Western Australia

Declared Places (Mental Impairment) Act 2015

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Western Australia

Declared Places (Mental Impairment) Act 2015

An Act to make provision for matters relating to places established by the Disability Services Commission for the detention, habilitation and rehabilitation of supervised persons required to be detained under the *Criminal Law (Mental Impairment) Act 2023*.

[Long title inserted: No. 10 of 2023 s. 324.]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Declared Places (Mental Impairment) Act 2015*.

[Section 1 amended: No. 10 of 2023 s. 325.]

2. Commencement

This Act comes into operation as follows —

(a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;

(b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

In this Act, unless the contrary intention appears —

adult means a person who has reached 18 years of age;

advocate has the meaning given in section 51;

authorised hospital has the meaning given in the CLMI Act section 9(1);

carer has the meaning given in the *Carers Recognition Act 2004* section 5;

CEO means the chief executive officer of the Commission;

chief advocate has the meaning given in section 51;

CLMI Act means the *Criminal Law (Mental Impairment) Act 2023*;

Commission means the Disability Services Commission referred to in the *Disability Services Act 1993* section 6;

contractor means a person who has entered into a contract with the CEO under section 44;

declared place means a place —

(a) that is a declared place under the CLMI Act section 60; and

(b) that is controlled and managed by or on behalf of the Commission;

declared place, in relation to a resident, means the declared place in which the resident is required to be detained;

declared place services means the services provided under a contract entered into under section 44;

detention centre has the meaning given in the *Young Offenders Act 1994* section 3;

enduring guardian has the meaning given in the GAA Act section 3(1);

GAA Act means the *Guardianship and Administration Act 1990*;

guardian —

(a) in relation to a resident who is not an adult, means a person who at law has parental responsibility, as defined in the *Family Court Act 1997* section 68, for the resident; and

(b) in relation to an adult resident, means a guardian as defined in the GAA Act section 3(1);

individual development plan, in relation to a resident at a particular time, means the individual development plan in effect under Part 4 for that person at that time;

prison has the meaning given in the *Prisons Act 1981* section 3(1);

regulated behaviour management has the meaning given in section 37;

resident means a supervised person who is required under the CLMI Act to be detained in a declared place;

subcontractor means a subcontractor of a contractor and includes a person with whom a subcontractor contracts and a person with whom that person contracts;

supervised person has the meaning given in the CLMI Act section 9(1);

Tribunal has the meaning given in the CLMI Act section 9(1).

[Section 3 amended: No. 10 of 2023 s. 326.]

4. Act binds Crown

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

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).

Part 3 — Residents' rights

7. Rights under other laws

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

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

8. Explanation of resident's rights

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

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

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

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

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

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

9. Freedom of lawful communication

(1) This section is subject to section 10.

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

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

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

(b) to send and receive uncensored communications;

(c) to receive at any time visits from, or otherwise have contact with, the resident's advocate, enduring guardian, guardian or lawyer;

(d) to receive at all reasonable times visits from, or otherwise have contact with, other people;

(e) to have access to mail and telephone services for the purposes of paragraphs (c) and (d);

(f) to have access at reasonable times to newspapers, radio and television.

10. Restricting freedom of communication

(1) The CEO may make an order —

(a) prohibiting a resident from exercising a right under section 9 for a period specified in the order; or

(b) limiting the extent to which a resident can exercise such a right for a period specified in the order.

(2) The CEO cannot make an order under subsection (1) that affects the right of a resident to receive at any time visits from, or otherwise have contact with, the resident's advocate, enduring guardian, guardian or lawyer.

(3) The CEO cannot make an order under subsection (1) unless satisfied that —

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

(b) it is necessary to do so to protect other persons in the resident's declared place or in the community; or

(c) it is necessary to do so to ensure the proper operation, control, management, security or good order of the resident's declared place.

(4) The CEO may vary or cancel an order made under subsection (1).

(5) An order under subsection (1) or (4) must be in writing.

(6) The CEO must ensure —

(a) that the records of a declared place relating to a resident include these —

(i) any document created under this section in relation to the resident;

(ii) written reasons for a decision made under subsection (1) or (4) in relation to the resident;

and

(b) that each of these people is given a copy of the records listed in paragraph (a)(i) and (ii) —

(i) the resident;

(ii) the resident's advocate, enduring guardian, guardian or lawyer;

(iii) one adult who the CEO is aware has a close personal relationship with the resident.

Part 4 — Individual development plans

11. Residents to have individual development plans

(1) The CEO must ensure that —

(a) an individual development plan is prepared for each resident in accordance with this Part; and

(b) each resident is managed, and receives care, support and protection, as required under the resident's individual development plan; and

(c) any assessment of a resident that is conducted as required under the resident's individual development plan is recorded in the resident's file.

(2) The purposes of a resident's individual development plan are —

(a) to promote the resident's development, habilitation and rehabilitation through training and other programmes appropriate to the resident; and

(b) to provide for the resident's management, care, support and protection; and

(c) if appropriate, to support the resident's reintegration into the community.

