much further than establishing separate accommodation that will be more home-like. The principles and objectives require, in order of priority, the protection and safety of the community, the protection and safety of residents, and an environment where residents are provided with the best possible training and developmental opportunities to promote their physical, mental, social and vocational abilities. Residents must be treated with dignity, courtesy and compassion without discrimination or stigma and with equal opportunity. Programs and services are to be based on the best available evidence and seek to reduce the risk of residents offending and to assist residents live, work and participate in the community. There is provision for residents and their families, carers and advocates to participate in the planning and provision of services which will be delivered in the least restrictive manner, compatible with the protection and safety of the community and residents.”

18

The Protection and Safety of the Community:

In relation to the Principles outlined above, there are, not surprisingly, different assessments of the success of the Centre in ensuring “the protection and safety of the community”! The local community’s concerns about safety were confirmed when the two residents at the Centre went absent without leave on New Year’s Eve 2015 by climbing over the fence. One resident was returned to the Centre the next day and the other resident was returned by their family on 3rd January 2016. This incident raised serious concerns in the community, who claimed that they were not kept informed about the residents being absent without leave and wanted to know more about the residents and the crimes that they had been alleged to have committed.

It is worth noting that the community’s fears were exacerbated by what appears to have been an inappropriate response to the incident that included Police helicopters with spotlights scanning the neighbourhood with on the ground back up from sniffer dogs. At a

18 Extract from Hansard ASSEMBLY — Thursday, 17 October 2013] p5160c-5163a Ms Andrea Mitchell
community meeting as part of this Review it was apparent that many people were
traumatised as a result of this incident. Many people told of their justifiable fear as the
spotlight from the police helicopter scanned their property and police dogs investigated
behind their garden sheds!

Thankfully, the inappropriate Police response to the “escape” from the Centre on New
Year’s Eve 2015 has now been addressed with the establishment of a Memorandum of
Understanding between the Disability Services Commission and the WA Police. This was
developed jointly by the Disability Services Commission and the WA Police on 8th March
2016 and reviewed on 10th March 2017.

Immediately following the “escape” from the Centre, the Chief Advocate, Debora Colvin
expressed concern about the media response to the incident with concerning and ill-
informed comments made in talkback radio and on social media. Ms Colvin issued a Media
Release which described “...some of the dialogue around recent incidents at the Centre as
divisive and dangerous for a humanitarian society.”

She went on to say:

“My concern when I heard that the residents were missing was that they were probably
more vulnerable themselves due to their intellectual or cognitive disability, than a threat to
anyone else. They need protection and support, not vilification and a prison cell with no end
date”19

As a result of this incident, the Minister for Disability Services initiated an immediate
Security Review of the Bennett Brook Disability Justice Centre. In a Statement to the
Legislative Council in March 2016, the Minister, the Hon. Helen Morton, said:

“The commission received advice from both the Department of Corrective Services and a
private sector security consultant on how to improve perimeter security and amend
operational procedures to minimise the risk of future absconding. The changes being
implemented to security are commensurate with the nature and purpose of the centre. Given
that security reports contain detailed confidential information about the design and
operations of the centre, they will not be tabled.

In addition, the commission and WA Police have finalised a memorandum of understanding
to ensure that both agencies have a clear understanding of the process that will be
implemented in cases of unauthorised absences from the centre. In establishing the centre,
the government has addressed a core social issue in providing a real option for people who
have been accused of a crime and have been deemed unfit to plead to charges because of
their intellectual or cognitive disability. That option is an alternative to prison. The fences,
the security, the well-trained staff and the individual plans are there to support a mandatory
approach to skills development, to help people become more independent when they return
home.” 20

19 Annual Report for 2016 by the Chief Advocate for Residents Under the Declared Places (Mentally Impaired
Accused) Act 2015, p. 12
20 Extract from Hansard [COUNCIL— Thursday, 17 March 2016] p1297d-1298a Hon Helen Morton
Security Upgrades were commenced in late May 2016 and took approximately three months to complete. During that time, the residents were returned to prison. Whilst it was initially hoped that they would be sent to a low security prison, they spent a period in the high security Casuarina Prison before being sent to Karnet Prison. It is worth noting that staff at the Bennett Brook Disability Justice Centre noted a marked deterioration in behaviour as a result of this period back in prison.

Coincident with the Security Review, the Minister initiated another inquiry:

“In addition, I commissioned an independent analysis of the individual plans, programs and services for residents of the centre, including whether the plans, programs and services are being applied in a way that promotes the protection and safety of the community. This analysis was undertaken by retired Supreme Court justice Hon Peter Blaxell and Professor Colleen Hayward, AM, of Edith Cowan University—two people highly regarded in their respective fields. As part of this independent analysis I also requested that Mr Blaxell and Professor Hayward advise whether due consideration was given by the Minister for Disability Services in determining resident suitability for the Bennett Brook Disability Justice Centre.” 21

The Blaxell/Hayward Review was asked by the Minister to inquire into the following issues:

The analysis of individual plans, programmes and services for residents of the Bennett Brook Disability Justice Centre to determine the extent to which:

1. Individual development plans, programmes and services (as specified in the Declared Places (Mentally Impaired Accused) Act 2015:
   a) assist residents to develop skills required to live, and participate appropriately in the community and be as independent as possible;
   b) promote and assist the reintegration of residents into the community;
   c) are applied in a way that promotes the protection and safety of the community;
   d) develop skills that assist in reducing the risk of residents offending or re-offending.

2. Leave of Absences from the Centre are managed appropriately to meet the care and development needs of residents and to minimise the risk to the community.

In relation to the issue of security and the question of community safety, the Blaxell/Hayward Review highlighted the importance of risk assessment processes in the determination of potential candidates for the Bennett Brook Disability Justice Centre and in their ongoing management and review whilst at the Centre:

“The goal of the risk assessment process is to give priority to the protection and safety of the community, residents and staff; while at the same time implementing risk management strategies which will allow residents to develop independence, confidence, and the capability to live outside the Centre. It is by striking this balance that DJS (Disability Justice Services) is

21 Extract from Hansard [COUNCIL—Thursday, 17 March 2016] p1297d-1298a Hon Helen Morton
able to train, develop and care for residents in a manner that is ‘the least restrictive option’ taking into account the safety and protection of others.”

This view was supported by the Chief Justice, the Hon Wayne Martin, in his evidence before the Senate Community Affairs References Committee Inquiry into “Indefinite detention of people with cognitive and psychiatric impairment in Australia.” He stated in a Committee Hearing in Perth on 19th September 2016:

“On the other hand, government, including the justice system, has a primary responsibility to protect the community. People who are suspected of committing offences but who suffer from cognitive or psychiatric impairment must be managed not only in accordance with the policy considerations I have already mentioned but also in such a way as to reduce to acceptable levels the risk those people might pose to our community. It seems to me that the appropriate balance of those countervailing considerations leads to a focus upon risk assessment and risk management using mechanisms that are primarily therapeutic rather than punitive. I would not expect that proposition to be contentious, but what is sometimes contentious is the manner in which those general principles are put into practice and effect.”

