

DECLARED PLACES (MENTALLY IMPAIRED ACCUSED) BILL 2013

Consideration in Detail

Resumed from an earlier stage of the sitting.

Clause 3: Terms used —

Debate was interrupted after the clause had been partly considered.

Dr A.D. BUTI: Before the break for 90-second statements, I was trying to get clarification on who could be housed in the declared places. I await the parliamentary secretary's confirmation that the bill before us will not prevent someone with an intellectual impairment who has been acquitted because of an unsound mind from being housed in the declared place. The parliamentary secretary alluded to the fact that maybe I was looking at an earlier draft of the bill. I am ready to stand corrected. I want to be corrected and told that somewhere this bill tells us that only those who have an intellectual impairment and cannot stand trial would statutorily be allowed into the declared places, and that those people who have an intellectual impairment and are also of unsound mind will not be housed in these declared places.

Ms A.R. MITCHELL: We spent some time thinking that through. I am sorry it was not as clear as perhaps the member would have liked. The member brought up the definition of unsound mind in section 27 of the Criminal Code and how that relates to the court as stated in sections 20 to 22 of the Criminal Law (Mentally Impaired Accused) Act. This bill does not address the power of the court to make a custody order under the Criminal Law (Mentally Impaired Accused) Act in relation to the unsoundness of mind or the definition of unsound mind in the Criminal Code. The issue at hand is who can be placed in a declared place. The authority to decide who goes to a declared place rests with the Mentally Impaired Accused Review Board. This bill provides the MIAR board with guidance on who can be considered for placement in a declared place. This bill provides for a Disability Services Commission representative to be a member of the Mentally Impaired Accused Review Board and to be present when all decisions are made. It is on the record that this government has stated that the intention of the declared place is to provide an alternative to prison for people with intellectual or cognitive disability who are unfit to plead. It is in *Hansard* that the declared place provides for people with intellectual or cognitive impairment.

Dr A.D. BUTI: Thank you, parliamentary secretary, but that still does not clarify the situation. Clause 3 states —

declared place means a place —

- (a) that is a declared place as defined in the MIA Act section 23;

It also states —

mentally impaired accused has the meaning given in the MIA Act section 23;

Section 23 of the Criminal Law (Mentally Impaired Accused) Act 1996 states —

mentally impaired accused means an accused in respect of whom a custody order has been made and who has not been discharged from the order;

Section 24(1) of the MIA act, “General effect of a custody order”, states —

A mentally impaired accused is to be detained in an authorised hospital, a declared place, a detention centre or a prison, as determined by the Board, until released by an order of the Governor.

Therefore, a custody order can be made for a person with an intellectual disability who has been acquitted of a charge because of an unsound mind. Nothing that the parliamentary secretary has said changes or alters the fact. The parliamentary secretary may say that someone from the Disability Services Commission will sit on the board, and that is fine. She may say that it is her intention that only those who cannot stand trial will be residents in these declared places, and that may be fine. However, they are policy decisions and not statutory decisions under the plain meaning of the act before us. The parliamentary secretary has said that the meaning of “mentally impaired” in this bill is to be the definition in the Criminal Law (Mentally Impaired Accused) Act 1996. A reading of the MIA act indicates that it is about a custody order, which is not restricted to those who are unfit to stand trial. The parliamentary secretary has not mentioned criminal law, but the fact remains that under this legislation, a custody order can be made for someone who is unfit to stand trial as well as an accused person who has been acquitted on account of unsound mind. The bill before the chamber today does not prohibit someone who is of unsound mind being admitted to a declared place; and, more to the point, someone who has been acquitted because of unsound mind can be admitted.

Mr R.H. COOK: The member for Armadale makes a good point because he is essentially drawing our attention to the fact that so much of the Mental Health Bill 2013 relies upon policy and regulations. This is the basis for

our very great suspicion and distrust of this bill and this government. The government said before the last election that these issues were matters of policy and that it would consult with the community around the placement and location of a declared place. We have now moved forward, and after the election the government is doing the exact opposite. It cannot be trusted. As a result, we seek clarification from the parliamentary secretary about where the legislation points to declared places housing people who have been acquitted of the charges involved. It is a perfectly reasonable question to ask and it is irresponsible of the parliamentary secretary to not respond to the member's concerns. The parliamentary secretary said that these issues are matters of policy. The fact of the matter is that this government does not even implement its own policy. We do not trust this government, and the member for Armadale does not trust this government.

Dr A.D. BUTI: The member for Kwinana and I share a birthday —

The ACTING SPEAKER (Ms J.M. Freeman): Happy Birthday.

Dr A.D. BUTI: It was yesterday.

Several members interjected.

Dr A.D. BUTI: Old news! The member for Kwinana has taken the words right out of my mouth, if I can paraphrase a song. This is the problem: the legislation that we are debating is incredibly important and it will set parameters for declared places. Congratulations to the government for establishing declared centres, but it is a very complex area and we must get the legislation correct to ensure that the community has confidence in it. It is very difficult to have that confidence if we base this legislation on just the government's intentions or policies because, as we know, they can change very quickly—probably as quickly as the Premier's promises.

Debate adjourned until a later stage of the sitting, on motion by **Mr J.H.D. Day (Leader of the House)**.

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