12. Preparation, review, change of individual development plan

(1) The CEO must ensure that for the preparation of a resident's individual development plan, the resident is assessed by 2 or more persons —

(a) with the qualifications or experience appropriate, in the CEO's opinion, to conduct the assessment; and

(b) whose qualifications or experience are in different disciplines.

(2) The CEO must ensure that any positive behaviour support component of a resident's individual development plan is assessed by a qualified behavioural support specialist.

(3) An individual development plan must be prepared having regard to any relevant policies and procedures about the management, care, support and protection of residents issued by the CEO for the purposes of this Act.

(4) The CEO must ensure that for the preparation of a resident's individual development plan, the following people are consulted —

(a) the resident;

(b) the resident's advocate, enduring guardian or guardian;

(c) a carer, or member of the resident's family who, in the CEO's opinion, is integral to the plan's preparation and available to participate.

(5) A resident's individual development plan must take into account any current document by which another person has power to make decisions on behalf of the resident.

(6) This section applies to the review of, and proposals to change, an individual development plan in the same way that it applies to the preparation of the plan.

13. Content of individual development plans

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

(a) an outline of the proposed arrangements for the provision of programmes or services for —

(i) promoting the resident's development, habilitation, rehabilitation and quality of life; and

(ii) providing for the resident's management, care, support and protection; and

(iii) reducing the intensity, frequency and duration of the resident's behaviour that places at risk the health or safety of the resident or others, including positive behaviour support; and

(iv) supporting the resident's reintegration into the community;

and

(b) an outline of the proposed plan for the resident's transition to participation and inclusion in the community; and

(c) details of any medication prescribed for the health care of the resident by a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in a health profession; and

(d) provision for the review of the resident's health care medication; and

(e) provision as to the resident's further assessment; and

(f) what constitutes appropriate or inappropriate regulated behaviour management in the resident's case; and

(g) details of any medication prescribed for the resident as behaviour management medication, as required under section 27(1)(b); and

(h) details mentioned in section 31(1)(b) or 35(1)(b), as is applicable in the case, of each emergency when a restraint was used on the resident or the resident was placed in or returned to seclusion; and

(i) strategies for avoiding, reducing and eliminating any further use of a regulated behaviour management that has been used in the resident's case; and

(j) any other information prescribed by regulation.

14. Review of individual development plans

(1) The CEO must ensure that each resident's individual development plan —

(a) is reviewed before the expiry of 6 months after it is first prepared and then every 12 months; and

(b) is reviewed as soon as practicable after the resident requests a review because the resident's circumstances have changed since the plan was prepared or most recently reviewed.

(2) The CEO must provide a copy of a resident's reviewed individual development plan —

(a) on request of the resident, to the resident or the resident's advocate or lawyer; and

(b) on request of the resident or the resident's enduring guardian or guardian, to the enduring guardian or guardian.

Part 5 — Protection of residents

15. Certain incidents to be reported

(1) In this section —

reportable incident, in relation to a resident, means —

(a) any ill-treatment or wilful neglect of the resident; or

(b) any unlawful sexual contact with the resident; or

(c) any unreasonable use of force on the resident;

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

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

(b) voluntarily.

(2) A person who works in a declared place and who reasonably suspects a reportable incident has occurred in relation to a resident must report the suspicion to at least one of the following —

(a) the CEO;

(b) a person who is nominated by the CEO for the purposes of this section;

(c) a person who is nominated by the Commission for the purposes of this section;

(d) the Director as defined in the *Health and Disability Services (Complaints) Act 1995* section 3(1);

(e) a police officer.

Penalty: a fine of $5 000.

16. Residents not to be ill-treated

(1) In this section —

ill-treat includes to wilfully neglect;

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

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

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

17. Treatment decisions on behalf of residents

(1) In this section —

treatment means —

(a) medical or surgical treatment, including —

(i) a life sustaining measure; and

(ii) palliative care;

or

(b) dental treatment; or

(c) other health care;

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

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

(a) the resident needs treatment; and

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

(c) there is no person who —

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

(ii) is reasonably available; and

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

(3) When making a treatment decision in respect of a resident's treatment the CEO must act according to the CEO's opinion of the best interests of the resident.

(4) After making a treatment decision in respect of a resident's treatment the CEO must take such action as the CEO considers appropriate in relation to the appointment of a guardian to make treatment decisions for the resident.

(5) The CEO must ensure, if a health professional provides urgent treatment to a resident in accordance with the GAA Act section 110ZI, that there is recorded in the resident's file —

(a) details of the treatment; and

(b) why it was not practicable for the health professional to obtain a treatment decision in respect of the treatment from the resident's guardian or enduring guardian or the person responsible for the resident as a patient under the GAA Act section 110ZD.

(6) The CEO must ensure, if a health professional provides urgent treatment to a resident in accordance with the GAA Act section 110ZI or 110ZIA, that the resident's guardian or enduring guardian or the person responsible for the resident as a patient under the GAA Act section 110ZD is informed of the treatment.