The Chief Justice went on to make some specific comments in relation to the Bennett Brook Disability Justice Centre.

“Going back to the basic principle, I think it is all about risk management. The question is: how should a person be managed, given that they are presumed to be innocent? It seems to me that the first step is: what risk do they pose to the community? If they pose a significant risk, then the community has to be protected from them, and they need to be kept in a secure facility. Until Bennett Brook the only secure facilities we had were the Frankland Centre, which is a place for mentally ill people and those people who need treatment—it is a secure hospital—or prisons. There was nowhere in between. With Bennett Brook—looking back with the benefit of hindsight and it is easy to be wise after the event—I think there was a degree of ambiguity about the nature of the people who would be placed within the centre. I do not think that was appropriately conveyed to the community.”

The problems created by this ambiguity were highlighted by the Chief Justice in his evidence when he talked about the “escape” from the Centre on New Year’s Eve 2015:

“When a couple of people walked out of the centre—which is only to be expected when you think about the sort of people we are dealing with—there was an expectable community reaction because that message had not got across effectively and then they responded by saying, ‘We going to build a massive fence around centre at great expense and we are going to remove the small number of people who are in there.’ As soon as you start talking about building fences, again you are sending mixed messages to the community. You are saying,
'These are people who do pose a danger.' Again, with the benefit of hindsight, you need to be clear: are we talking about people who pose a risk or are we not? If you are talking about people who pose a risk, you need one type of facility. If you are talking about people who do not pose a risk but who are being managed therapeutically on their way back into the environment, then you need another type of facility. Again, looking at it as a complete outsider and not having been involved in the management, I think the problem is that there was ambiguity about what the nature of the centre was and who was going to be in it. 25

The Chief Justice also talked about the misunderstanding created as a result of the failure to properly engage with the community adjacent to the Centre:

"...it was designed as a pre-release centre rather than as a centre for the long-term containment of those people. Those people who were heading for release anyway had been assessed to be of sufficiently low risk to be released, so the idea was to manage their return into the community so that, for example, they could go out during the day. One of the advantages of having it close to a community is they can go out and work during the day and come back at night—that sort of thing—so you are gradually reintegrating them into the community. But, if that is the type of facility you are running, then you need to emphasise to the people amongst whom they will be moving that these are people who are destined for release and who would have otherwise been released anyway. I do not know if that message was conveyed. It certainly was not to the people who were standing behind the placards when I went out there for the opening." 26

The management of Leaves of Absence is also an important consideration in the context of community safety and were considered in that context by Blaxell and Hayward. They state:

"We believe that the systems and arrangements at the Centre for leave of absence pay proper regard to the 'paramount consideration' of highest priority, namely the protection and safety of the community." 27

**The protection and safety of residents:**

The processes to ensure the protection and safety of the residents at the Centre are also risk focussed with detailed processes and plans in place to ensure their safe transition back into the community. These processes were also the subject of the Review undertaken by Blaxell and Hayward in early 2016. The Blaxell/Hayward Review outlines the balancing act that is required in these processes:

"Risk assessment is one of the most important function performed by DSC in respect of Centre residents. It is in this way that DSC takes heed of the 'paramount considerations' in the DP Act, including the 'protection and safety of the community' and the 'protection and safety of residents'. Risk assessments also enable Disability Justice Services to design and

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25 Official Committee Hansard, Community Affairs References Committee Inquiry into “Indefinite detention of people with cognitive and psychiatric impairment in Australia.”, 19th September 2016, pp. 2-3

26 Official Committee Hansard, Community Affairs References Committee Inquiry into “Indefinite detention of people with cognitive and psychiatric impairment in Australia.”, 19th September 2016, page 3

27 Blaxell and Hayward Report, p. 25
administer programmes and services which ‘reduce the risk of residents offending or re-offending.’” 28

They go on to say:

“The process of risk assessment commences at the time that the Board starts to consider placing an individual at the Centre, and it continues after placement by way of constant monitoring and regular review. Each review assesses any changes in risk that have occurred and the suitability, adequacy and effectiveness of the existing risk management strategies. The ongoing risk assessment (including reviews) forms part of the residents IDP and must be conducted by two appropriately qualified persons with experience in different disciplines.” 29

The IDP’s or Individual Development Plans are a critical part of the framework in the delivery of the programmes and services at the Centre which assist with the reintegration of residents back into the community. This approach is stipulated in Part 4 of the Declared Places (Mentally Impaired Accused) Act 2015.

Whilst Blaxell and Hayward endorsed the approach being taken by the Disability Services Commission their Report incorporated some recommendations with a particular focus on individual goal setting, the time taken to develop IDP’s and the range of services available to residents.

“.it is our opinion that the IDP’s we have seen do not sufficiently articulate each resident’s vision of a ‘good life’. The IDP’s instead set out a multiplicity of goals which are ‘long term and broken down into shorter term goals that can be achieved with the duration of (3 months)... Although this complex structure of goals provides a good guide to staff, we doubt that the resident would fully understand them. He may also perceive them as hurdles standing in the way of his vision of a good life rather than as milestones marking a clear path towards achieving that end. We believe that IDP’s would be improved if they focused on fewer and perhaps only a single long term goal so that residents will have a clearer perception of what lies ahead....” 30

All of the recommendations made by Blaxell and Hayward in relation to the IDP’s were accepted and have been implemented by the Disability Services Commission. Internal reviews confirm that the Blaxell Hayward Report recommendations have been implemented:

1. Goal setting in IDP: The goals statements are now provided as a descriptive statement and a short version in the residents own words. This shows his understanding and ownership. Details for achieving the goal are incorporated into the plans for the structured day.
2. Timing of IDP preparation: There is no real plan achieved in 20 days – 3 months is needed to get to know the individual well enough to plan effectively. Plans are completed in 3 months, reviewed within 6 and full review in 12 months.

28 Blaxell and Hayward Report, p.7
29 Blaxell and Hayward Report, pp.7-8
30 Blaxell and Hayward Report, pp. 20-21
3. Programmes of activities: At the time of the Blaxell Hayward Review very little had been put in place. There are now several interest based activities including arts, making films that include learning for the resident, woodwork, music, gardening. They all show evidence of being very successful and positively integrate behaviour development and messaging.

During discussions with staff on a visit to the Centre in September 2017 the issues in relation to the IDP’s were discussed and it was apparent that there is a strong commitment to ensuring that they are more meaningful for the residents. A range of visual and other tools are now being used to improve outcomes for the residents and ensure that outcomes are being delivered.

Another important issue raised by a number of stakeholders was the need for culturally appropriate services and programs for Aboriginal and Torres Strait Islander people. In their submission to the Senate Inquiry into the indefinite detention of people with cognitive and psychiatric impairment, the First Peoples Disability Justice Consortium (FPDJC) Submission stated:

"In-prison rehabilitation programs and programs that prepare people for life after prison are insufficiently designed to take into account the needs of Aboriginal and Torres Strait Islander people, or cultural protocols, processes and knowledges. Programs rarely address unique needs of Aboriginal and Torres Strait Islander people including anger, forcible removal as a child and intergenerational trauma, nor do they address factors contributing to incarceration including marginalised social and economic position. One decades-old study did, however, find that Aboriginal and Torres Strait Islander people’s post-release participation in work-release programs, financial support and employment upon release were associated with lower recidivism – addressing some of the determinants of both crime and health." 31

Whilst there is some work currently undertaken by the Disability Services Commission to address these needs, this area will need further review if the number of Aboriginal residents at the Centre increase. One important issue to consider, as the number of Aboriginal residents in the Centre increases, is the employment of Aboriginal staff.

The Office of the Inspector of Custodial Services highlighted the importance of employing Aboriginal staff to work with Aboriginal prisoners in a report on Aboriginal staff in Prisons in April 2016

"Numerous other reports have espoused the benefits of improving Aboriginal staff representation in corrections. The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) suggested that the employment of Aboriginal people in corrections enhanced the relationship between prisoners and officers, improved understanding of Aboriginal issues, and decreased racism (Johnston 1991). In their submission to the RCIADIC the Queensland

31 FPDJC Submission to Senate Inquiry into the indefinite detention of people with cognitive and psychiatric impairment, p.58
Department of Corrective Services argued that the recruitment of Aboriginal people had numerous long term benefits, including:

- providing a non-offending role model for Aboriginal people;
- assisting staff in appreciating that Aboriginal people can have roles other than that of prisoners;
- providing a line of communication between Aboriginal prisoners and correctional management; and
- improving communication between corrections and Aboriginal communities.” 32

These benefits would apply as much or more in the Centre as they would in a prison environment and it will be important for the Disability Justice Service to explore opportunities for the recruitment and training of Aboriginal staff.

Leaves of Absence

Leaves of Absence (LOA) are an important aspect of the process of reintegrating residents back into the community. Division 3 of the Criminal Law (Mentally Impaired Accused) Act 1996 provides the statutory framework for the operation of Leaves of Absence at the Centre. This Section outlines the role of the Mentally Impaired Accused Review Board and the Attorney General in granting and, where appropriate, cancelling an order to grant an LOA. It is important to note that risk is also a critical element in the decision-making process for LOA’s:

Before making a leave of absence order, the Board is to have regard to—

(a) The degree of risk that the release of the accused appears to present to the personal safety of people in the community or of any individual in the community; and

(b) The likelihood that, if given leave of absence on conditions, the accused would comply with the conditions. (Clause 28 (3) of the Criminal Law (Mentally Impaired Accused) Act 1996)

Blaxell and Hayward undertook a comprehensive assessment of the policies and procedures associated with Leaves of Absence and concluded that they operated well:

“...by the time of each resident’s first leave of absence there have been thorough assessments and vetting of his suitability for the programme. We have referred earlier to the very rigorous conditions that apply to leave of absence, and to the documentation that is prepared by the Centre before and after each visit. Having carefully analysed these leave of absence arrangements we consider that they operate at a high standard and in a very professional manner.” 33

The only recommendation made by Blaxell and Hayward in their Report in relation to Leaves of Absence related to the need for the establishment of a single document for each resident

32 OICS Report: “Recruitment and retention of Aboriginal staff in the Department of Corrective Services”, 2016, p.9
33 Blaxell and Hayward Report, p. 24
which listed any breaches of conditions and the consequences which then ensued. Whilst
they did not see the need for recording of “minor infractions”, they felt that it was
important to record “…breaches which had the potential to cause any risk to the community,
to staff or other residents, or to the resident himself” 34

Disability Services have confirmed that this recommendation had been implemented and
that a new record system has been created which includes a specific LOA file as well as a
medical pharmacy file, clinical and activity file for each resident. LOA files are held in West
Perth.

It is worth noting that since the last unauthorised absence on 8th May 2016 (Mother’s Day),
there have been over 700 LOA’s for the 2 residents without incidents or unauthorised
absences. This seems to confirm the view of Blaxell and Hayward that the LOA’s “operate at
a high standard and in a very professional manner.”35

**Utilisation of the Centre as a Declared Place:**

Given that there have only been a total of three residents at the Bennett Brook Disability
Justice Centre and that there are only two currently resident at the Centre at the time of
writing this Report, it is not surprising that many of the stakeholders who took part in this
Review highlighted the low numbers and high costs involved in running the Centre. In
general, this view was consistent whether the stakeholder supported or opposed the
location of the Centre at Bennett Brook.

There has been a degree of confusion in the community and with stakeholders about the
capacity of the Centre and the potential numbers that may be placed in the Centre. The
following exchange during the Senate Community Affairs References Committee Hearing in
Perth is a good example:

**“Senator DOBDSON: I must say I am a bit confused. How many people are going through the
declared centre, Bennett Brook? I have heard two and three, and I am not really clear what
numbers there are. I think you mentioned that there are other services you are providing.
Are they coming from Bennett Brook or are they coming from another function of the
commission?”**

**Dr Chalmers:** At the time that the original planning commenced around a declared take
place in WA, my memory has it that we were told by the Mentally Impaired Accused Review
Board that there were about 15 people within the prison system who could be eligible for
this alternative placement rather than prison. It took us a couple of years to design and build
the centre. During that period of time, some of those 15 found their way back out into the
community and were supported and so on which is a good thing because they found their
way out to resume their lives in the community. Since it opened 12 months ago, we have had
three people referred from the Mentally Impaired Accused Review Board to reside in the
centre rather than in prison. And, as I said, there are a couple of others being considered
now. So we thought that the numbers might be closer to 10 but they are lower than that at

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34 Blaxell and Hayward Report, P. 28
35 Blaxell and Hayward Report, p.24
the moment. We are confident that they will grow over the next year so we will get close to that 10 that was modelled up from the start. Does that—

Senator DODSON: Okay. So you were told there were 15 at one point—

Dr Chalmers: Yes.

Senator DODSON: You accommodated three?

Dr Chalmers: Yes.