Part 6 — Functions of CEO

18. CEO's functions as to residents

While a person is required under the CLMI Act to be detained in a declared place —

(a) the person is taken to be in the custody of the CEO; and

(b) the CEO is responsible for the person's welfare and safe custody.

[Section 18 inserted: No. 10 of 2023 s. 327.]

19. CEO's functions as to declared places

(1) Subject to the control of the Commission, the CEO is responsible to the Commission for the proper operation, control, management and security and for the good order of each declared place.

(2) If a resident dies, or is absent without leave from a declared place, the CEO must as soon as practicable notify the resident's enduring guardian or guardian and the Commission, the Tribunal and the Commissioner of Police.

(3) For the purposes of subsection (2), a resident is ***absent without leave*** from a declared place if the resident —

(a) is away from the place other than under a leave of absence order as defined in the CLMI Act section 9(1); or

(b) having been away from the place under a leave of absence order, fails to return to the place or another place in which the resident is required to be detained when the leave of absence order expires or is cancelled.

(4) If a resident is absent from a declared place because he or she is receiving medical treatment elsewhere the CEO must as soon as practicable notify the resident's enduring guardian or guardian.

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

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

[Section 19 amended: No. 10 of 2023 s. 328.]

20. Delegation of CEO's functions

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

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

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

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

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

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

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

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

Table

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

[Section 20 amended: No. 10 of 2023 s. 329.]

Part 7 — Management of declared places

21. Terms used

In this Part, unless the contrary intention appears —

intoxicant means any of the following —

(a) alcohol;

(b) a drug capable of intoxicating a person;

(c) a substance that produces a vapour at room temperature and that is capable of intoxicating a person;

(d) any other substance capable of intoxicating a person;

prohibited thing, in relation to a declared place, means anything that —

(a) is an intoxicant; or

(b) might reasonably be a threat to the security or good order of the place or to the health or safety of any person in the place; or

(c) is prescribed by regulation as being not permitted in the place or is not permitted in the place except under conditions prescribed by regulation.

22. Powers to control and manage declared places

The CEO may do any or all of the following for the purpose of controlling and managing a declared place —

(a) prevent people entering the place;

(b) refuse entry to the place by a person carrying any prohibited thing;

(c) search any person who wishes to enter, or is in, the place and anything the person is carrying if there is a reasonable suspicion that a prohibited thing is on, or being carried by, the person;

(d) refuse entry to, or remove from, the place a person who does not consent to a search under paragraph (c);

(e) search anything in the place that is not being carried by a person;

(f) seize any prohibited thing found during a search or in the place.

23. General powers in relation to residents

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

(a) give the resident reasonable orders and enforce them;

(b) search the resident, the resident's property and any room or other place occupied or used by the resident;

(c) seize any prohibited thing in the resident's possession.

24. Searching people and seizing things

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

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

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

(a) the searcher must be a person of the same gender as the person being searched; and

(b) another adult must be present during the search.

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

(a) scan the person with an electronic or mechanical device, whether hand held or not, to detect any thing;

(b) remove the person's headwear, gloves, footwear or outer clothing (such as a coat or jacket), but not the person's inner clothing or underwear, in order to facilitate a frisk search;

(c) frisk search the person by quickly and methodically running the hands over the outside of the person's clothing;

(d) search any article removed under paragraph (b).

(5) The searcher may do any or all of these things for the purpose of conducting the search —

(a) search any thing being carried by, or under the immediate control of, the person;

(b) order the person to remove any thing that might injure the person conducting the search from any article that the person is wearing;

(c) photograph part or all of the search while it is being done;

(d) order the person to do anything reasonable to facilitate the exercise by the person conducting the search of any power in this section.

(6) The search must be conducted as follows —

(a) the search must be done as quickly as is reasonably practicable;

(b) the search must not be any more intrusive than is reasonably necessary in the circumstances;

(c) if the person conducting the search proposes to remove any article that the person is wearing, the person conducting the search must tell the person why it is considered necessary to do so;

(d) the person must be allowed to dress as soon as the search is finished;

(e) the person must be provided with a reasonably adequate replacement for any article of clothing or footwear seized if, due to the seizure, the person is left without adequate clothing or footwear in the circumstances.

(7) A seized thing —

(a) must be kept in safe custody and returned to the person from whom it was seized when the person leaves the declared place; or

(b) if an intoxicant, may be destroyed unless it is a drug prescribed for the person from whom it was seized; or

(c) must otherwise be dealt with according to law.

(8) The CEO must ensure a record is kept of things seized and dealt with under this Act.

Part 8 — Regulation of behaviour management

Division 1 — Behaviour management medication

25. Terms used

In this Division —

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

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

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

nurse means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing profession —

(a) whose registration under that Law is endorsed as nurse practitioner; or

(b) whose name is entered on Division 1 of the Register of Nurses kept under that Law as a registered nurse;

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

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

(b) voluntarily.