Senator DODSON: And you think that you may be able to increase that up to capacity in the coming months, or—

Dr Chalmers: Probably over the next year we will start to nudge that—

Senator DODSON: Next year—

Dr Chalmers: up towards the 10. But the model is also a flow-through model, so from the day that someone is placed in the centre we start working to get them out of that centre. So it is all designed—in fact the three people who have been there have been on extensive leave of absence, where they spend a large part of the day out in the community, rebuilding their lives and starting to engage in community activities. Some of them have their own houses allocated to them, so it is a flow-through model: some come in and others go out.

Senator DODSON: Okay. I just wanted to get clear that the endpoint of this whole process is to get people into the community—

Dr Chalmers: Absolutely.”36

Information about the detailed costs of running the Centre have been difficult to ascertain as the costs are incorporated in a broader Disability Justice budget and there is substantial flexibility in how the staff are allocated. The following interchange between the Member for Maylands, Lisa Baker and the Director General of the Disability Services Commission, Dr Ron Chalmers provides a useful summary:

"Ms L.L. BAKER: Minister, I have some more practical questions about the disability justice centres. There are four of them and if I read them to the minister, she may want to take some on notice and she might answer some now. In relation to the justice centres, could the minister give me the estimated operational cost for 2015–16?

Dr R. Chalmers: The budgeted amount is $2.5 million, but given the fact that this year has not finished yet and because it is a budget amount, it will vary depending on a range of factors including the number of residents in the centre. It also includes other activities under the broad band of disability justice service. We are involved in not just running the centre, but also providing prison in-reach services. We have staff involved in the prison system supporting people with intellectual disability and cognitive impairment. We are also involved in community justice activities—diversion and so on. The $2.5 million is budgeted, but it may not be spent.

Ms A.R. MITCHELL: I am sorry, what was the member asking?

Ms L.L. BAKER: I was asking whether it is possible to break down the costs just specifically for the justice centre, particularly in relation to the staffing costs versus running costs.

Ms A.R. MITCHELL: I will ask the director general to respond.

Dr R. Chalmers: No, it is not possible. I have been asked this question a number of times. We set a budget, but because of those variables—that is, the number of people in the centre,

36 Official Committee Hansard, Community Affairs References Committee Inquiry into “Indefinite detention of people with cognitive and psychiatric impairment in Australia.”, 19th September 2016, page 46
and the intersection between the centre activity and those other disability justice service activities—it is not possible to quantify that.  

In that regard, it is important to highlight the fact that Disability Services has a broader role in relation to the justice system. The Director General, Dr Ron Chalmers, explained this succinctly to the Senate Hearing in Perth:

“I just want to make the point that the Disability Services Commission has an impact in this area beyond just that centre and that, while we are happy to answer any questions about the centre itself, it sits within a broader context, and, in its broadest sense, in our support to people with disability who come in contact with the justice system, we rely heavily on our state-wide local area coordination network and have done for a couple of decades now. That is our frontline of support, if you like, for people across the state who require support in a variety of forms to mitigate against the risk of people coming in contact with the justice system but also to assist people who do happen to stray into that territory and need support on the way through. And that support takes many forms.

The other area that we have been active in since about 2012-13 is a broader disability justice service, which includes a prison inreach capacity. We have been building that steadily over the period of time. Under that service we work collaboratively with the Department of Corrective Services and also with the Mentally Impaired Accused Review Board, to work at a systemic level around supporting people who are in the prison system and people who are out in the community under orders—assisting them in a range of areas that, again, aim to support them and to mitigate the risk of them spending periods of time in the justice system itself.

That has drawn us into a close partnership relationship with the Department of Corrective Services. We now support about 85 people with disability via that prison inreach support system. Our staff—Ms Parry’s staff—are in regular contact with corrections staff, and that involves the delivery of targeted training programs for correction officers within the prison environment themselves, in Perth and in other places.”

The relationship between the InReach programme and the Centre was also explored in a Legislative Assembly Estimates Committee in June 2015:

“Mr D.J. KELLY: The reason I have been asking some of these questions is that one of the things that has been put to me is that the prison in-reach program has been so successful and it is such a good program that it may be that the need for the centre is not as great as was initially considered. If the parliamentary secretary remembers, there was originally a plan for two centres, and that was cut down to one centre because the government came to the conclusion that there was no need for the second one. My question is: is it the case that

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37 Extract from Hansard [ASSEMBLY ESTIMATES COMMITTEE A— Thursday, 26 May 2016] p439b-448a Mr Dave Kelly; Ms Andrea Mitchell; Ms Lisa Baker; Ms Janine Freeman; Chairman; Dr Graham Jacobs; Ms Eleni Evangel

38 Official Committee Hansard, Community Affairs References Committee Inquiry into “Indefinite detention of people with cognitive and psychiatric impairment in Australia.”, 19th September 2016, page 42
the prison in-reach program has been so successful that the demand for the disability justice centre is not as high as had previously been considered?

Ms A.R. MITCHELL: I thank the member for complimenting the disability in-reach program, because we are proud of it as well.

Mr D.J. KELLY: It is an excellent program, from all reports.

Ms A.R. MITCHELL: At the same time, I will get Dr Chalmers to provide some more specific information about the centre.

Dr R. Chalmers: The people we believe will be heading towards the centre right from the start are people who, despite the very best efforts of people working in the in-reach program, will still need a period in the justice centres. It will not be an immediate exit to the community. The centre is a critical component of the overall strategy, as is prison in-reach. The other thing we have to bear in mind is that the pathway from prison to the centre and the community is just one pathway. We predict that, once it becomes clear to the legal profession and the legal system that this justice centre is an option for people, we will find that people who are found unfit to plead to charges because of the nature of their disability will end up going directly from courts to the centre, rather than from courts to prison and then to the centre. Again, I come back to saying that we wanted the centre to be small-scale. We did not want it to be another prison in the community, which it is not, and we wanted to make sure that there was capacity for the legal system to use that facility. Again, I say that if we filled the centre on day one, that would not be possible. I think we are going to kick this off with just about the right number in the centre, and take advantage of the good work that the member has already recognised is happening in the prison in-reach component of the strategy." 39

The Director of the Disability Justice Service, provided the Review with the following outline of the Services provided in her Section:

"In addition to the operation of the Bennett Brook Disability Justice Centre, The Disability Justice Service (the Service) comprises a range of integrated services including prevention and diversion, clinical interventions and prison in-reach/out-reach. These services are available to people with disability who have been sentenced, are on remand or who have been deemed unfit to plea due their disability and people with disability who interface with the justice system and are living in the community.

The “In-Reach service” has typically described the support provided to people while they are in custody, rather than the other services provided by the Service. The Service employs two staff (1x Justice Coordinator, 1x Justice Officer) for this function. However, depending on the number of active cases and the needs of the Service, caseloads are also allocated to other positions within the team, e.g. Manager of the Centre of Disability Justice Clinicians.

The Justice Coordinator/Officer is the first point of contact for information in relation to the Service. The Service provides information, planning and support to people with disability, their families, disability sector organisations, legal professionals, advocates and other government agencies. The Service also provides support connecting individuals with Local Coordination, where practical, up to six months prior to the planned release from custody.

39 Extract from Hansard [ASSEMBLY ESTIMATES COMMITTEE B — Thursday, 11 June 2015] p594b-602a
Chairman; Ms Andrea Mitchell; Mr Dave Kelly
The Service liaises with the Department of Justice to maintain awareness of people with disability who are placed in custody. People who are indefinitely detained do not have a planned release date, therefore the Service engages with them as required and/or requested by the Mentally Impaired Accused Review Board.

Services are primarily delivered in the metropolitan area. People in regional and remote areas may be supported via consultancy, in conjunction with Local Coordinators and/or disability sector organisations.

In 2016-17, the Service supported over 100 individuals in the community and in various custodial settings. The number of people supported by the Service at any one time fluctuates throughout the year. On average, approximately 85 people are supported at any one time, with 50-60 per cent of those people being held in custody while the remaining 40-50 per cent are in the community. The breakdown of people in custody and in the community is constantly varying due to people moving in and out of prison throughout the year. As at 21 September 2017, the Service is monitoring approximately 52 people in custody.  

The questions relating to the costs associated with running the Centre are complex and somewhat blurred in the bigger picture of Disability Justice programs, but it is probably fair to say that, at the moment, the operating cost per resident is very high relative to other justice options. The Report will explore these questions further under Terms of Reference 4 “Strategies for maximising the value to the community of operating a Declared Place as envisaged by the Declared Places (Mentally Impaired Accused) Act 2015”.

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40 Email dated 23 September 2017 from Ms Myra Parry
Terms of Reference 3: Lessons to be learnt from the establishment and operation of the Centre.

The “lessons” outlined in this section of the Review build on issues raised during the examination of Terms of Reference 1 and 2 above. Terms of Reference 1 dealt largely with the “establishment” of the Centre and Terms of Reference 2 focussed on the “operation” of the Centre and will be examined under those headings.

Establishment of the Centre

It is fair to say that the various processes undertaken to establish the first “Declared Place” in Western Australia were not ideal and this has left a legacy of distrust and anger amongst the majority of the community who live in Lockridge and the suburbs adjacent to the Centre. As indicated in the comments in relation to the first Term of Reference, this failure to undertake meaningful engagement with the community was unfortunately exacerbated by an inappropriate response to an “escape” from the Centre on New Year’s Eve 2015.

During debate in the Legislative Council, the Leader of the Opposition in the Council, Hon. Sue Ellery suggested a few lessons that could be learned from the process:

“I have great sympathy for the people who are frightened about living next door to the centre. I understand why they feel that way. I understand why they feel they have been neglected. I understand why they feel they have been asked to shoulder a greater burden than other communities. That could have been avoided if the government had done this in a more sensitive way. I really hope, because we will need more than one of these centres, that important lessons have been learnt about how to do it in the future and how to pick the right spots and how to engage local community leaders from the outset. That means building in a greater period of time to get the thing up and running. The government will never get 100 per cent support or even 50 per cent support, but it could have got a lot more support if it had engaged local community leaders a lot earlier and been able to stand up and put hand on heart and say, “Here’s the criteria; we followed it to the letter of the law. Here’s how we’ve attempted over the last three months to engage with the local community. We’ve given it our best shot and we remain committed to engaging with you.” The government needed to let people work through their anger—that is what people will do—and to build into the process the amount of time needed to do that. I hope the minister is able to tell us in her response the lessons that have been learnt and how she might do it differently next time.”

What then are the key lessons to be learned from the “establishment phase” of the Centre? Community consultation needs to be undertaken early in the decision-making process. Once the Cabinet had made the decision in October 2011 to construct two Disability Justice Centres, consideration should have been given to the issue of community engagement in relation to the location of these facilities and the process that would be used to determine the most appropriate location.

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41 Extract from Hansard [COUNCIL— Thursday, 19 February 2015] p376c-400a
Using the “lessons Learned” from their research, the Authors of the article referred to earlier in relation to the transitional housing facility for prisoners in New York, suggest that there are five elements to a best practice approach for gaining community support:

1. Organisational Readiness: Deciding to make the commitment
   Make sure that the organisation that is the “developer” for an initiative such as a “Declared Place” (in this case the Disability Services Commission) is prepared to embark on such an initiative. This includes an analysis of staff skills and commitment and alignment to broader organisational plans and strategies.

2. Beginning Community Outreach: Identifying the Stakeholders
   It is important to identify those groups or individuals who have a strong interest in a development such as a “Declared Place” and this should be done early in the planning process. This could include all levels of government; advocates who can act as ambassadors, concerned neighbours from the local community, the judiciary and legal practitioners, psychologists and psychiatrists, therapeutic and support service providers and the media. It is important to note that another lesson learned was that strategies such as neighbourhood meetings should not be relied on solely to identify and attract community members.

3. Two Pillars of Trust: Accessibility and Accountability
   An organisation needs to give serious consideration to choosing who will be the “face” to the community during the project planning and implementation and then to ensure that they are accessible and responsive. Senior staff members and people who have a level of respect in the local community should be at the top of the list. The Case Studies in this research also highlighted the fact that many communities, particularly in lower socio-economic areas, have a long memory of broken promises so it is important to be seen to do what has been promised – in other words, to “walk the talk”!

4. Being a “Good Neighbour”
   In simple terms, this means being honest and straightforward about what is being proposed, being transparent about operational planning issues; listening to the needs of the community and where possible meeting or accommodating those needs.

5. Leadership Effectiveness: Embodying Strength and Grace
   Leaders and other organisational representatives need to commit to attending community events even when times are hard and community opposition is strong and vocal and they should respond with grace and non-defensiveness. Expressing anger or behaving defensively will be counterproductive.42

Given the clear evidence about the shortcomings in relation to the process to identify and then establish the Bennett Brook Disability Justice Centre, the following recommendations should be considered:

42 (“In Our Backyard Overcoming Community Resistance to Re-entry Housing (A NIMBY Toolkit”, John Jay College of Criminal Justice, the City University of New York (2011), pp.14-17)
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 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 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.

It is acknowledged that there are already some positive community engagement initiatives under way such as the work by residents at the Centre to construct and decorate play tables for children at Eden Hill Primary School, but this sort of initiative should be expanded to assist in re-building relationships with the local community.