[Section 25 amended: No. 4 of 2018 s. 109.]

26. Administration of behaviour management medication

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

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

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

(2) A person must not administer behaviour management medication to a resident unless —

(a) a doctor prescribes the medication for the primary purpose of controlling the resident's behaviour; and

(b) the person administering the medication is —

(i) a doctor; or

(ii) a nurse acting under the direction of a doctor;

and

(c) the medication is administered in accordance with the prescribing doctor's directions, including directions about the dose, route and frequency of the medication and any restrictions on its use; and

(d) the person administering the medication is satisfied that the resident will be observed in accordance with the prescribing doctor's directions.

(3) Sections 40 and 41(1) apply in relation to behaviour management medication.

27. Records of behaviour management medication

(1) The CEO must ensure that details of any medication prescribed for a resident as behaviour management medication are included in —

(a) the resident's file; and

(b) the resident's individual development plan.

(2) A person who administers, or directs the administration of, behaviour management medication to a resident must ensure that the following details are recorded in the resident's file —

(a) the name and amount of the medication administered;

(b) the time or times at which it was administered and the reason for administering it at each time;

(c) the person who administered it;

(d) the person who prescribed it and the time and date of prescription;

(e) if the medication was prescribed to be administered as and when needed, the circumstances in which it was administered;

(f) the name of each person who made each observation of the resident after the medication was administered, whether in accordance with or in addition to the prescribing doctor's directions, and the date, time, duration and results of each observation;

(g) the name of the person who reviewed the resident's health and welfare under section 41(2)(a) and the date, time, duration and results of the review;

(h) any other information prescribed by regulation.

Division 2 — Restraint

28. Term used: restraint

In this Division —

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

(a) the provision of physical support or assistance in daily living activities; or

(b) the use of a surgical or medical appliance for the proper treatment of physical disease or injury.

29. Approval of restraint devices

The CEO must —

(a) approve the devices that may be used for the restraint of residents; and

(b) specify the approved devices in a policy or procedure issued to each declared place.

30. Restraint to be authorised

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

(a) after having regard to the resident's individual development plan; and

(b) if satisfied it is the least restrictive way to protect the resident's health and safety or to protect others; and

(c) if the restraint is to be by way of a device, if the device is approved under section 29.

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

(a) each type of restraint authorised to be used;

(b) the reasons for the restraint;

(c) any restrictions on the circumstances in which the restraint may be used;

(d) the maximum period or periods for which the restraint may be used;

(e) the intervals at which the resident must be observed while restrained, which must not be longer than 15 minutes;

(f) any special measures necessary to ensure the resident's proper care and support while restrained;

(g) the date and time the authorisation is made and its duration;

(h) any other information prescribed by regulation.

31. Restraint to be in accordance with authorisation

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

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

(b) in an emergency, it is not practicable to get an authorisation and the person notifies the CEO, as soon as practicable afterwards, of the restraint used, the reasons for using it and the reasons for not getting the authorisation.

(2) Sections 40 and 41(1) apply in relation to restraint.

(3) A person whose duties are or include controlling or managing a resident must immediately remove a restraint from the resident if —

(a) the person is satisfied care and support can be safely provided to the resident without the restraint; or

(b) the CEO orders the person to remove the restraint.

32. Records about restraint

The CEO must ensure that —

(a) a copy of an authorisation under section 30 is included in the resident's file; and

(b) the following details are recorded in the resident's file —

(i) each type of restraint used on the resident, whether under an authorisation, by way of emergency or in any other circumstance;

(ii) if the authorisation states any restriction on the circumstances in which a restraint may be used, the circumstances in which the restraint was used;

(iii) the time or times at which each restraint was applied and the reason for doing so at each time;

(iv) each person who applied each restraint;

(v) the duration of each restraint;

(vi) if the restraint was by way of a device, the person who removed the restraint;

(vii) the name of each person who made each observation of the resident while the restraint was used and the date, time, duration and results of each observation;

(viii) the name of the person who reviewed the resident's health and welfare under section 41(2)(b) and the date, time, duration and results of the review;

(ix) if the restraint was used in an emergency, the time at which the CEO was notified under section 31(1)(b), and the matters notified;

(x) any other information prescribed by regulation.

Division 3 — Seclusion

33. Term used: seclusion

In this Division —

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

34. Seclusion to be authorised

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

(a) after having regard to the resident's individual development plan; and

(b) if satisfied that seclusion is necessary to protect the resident or other people from imminent physical harm; and

(c) if satisfied that seclusion is the least restrictive way to protect the resident's health and safety or to protect others.

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

(a) the reasons for the seclusion;

(b) the date and time the authorisation is made and its duration;

(c) the maximum period or periods of the resident's seclusion, each of which must not be longer than the period, if any, prescribed by regulation;

(d) any special measures necessary to ensure the resident's proper care and support while secluded;

(e) whether the resident is to be continually observed while secluded or, if not, the intervals at which the resident must be observed while secluded, which must not be longer than 15 minutes;

(f) any other information prescribed by regulation.