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 Cabinet 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.

Operation of the Centre

As indicated earlier, the Operations of the Centre were examined in detail by Blaxell and Hayward in early 2016. It is pleasing to see that many of the recommendations made by Blaxell and Hayward have been implemented by Disability Services and that the Centre is moving closer to fulfilling its objectives as a Declared Place.

The following recommendations have been developed to ensure continuous improvements in the operations at the Centre:

Recommendation 6: Continuous Improvement and OICS oversight role
There are a range of options to ensure continuous improvement in the operations of the Centre. This could range from an internal audit, an external “light touch” review of operational practices to a full review by the Office of the Inspector of Custodial Services (OICS). Discussions with a range of stakeholders seemed to confirm that the current regular Internal Reviews, such as the one undertaken in late 2016, should continue but that they should be supplemented from time to time by a Full Review from the OICS. The OICS has already produced reports that relate to the issues associated with mentally impaired accused (refer list of References in Appendix 1) and is therefore well qualified to assess the operations of the Disability Justice Centre.

**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**

The Senate Community Affairs References Committee Report highlighted the need for more culturally appropriate service delivery and the greater involvement of Aboriginal people and organisations in the design and delivery of services for people with an intellectual disability or cognitive impairment in the justice system:

“The committee has received evidence that there needs to be greater involvement of Aboriginal and Torres Strait Islander support workers in the journey of Aboriginal and Torres Strait Islander peoples subject to forensic orders. The Aboriginal Disability Justice Campaign (ADJC) noted its concern about the ‘lack of culturally responsive service systems’ for Aboriginal and Torres Strait Islander peoples. The Aboriginal Legal Service of Western Australia outlined why culturally appropriate care is important.

...if things are going to improve there needs to be a greater involvement of Aboriginal people in helping these people. If you get blackfellas involved—ideally where people are on country, but where they are surrounded by people from their own community who they trust and who they have a rapport with—that is a hope for the future. So often what I find in my job at the ALS is if you have non-Aboriginal people dealing with these people things go off the rails in a heartbeat. We are continually confronted with pre-sentence reports done on these people and other clients—psychological reports—which are indescribably damning about the client and very seriously adversely affect their prospects in terms of the disposition that a court may impose.” 43

Dr Megan Williams, a Senior Research Fellow at the University of Western Sydney also pointed to the specific shortcomings in relation to programs that assist with the transition from Prison or Institutional Care into the community:

“In-prison rehabilitation programs and programs that prepare people for life after prison are insufficiently designed to take into account the needs of Aboriginal and Torres Strait Islander people, or cultural protocols, processes and knowledges. Programs rarely address unique needs of Aboriginal and Torres Strait Islander people including anger, forcible removal as a child and intergenerational trauma, nor do they address factors contributing to incarceration including marginalised social and economic position. One decades-old study did, however, find that Aboriginal and Torres Strait Islander people’s post-release

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43 Senate Community Affairs Reference Committee Report: Indefinite detention of people with cognitive and psychiatric impairment in Australia, November 2016, p.109
participation in work-release programs, financial support and employment upon release were associated with lower recidivism – addressing some of the determinants of both crime and health”. 44

Dr Williams also pointed to the value of a “Throughcare Approach” in her contribution to the FPDJC Submission:

“For decades international human rights instruments have asserted the need for throughcare, stating that prisoners have the right to rehabilitation appropriate to their age and legal status, and with respect for their dignity from the beginning of their sentence. Such rehabilitation includes health care, special attention to improve relationships with family and community, preparation for work life, education integrated with the community, cultural activities and coordinated after-care.” 45

She also highlighted the value of healing programs such as those proposed by the Healing Foundation in the context of therapeutic support for Residents at the Centre: “Quality evidence is increasingly available about Aboriginal and Torres Strait Islander people’s community-driven collective healing programs, indicating that such programs are cost effective and have an important role in reducing incarceration rates.” 46

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 InReach program.

44 First Peoples Disability Justice Consortium Submission to Senate Inquiry into the Indefinite Detention of People with Cognitive and Psychiatric Impairment, p.58

45 First Peoples Disability Justice Consortium Submission to Senate Inquiry into the Indefinite Detention of People with Cognitive and Psychiatric Impairment, p.69

46 First Peoples Disability Justice Consortium Submission to Senate Inquiry into the Indefinite Detention of People with Cognitive and Psychiatric Impairment, p.63
Term of Reference 4:
Strategies for maximising the value to the community of operating a
Declared Place as envisaged by the Declared Places (Mentally Impaired
Accused) Act 2015.

There are some important issues that need to be addressed to enable the Centre to fulfil its
objectives and enable it to deliver maximum value to the community of Western Australia.
These issues largely relate to the need to increase the number of residents at the Centre.
This will not only provide a “critical mass” of people to enable more effective delivery of
services and programs but also to improve the “cost-benefit” of the Centre in terms of
simple measures such as the costs per resident to run the Centre.

Recommendation 8: Reform of the Criminal Law (Mentally Impaired Accused) Act 1996.
It is not the intention of this Review to outline in detail the legal arguments that support the
need for law reforms which would maximise the value to the community of operating a
Declared Place. There are separate processes that have taken place under the auspices of
the Department of the Attorney General in that regard and these considerations are still
under way.

It is, however, not outside of the scope of this Review to report that there is broad
agreement that the Attorney General should act quickly to amend the Criminal Law
(Mentally Impaired Accused) Act 1996. In the context of this Review, the key reforms that
would benefit people with an intellectual disability or cognitive impairment and provide
them with better access to the Declared Place are as follows:
It is recommended that, as a matter of priority, the Attorney General amend the Criminal
Law (Mentally Impaired Accused) Act 1996 to:

Eliminate indefinite detention
Peter Collins ALSWA outlined the challenges facing his lawyers when he appeared before
the Senate Community Affairs Reference Committee Hearing in Perth:

“Lawyers and court officers at the Aboriginal Legal Service face a terrible conundrum when
acting for these sorts of clients. Everyone is acutely conscious and fearful of the prospect of a
client being found unfit to plead and being the subject of a custody order. Lawyers are often
placed in terribly compromised positions, from the point of view of their ethical and
professional responsibilities to clients—I am one of them—in that the tendency is to
massage clients of this type into a position where they can enter a plea. Usually it is a plea of
guilty in order that the client can be sentenced and be subjected to the usual criminal
sanctions, rather than the prospect of being indefinitely detained. You can bet your bottom
dollar that the overwhelming majority of Aboriginal people who are found unfit stay in
custody for very lengthy periods of time. They stay in jails. The case of Yates, which was
reported in the High Court in 2013, is a compelling demonstration of that fact. 47