35. Seclusion to be in accordance with authorisation

(1) A person must not place a resident in seclusion or return a resident to seclusion unless —

(a) the person does so in accordance with an authorisation under section 34; or

(b) in an emergency, it is not practicable to get an authorisation and the person notifies the CEO, as soon as practicable afterwards, of the seclusion, the reasons for the seclusion and the reasons for not getting the authorisation.

(2) Sections 40 and 41(1) apply in relation to seclusion.

(3) A person whose duties are or include controlling or managing a resident must immediately remove a resident from seclusion if —

(a) the person is satisfied that the resident's seclusion is no longer necessary; or

(b) the CEO orders the person to remove the resident from seclusion.

36. Records about seclusion

The CEO must ensure that —

(a) a copy of an authorisation under section 34 is included in the resident's file; and

(b) the following details are recorded in the resident's file —

(i) each time at which the resident is placed in, released from, and returned to, seclusion, whether under an authorisation, by way of emergency or in any other circumstance;

(ii) each person who placed the resident in, released the resident from, and returned the resident to, seclusion;

(iii) the reasons for each release from, or return to, seclusion;

(iv) the name of each person who made each observation of the resident during seclusion and the date, time, duration and results of each observation;

(v) the name of the person who reviewed the resident's health and welfare under section 41(2)(c) and the date, time, duration and results of the review;

(vi) if the resident was placed in, or returned to, seclusion in an emergency, the time at which the CEO was notified under section 35(1)(b), and the matters notified;

(vii) any other information prescribed by regulation.

Division 4 — General provisions about regulated behaviour management

37. Term used: regulated behaviour management

In this Division —

regulated behaviour management means any of the following —

(a) behaviour management medication as defined in section 25;

(b) restraint as defined in section 28;

(c) seclusion as defined in section 33.

38. Police officers' powers not affected

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

39. Consent not required

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

40. General restrictions on regulated behaviour management

Regulated behaviour management —

(a) must not involve the use of more force than is reasonable; and

(b) must not involve the use of more measures than is reasonable; and

(c) must not be more restrictive or intrusive than is necessary; and

(d) must not be used for longer than is necessary; and

(e) may be used whether the resident is in or outside a declared place unless to do so is inconsistent with an authorisation under section 30 or 34.

41. Welfare of residents during and after regulated behaviour management

(1) During the use of regulated behaviour management in a resident's case, the resident must have —

(a) sufficient food and fluids; and

(b) sufficient bedding and clothing; and

(c) access to toilet facilities; and

(d) access to medication prescribed for the resident for medical treatment.

(2) The CEO must ensure that as soon as practicable after, but not more than 2 hours after —

(a) a resident is administered behaviour management medication; or

(b) the removal of a restraint from a resident; or

(c) the release of a resident from seclusion,

the resident's health and welfare are reviewed by a person who, in the opinion of the CEO, is suitably qualified or experienced to do so.

42. Chief advocate to receive information about regulated behaviour management

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

43. Review of use of regulated behaviour management

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

(2) The CEO must ensure that —

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

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

Part 9 — Contracts for declared place services

44. Contracts for declared place services

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

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

(3) Subsection (1) does not affect —

(a) the powers that the Commission has under the *Disability Services Act 1993* section 12A(1); or

(b) the constraints on the exercise of those powers under section 12A(2) of that Act; or

(c) the obligation under section 21B of that Act of the Commission to consult the Minister about certain action.

45. Minimum matters to be included in contracts

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

(a) compliance by the contractor, any subcontractor and their employees and agents with this Act and other relevant written laws;

(b) compliance by the contractor with the obligations that the contractor has under the *Coroners Act 1996* as a person who holds a resident in care;

(c) objectives and performance standards in relation to the provision of the declared place services;

(d) fees, costs and charges to be paid to and by the contractor;

(e) compliance by the contractor, any subcontractor and their employees and agents with the minimum standards

established under section 46 in relation to the provision of the declared place services;

(f) the submission of reports in relation to the contractor's obligations under the contract;

(g) notification by the contractor of any change in the control, management or ownership of —

(i) the contractor; or

(ii) a subcontractor, or a member of a class of subcontractors, specified in the contract for the purposes of this paragraph by the CEO;

(h) the circumstances in which the CEO can intervene in, or suspend or terminate, a contract and requisition property in the case of a terminated contract, and the financial and other consequences of doing so;

(i) codes of ethics and conduct, as approved by the CEO, to apply to the contractor, any subcontractor and their employees and agents;

(j) reporting procedures to notify the CEO of the following —

(i) the death of a resident;

(ii) a resident being absent without leave;

(iii) a resident being absent from a declared place because he or she is receiving medical treatment elsewhere;

(iv) the occurrence of an accident, serious irregularity or other unusual event that adversely affects the good order or security of a declared place;

(k) investigation procedures and dispute resolution mechanisms for complaints about the provision of the declared place services;

(l) an indemnity by the contractor in favour of the Commission;

(m) the office the holder of which is to be the principal officer of the contractor and the subcontractors under the relevant contract for the purposes of the *Children and Community Services Act 2004*, the *Corruption and Crime Commission Act 2003*, the *Freedom of Information Act 1992* and the *Parliamentary Commissioner Act 1971*;

(n) any other matter prescribed by regulation.

46. Minimum standards

(1) The CEO must establish minimum standards applicable to the provision of declared place services and the CEO may vary the minimum standards.

(2) The Minister must, within 14 days after the minimum standards are established or varied, cause a copy of the standards or the variation to be laid before each House of Parliament or dealt with under section 62.

47. Penalty for breach

(1) A contract under section 44 may provide for a party to the contract to be liable to pay an amount determined under the contract, by way of penalty, in respect of a breach of the contract.

(2) The contract may provide for an increase in the amount of the penalty because of each day or part of a day during which a breach continues.

(3) A penalty provided for in accordance with this section is recoverable even though no damage may have been suffered or the penalty may be unrelated to the extent of any damage suffered.

48. Access to certain declared places, persons and documents

(1) The Commission, the CEO and any person authorised by the CEO have free and unfettered access at any time to a declared place, person or document referred to in subsection (2) for the purpose of —

(a) ensuring compliance with this Act or a contract under section 44; or

(b) ensuring that declared place services are being properly provided.

(2) A person referred to in subsection (1) has access to —

(a) a declared place at which declared place services are provided under a contract under section 44 or any part of the declared place; and

(b) each resident in the declared place; and

(c) each person whose work is concerned with the declared place; and

(d) each document in the possession or control of the contractor or a subcontractor in relation to a declared place service for the declared place.

(3) The CEO may authorise a person for the purposes of subsection (1).

(4) An authorisation must be in writing and may be made subject to such conditions and limitations specified in the authorisation as the CEO thinks fit.

(5) A person must not hinder a person referred to in subsection (1) when the person is exercising or attempting to exercise a power under that subsection.

Penalty: a fine of $20 000.

(6) This section does not limit any entitlement that a person has under a law to access a place, person or document referred to in subsection (2).

49. Annual reports and tabling of contracts

(1) The CEO must prepare and deliver to the Minister by 30 September each year a report on each contractor who provided declared place services in the preceding 12 months.

(2) The report must contain such information as is required to be included in the report by the Minister to enable an informed assessment to be made of —

(a) the operations of each contractor; and

(b) the extent to which there has been compliance with each contract.

(3) The Minister must, within 14 days after receiving a report, cause a copy of the report to be laid before each House of Parliament or dealt with under section 62.

(4) The Minister must, within 14 days after a contract or a variation to a contract is executed, cause a copy of the contract or the variation to be laid before each House of Parliament or dealt with under section 62.

50. No contracting out

The provisions of this Part apply despite anything to the contrary in a contract.

Part 10 — Advocacy services for residents

51. Terms used

In this Part —

advocate —

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

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

chief advocate —

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

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

52. Residents' rights as to visits or other contact

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

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

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

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

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

(3) A resident has these rights —

(a) the right to decline to be visited or otherwise contacted by an advocate;

(b) to not consent, or to withdraw consent, to an advocate's having access to the records of a declared place about the resident.

53. Advocate functions

Each advocate has these functions —

(a) visiting or otherwise contacting residents in accordance with section 52;

(b) acting as the personal advocate of residents to safeguard their health and safety and foster their development;

(c) monitoring orders under section 10 restricting freedom of communication;

(d) monitoring the use of regulated behaviour management;

(e) inquiring into or investigating any matter relating to an environmental condition of a declared place that is adversely affecting, or is likely to adversely affect, the health, safety or wellbeing of residents;

(f) inquiring into or investigating the extent to which explanations of the rights of residents have been given in accordance with section 8(1), (2), (3) and (4) and the extent to which those rights are being, or have been, observed;

(g) assisting residents to protect and enforce their rights referred to in section 8(1);

(h) inquiring into, and seeking to resolve, complaints made to advocates about the management or care of residents;

(i) assisting a resident to make a complaint to the person who operates the declared place;

(j) assisting a resident to make a complaint under the *Disability Services Act 1993* Part 6;

(k) being a resident's representative in respect of a complaint if recognised as the resident's representative under the *Disability Services Act 1993* section 32(2);

(l) liaising with the resident's enduring guardian, guardian or administrator (as defined in the CLMI Act section 9(1));

(m) assisting residents to access legal services;

(n) referring any issues arising out of the performance of a function of the advocate to the appropriate person to deal with those issues, including to the chief advocate, if the advocate cannot resolve the issue or otherwise considers it appropriate to refer the matter;

(o) the functions given under other provisions of this Act, including participating in the planning and provision of services received by residents and the preparation of individual development plans.

[Section 53 amended: No. 10 of 2023 s. 330.]

54. Advocate powers

(1) In this section —

work, in a declared place, means to provide services at the place under a contract of service or a contract for services.