The then Shadow Attorney General, John Quigley introduced a Private Member’s Bill, the

47 Official Committee Hansard, Community Affairs References Committee Inquiry into “Indefinite detention of
people with cognitive and psychiatric impairment in Australia”, 19th September 2016, p. 16
Criminal Law (Mentally Impaired Accused) Amendment Bill in 2014 to highlight the need for this reform. He stated in his Second Reading Speech:

"These are but two of the many cases that evidence the injustice arising out of the courts being required by law to make custody orders for mentally unfit accused persons and to make those orders of indeterminate length. I understand from the public comments of the Honourable Chief Justice of Western Australia, reported in The Australian and those made by other members of the judiciary, that there is widespread judicial, as well as public, support for the proposition that custody orders made for mentally unfit people accused of crimes should not exceed in length the period that it would have been appropriate for the person to spend in prison had they been mentally fit and convicted of the offences charged. The Chief Justice’s comments also highlight another problem with the present scheme of custody orders of indeterminate length, in that members of the legal profession are loath to bring to the court’s attention their client’s mental unfitness. This is because if the accused person raises mental unfitness, the likelihood is that they will be given a custody order of indeterminate length and could languish in prison for years, as has been the case with many other lost souls. I can confirm the Chief Justice’s concerns in this regard from my years in legal practice." 48

Provide the judiciary with the same options as exist under the Sentencing Act

Chief Justice Wayne Martin commented on the need to give more options to the judiciary through reform of CL(MIA). He stated in the Senate Committee Hearing in Perth:

A long time ago, when the act was first passed, it was suggested that we should have more options. Again, in 2003, in the most recent review, it was said—i think appropriately—that we should have all the options under the Sentencing Act when somebody has been found unfit to stand trial, which includes supervision on condition. I think that is absolutely important because, having dealt with these cases myself, you have a very stark alternative. It is either indefinite detention, which can be for a very long time, or complete, unconditional release; and very often you would want a middle road. For example, a case I had in the Kimberley—Senator, obviously you would be familiar with the conditions up there—involved a man who was clearly cognitively impaired, probably as a result of, I suspect, FASD, followed by substance abuse—sniffing for a long time. There was an allegation of inappropriate behaviour of a lower order with children. He was a management risk. It was very low order seriousness offending. He was a management risk. He could be managed in his community, if there were conditions imposed about where he would live and not going near the school and those sorts of things. But I could not impose those conditions, so I had to either lock him up indefinitely, which I was not prepared to do because his behaviour just was not that serious, or take a punt and hope that the community itself would impose those conditions on him. The evidence I got was that the community were aware of his needs. There were a couple of relatives who were going to step up and look after him, and so I took the punt. But we should not have to take a punt in cases like that. We should have had the option of saying, 'I'm not going to put you into custody, but here are the conditions you have to live by, and if you breach those conditions then some action could be taken." 49

48 Extract from Hansard [ASSEMBLY — Wednesday, 19 March 2014] p1578a-1579a Mr John Quigley
49 Official Committee Hansard, Community Affairs References Committee Inquiry into “Indefinite detention of people with cognitive and psychiatric impairment in Australia.”, 19th September 2016, p. 4
Remove the need for Ministerial consent to a recommendation by MIARB for placement at the Centre
A broad range of stakeholders supported the proposal that the Governor (acting on the advice of the Minister for Disability Services) should no longer have the final say in whether a person should be placed in the Centre. Many people suggested that a Minister is too strongly influenced by the potential for political backlash and therefore errs on the side of being risk averse in relation to decisions to place people at the Centre.

Recommendation 9: Targeted training for legal professionals in relation to intellectual disability and the value of a Declared Place
In an Addendum to their Report, Blaxell and Hayward raised concerns about the "...longstanding reluctance by criminal defence lawyers in Western Australia to advise intellectually disabled clients to seek custody orders under the MIA Act." 50

They went on to say, "The reasons for this reluctance are entirely to do with the consequences of such an order." And "...in practical terms a hard choice must be made between a finite prison term and indefinite detention, and the former is usually seen to be better." 51

Blaxell and Hayward recommended an education program directed at the legal profession and particularly the Criminal Lawyers Association. The then Director General of the Disability Services Commission, Dr Ron Chalmers addressed this issue in his response to a question in Estimates Committee in 2016:

"Earlier this year, a review of the Bennett Brook Disability Justice Centre was commissioned after it was operating for half a year. One of the recommendations in the review undertaken by retired Supreme Court Judge Peter Blaxell [and Professor Colleen Hayward] was exactly what the member has described—that is, an investment in time and the provision of information and an explanation to various parts of the justice service. We have that planned. Our first engagement with Legal Aid WA, the Aboriginal Legal Service and a range of players was due to commence last week. For a range of reasons that has been put off for a fortnight. We have all bases covered on that front. We have to work with magistrates, judges, lawyers and their associations, because they need to understand what this has to offer." 52

This issue of educating the legal profession about the value of a Declared Place for their clients will be enhanced if the proposed reforms to the Criminal Law (Mentally Impaired Accused) Act 1996 are implemented and this should be seen as a priority action by the Minister for Disability Services and the Attorney General.

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

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50 Blaxell and Hayward Report, p.30
51 Blaxell and Hayward Report, pp. 30-31
52 Extract from Hansard [ASSEMBLY ESTIMATES COMMITTEE A— Thursday, 26 May 2016] p439b-448a Mr Dave Kelly; Ms Andrea Mitchell; Ms Lisa Baker; Ms Janine Freeman; Chairman; Dr Graham Jacobs; Ms Eleni Evangel]
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**

As indicated earlier, this Review consulted widely with people from a range of sectors and disciplines and there was pretty universal agreement that the best outcomes for people with an intellectual disability or cognitive impairment who come into contact with the justice system is when a wide range of stakeholders work together to achieve integrated and tailored programs of support. This team approach could, for example, include representatives from the Disability Services, Justice, Corrective Services, Housing, Child Protection, Police, Education, Training, Arts, Aboriginal Affairs, Multicultural Departments and could include community sector representatives where appropriate.

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 name of the Centre**

It was suggested by some stakeholders that using the term “Disability Justice Centre” perpetuated the perception in the community that the focus of the Centre is on justice and incarceration rather than supported transition back to the community.

It is recommended that consideration should be given to changing the name of the Centre to the Bennett Brook Centre.
Term of Reference 5:
Options available to the State Government in relation to the future of the Bennett Brook Disability Justice Centre.