(2) An advocate may do anything necessary or convenient for the performance of the advocate's functions under this Act.

(3) The performance of any function under this Act of an advocate is subject to the direction of the chief advocate.

(4) An advocate may, with or without notice, at any time, and for any length of time, do these things —

(a) visit a declared place and inspect any part of the place;

(b) visit, or otherwise have contact with, any one or more residents, except a resident who has declined to be contacted by an advocate.

(5) An advocate may ask a person who works at a declared place questions about any of these matters —

(a) the welfare, health, care, training, safety, management or security of any resident;

(b) the operation, control, management, security and good order of a declared place, but only to the extent to which the matter is relevant to a matter mentioned in paragraph (a).

(6) An advocate may inspect and copy any document at a declared place relating to the place.

(7) An advocate who is visiting or otherwise contacting a resident may inspect and copy any of the following documents, wherever held, except a document to which the advocate has been denied access by the resident —

(a) the resident's individual development plan;

(b) any other document included, and the information recorded, in the resident's file;

(c) any of the records listed in section 10(6)(a)(i) and (ii) that relate to the resident;

(d) any other document in the possession or control of the person who operates the declared place that relates to the resident.

(8) An advocate may require a person who works at a declared place to give reasonable assistance to the advocate for the purpose of the performance of the advocate's functions under this Act.

55. Offences

(1) A person who is asked a question by an advocate under section 54(5) must answer the question.

Penalty: a fine of $6 000.

(2) A person who is asked a question by an advocate under section 54(5) must not give an answer that the person knows is, or has reckless disregard as to whether the answer is, false or misleading in a material particular.

Penalty: a fine of $6 000.

(3) A person must not fail without reasonable excuse (proof of which is on the person) to give assistance that is required under section 54(8).

Penalty: a fine of $6 000.

(4) A person must not, without reasonable excuse (proof of which is on the person), hinder an advocate in the performance of the advocate's functions under this Act.

Penalty: a fine of $6 000.

(5) An individual is not excused from complying with subsection (1) or (3) on the ground that the answer to a question or the provision of assistance might tend to incriminate the individual or expose the individual to a criminal penalty.

(6) If an individual complies with subsection (1) or (3) neither —

(a) an answer given by the individual that was given to comply with subsection (1); or

(b) the fact that the assistance given by the individual to comply with subsection (3) was given,

is admissible in evidence in any criminal proceedings against the individual other than proceedings for perjury or for an offence under subsection (2).

56. Advocate reports

(1) The functions in this section are in addition to the function referred to in section 53(n).

(2) An advocate who considers that a matter should be considered by the CEO may report the matter to the CEO.

(3) As soon as practicable after the end of a financial year, the chief advocate must report to the Minister on the activities of all advocates during that year.

(4) The Minister is not entitled to have information under this section in a form that —

(a) discloses the identity of a resident; or

(b) might enable the identity of a resident to be ascertained,

unless the resident or the resident's enduring guardian or guardian has consented to the disclosure.

(5) The Minister must, within 14 days after receiving a report, cause a copy of the report to be laid before each House of Parliament or dealt with under section 62.

Part 11 — Miscellaneous matters

57. Provision of information about residents: Tribunal and CEO

(1) The Tribunal and the CEO may give each other information that is relevant to the welfare, health, care, training, safety, management or security of a resident.

(2) The CEO must, on the written request of the Tribunal, prepare and give the Tribunal a report about any matter that relates to —

(a) the welfare, health, care, training, safety, management or security of a resident; or

(b) any function the Tribunal has under the CLMI Act in relation to a resident.

[Section 57 amended: No. 10 of 2023 s. 331.]

58. Provision of information about residents: CEO and others

(1) The following persons may, on the written request of the CEO, give the CEO information that relates to a resident's welfare, health, care, training, safety, management or security —

(a) a public sector body as defined in the *Public Sector Management Act 1994* section 3(1);

(b) the Commissioner of Police;

(c) a superintendent of a prison or detention centre in which the resident has been detained;

(d) the person in charge of an authorised hospital in which the resident has been detained;

(e) a person who takes charge of a resident for the purpose of moving the resident to or from a declared place;

(f) a contractor or a subcontractor that is or has been responsible for the resident under a contract under section 44.

(2) The CEO may, on the written request of any of the following persons, give the person information that relates to a resident's welfare, health, care, training, safety, management and security —

(a) the Public Advocate, as defined in the GAA Act section 3(1), for the purposes of performing functions under the GAA Act sections 97 and 98;

(b) the Commissioner of Police;

(c) the chief executive officer of the department of the Public Service principally assisting the Minister responsible for the administration of the *Children and Community Services Act 2004*, the *Court Security and Custodial Services Act 1999*, the *Prisons Act 1981* or the *Young Offenders Act 1994*;

(d) a superintendent of a prison or detention centre in which the resident has been, or is to be, detained;

(e) the person in charge of an authorised hospital in which the resident has been, or is to be, detained;

(f) a person who takes charge of a resident for the purpose of moving the resident to or from a declared place.

59. Confidentiality of information about residents

(1) A person must not, directly or indirectly, record, use or disclose information that relates to a resident and that was obtained by the person when performing a function under this Act or in the course of duty in the provision of declared place services.

Penalty: a fine of $2 500.

(2) Subsection (1) does not apply to the recording, use or disclosure of information —

(a) for the purpose of performing a function that the person has or had under this Act; or

(b) for the purpose of providing declared place services; or

(c) as required or allowed under this Act or another law; or

(d) under the order of a court or a person acting judicially; or

(e) for the purpose of proceedings before the State Administrative Tribunal commenced under the GAA Act; or

(f) for the purpose of giving information to a law enforcement body in connection with an offence allegedly committed by or against a resident; or

(g) in the public interest to protect the physical safety of an individual; or

(h) if the information is personal information, with the consent of the person or the person's enduring guardian or guardian; or

(i) in circumstances prescribed by regulation.

(3) A person does not, by giving information under section 57(1) or by complying with a request made under section 57(2) or 58(1) or (2) —

(a) incur civil or criminal liability in respect of the disclosure; or

(b) breach any duty of confidentiality or secrecy imposed by any law; or

(c) commit unprofessional conduct or breach professional ethics or standards or any principles of conduct applicable to a person's employment.

60. Reports about declared places

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

(a) the operations of the place;

(b) the number of people admitted to the place as residents;

(c) the number of people who ceased to be residents of the place;

(d) any other matter prescribed by regulation.

61. Protection from personal liability

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

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

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

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

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

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

62. Laying documents before Parliament

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

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

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

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

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

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

63. Regulations

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to this Act.

(2) The regulations prescribe or adopt standards that apply to people when performing functions under this Act in relation to residents.

64. Review of this Act

(1) The Minister must review the operation and effectiveness of this Act as soon as practicable after —

(a) the third anniversary of the day on which this section comes into operation; and

(b) each 5 year period after that anniversary.

(2) The Minister must cause a report on each review to be laid before each House of Parliament as soon as practicable after the review is done.

Part 12 — Transitional provisions for *Criminal Law (Mental Impairment) Act 2023*

[Heading inserted: No. 10 of 2023 s. 332.]

65. Terms used

In this Part —

Board means the Mentally Impaired Accused Review Board established under the *Criminal Law (Mentally Impaired Accused) Act 1996* section 41;

commencement day means the day on which the CLMI Act Part 2 comes into operation.

[Section 65 inserted: No. 10 of 2023 s. 332.]

66. Provision of information about residents

(1) Subsection (2) applies if the CEO —

(a) was required to prepare and give a report to the Board under section 57(2) as in force before commencement day; and

(b) did not give the report to the Board before commencement day.

(2) The CEO must prepare and give the report to the Tribunal.

[Section 66 inserted: No. 10 of 2023 s. 332.]

[Div. 1-3 (s. 67-89) deleted: No. 10 of 2023 s. 332.]

Notes

This is a compilation of the *Declared Places (Mentally Impaired Accused) Act 2015* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table.

Compilation table

Short title	Number and year	Assent	Commencement
Declared Places (Mentally Impaired Accused) Act 2015 [1]	4 of 2015	3 Mar 2015	s. 1 and 2: 3 Mar 2015 (see s. 2(a)); Act other than s. 1 and 2: 17 Jun 2015 (see s. 2(b) and *Gazette* 16 Jun 2015 p. 2071)
Health Practitioner Regulation National Law (WA) Amendment Act 2018 s. 109	4 of 2018	19 Apr 2018	1 Dec 2018 (see s. 2(d) and *Gazette* 13 Nov 2018 p. 4427-8)
Criminal Law (Mental Impairment) Act 2023 Pt. 15 Div. 11	10 of 2023	13 Apr 2023	1 Sep 2024 (see s. 2(b) and SL 2024/175 cl. 2)

Other notes

[1] Now known as the *Declared Places (Mental Impairment) Act 2015*; short title changed (see note under s. 1).

Defined terms

[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]

Defined term	Provision(s)
absent without leave	19(3)
adult	3
advocate	3, 51
authorisation	25
authorised hospital	3
behaviour management medication	24(8)
Board	65
carer	3
CEO	3
chief advocate	3, 50
CLMI Act	3
commencement day	65
Commission	3
contractor	3
declared place	3
declared place	3
declared place services	3
detention centre	3
doctor	25
enduring guardian	3
GAA Act	3
guardian	3
ill-treat	16(1)
individual development plan	3
intoxicant	21
nurse	25
person responsible	16(1)
prison	3
prohibited thing	21
regulated behaviour management	3, 37
reportable incident	15(1)
resident	3
restraint	28
seclusion	33
subcontractor	3
supervised person	3
treatment	17(1)
treatment decision	17(1)
Tribunal	3

work ..... 15(1), 25, 54(1)

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