The Bennett Brook Disability Justice Centre has suffered from a range of unfortunate circumstances and poor decision making during its planning, development and early operations which have collectively created a context in which its future is being questioned by some in the community. These circumstances have included:

- the politisisation of the process to select an appropriate site (exacerbated by the timing of announcements in the lead up to the 2013 State Election);
- poor community engagement processes (partly due to the politisisation of the issue);
- a lack of a transparent process and criteria to select the site;
- a high profile “escape” from the Centre in its early operations and an inappropriate police response;
- the failure by successive Governments to respond to repeated calls to reform the Criminal Law (Mentally Impaired Accused) Act 1996

Notwithstanding these early problems, many lessons have been learned and the operations of the Centre are demonstrating continuous improvement and subsequent external reviews and internal review processes have endorsed the approach being used by Disability Services to operate the Centre. It is also important to note that the Mentally Impaired Accused Review Board (MIARB), is clearly focussed on its role in ensuring the protection of the community. In his Annual Report for 2015/16, The Chairman of MIARB, His Honour Judge Robert Cock QC stated:

“The Declared Places (Mentally Impaired Accused) Act 2015 commenced on 17 June 2015, although the Disability Justice Centre was not officially opened until August 2015. A mentally impaired accused is not to be detained in the declared place that is established by the DSC unless the Board is satisfied that the accused is a person with disability as defined in section 3 of the Disability Services Act 1993 and the predominant reason for the disability is not mental illness; is satisfied that the accused has reached 16 years of age; and has 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.” 53

Evidence provided to the Review by Disability Services about the lack of breaches whilst Residents are on a Leave of Absence from the Centre since May 2016 confirms the impression that things have settled down and the high-level focus on risk assessment and risk management by both Disability Services and MIARB should provide some reassurance to the local community that their safety is of paramount importance and that the risk to them and their families is low.

53 MIARB Annual Report 2015/16, p. 9
It is important, however, to note that it is still relatively early in the operations of this new “Declared Place” and that other significant variables such as law reform and Government decisions about the potential establishment of regional Declared Places will impact on the operation and viability of the Centre at Bennett Brook. It is therefore too early to make a final decision about whether the Declared Place should continue to be located at Lord Street, Bennett Brook.

Discussions with stakeholders during the course of this Review led to the development of a potential model for the establishment of a regional network of smaller Declared Places with the Bennett Brook Disability Justice Centre acting as the hub. The need for such a regional focus was highlighted at the Senate Committee Hearing in Perth:

Peter Collins from the Aboriginal Legal Service stated:

“I will conclude with these observations. In my estimation, 95 per cent of Aboriginal people charged with criminal offences appearing before the courts have either an intellectual disability, a cognitive impairment or a mental illness. The overwhelming majority of those are undiagnosed and, therefore, untreated. If they go to jail it is almost impossible to conceive of them being diagnosed in jail; therefore, they are untreated. If you receive a community-type sanction, if you are from a regional or remote area, you will go to a place where you do not receive any meaningful interventions to deal with your problem.” 54

The Inspector of Custodial Services also raised this issue when he appeared before the Senate Committee in Perth:

“I also have a fundamental problem, and it is this: the declared place that we have set up is in Perth; it is a metropolitan place. When you look at the backgrounds of the people who are caught by the act, lots of them are not from Perth. So what is the point of a prerelease facility in the metropolitan area for people are going to go back and live in the Kimberley or the lands. So it does not meet the needs of all of the cohort. It is also going to be very difficult, if not impossible, in my view, to set up adequate declared places, given the gender, male-female; the age differences; the cultural differences; and, with some of the people who are caught by the act, the issues around sexual behaviour. It would be very difficult to manage the large cohort of different need. So I welcome the centre, but as I say I have a fundamental difficulty as to whether a Perth based declared place, or two, is really going to meet the cohort that we have.” 55

The Senate Community Affairs References Committee picked up this issue and included the following comments in its Final Report:

The committee has heard evidence about the locations of secure care facilities such as the Bennett Brook DJC. Although there were mixed opinions on facilities such as the Bennett Brook DJC, many witnesses agreed that the establishment of the state’s first declared place

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54 Official Committee Hansard, Community Affairs References Committee Inquiry into “Indefinite detention of people with cognitive and psychiatric impairment in Australia.”, 19th September 2016, p.16
55 Official Committee Hansard, Community Affairs References Committee Inquiry into “Indefinite detention of people with cognitive and psychiatric impairment in Australia.”, 19th September 2016, p.10
is a step in the right direction in WA. As a first step, the establishment of the Bennett Brook DJC in the Perth metropolitan area makes sense; however, greater consideration needs to be given to where the next declared place will be. 56

**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: Community education about intellectual disability**

There was general agreement amongst stakeholders that a broader community education campaign in relation to intellectual disability and cognitive impairment would benefit Government in the context of any future community engagement exercises for the establishment of facilities such as the Centre. There is, perhaps justifiably, a great fear of the unknown and it would be beneficial if there was a greater understanding in the community about these issues.

**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

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56 Senate Community Affairs References Committee Report, “Indefinite detention of people with cognitive and psychiatric impairment in Australia.”, November 2016, pp.109-110
Appendix 1 – Key References

Reports and Reviews in relation to Bennett Brook Disability Justice Centre:

Blaxell, Peter and Hayward, Colleen, “Independent Analysis of the Bennett Brook Disability Justice Centre”, January 2016

Department of Corrective Services, “Bennett Brook Disability Justice Centre Security Review”, February 2016 (Confidential Report that has not been publicly released)

Statutory Reports with reference to Bennett Brook Disability Justice Centre:


Office of the Inspector of Custodial Services, “Behaviour management practices at Banksia Hill Detention Centre”, June 2017

Reports and Inquiries in relation to Intellectually Disability and the Justice System:

Joint Standing Committee on the National Disability Insurance Scheme, Report on “Provision of services under the NDIS for people with psychosocial disabilities related to a mental health condition”, August 2017


Senate Community Affairs Reference Committee, Report on “Indefinite detention of people with cognitive and psychiatric impairment in Australia” November 2016

- Hansard of Perth Hearing, 19 September 2016
- Submissions to the Inquiry

Legislative Assembly Education and Health Standing Committee Report No.150 on “Foetal Alcohol Spectrum Disorder: the invisible disability”, 15 September 2012
Law Reform Issues:


Community Engagement:

International Association for Public Participation, IAP2 Public Participation Spectrum, 2014

International Association for Public Participation, IAP2 Quality Assurance Standard, June 2015

John Jay College of Criminal Justice, the City University of New York, “In Our Backyard: Overcoming Community Resistance to Reentry Housing (A NIMBY Toolkit)”, 2011

Academic Papers:

Judith Cockram, “Equal Justice? The Experiences and Needs of Repeat Offenders with Intellectual Disability in Western Australia”, Centre for Social Research, Edith Cowan University, September 2005