DECLARED PLACES (MENTALLY IMPAIRED ACCUSED) BILL 2013

Consideration in Detail

Resumed from 21 August.

Clause 5: Principles applicable to residents —

Debate was adjourned after new clause 4C had not been agreed to.

Mr J.H.D. DAY: The parliamentary secretary, the member for Kingsley, is on her way. She has been representing the Minister for Mental Health at an event. I understand that she is not far away. In the interim, I will deal with the bill as best as possible.

The ACTING SPEAKER (Mr P. Abetz): For the benefit of members, I understand we are on clause 5—is that right?

Dr A.D. BUTI: I believe so.

The ACTING SPEAKER: The member is addressing clause 5. That is all I wanted to check, member.

Dr A.D. BUTI: Thank you, Mr Acting Speaker.

This clause refers to the principles applicable to residents. Clause 5(1) states —

> 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.

I have a couple of questions about those priorities —

The ACTING SPEAKER: Member for Wanneroo!

Dr A.D. BUTI: The member for Wanneroo has no substance.

Is the safety of the community aspect always going to be of the highest priority? How is that priority determined vis-a-vis the protection and safety of residents? Subclause (c) states "the best interests of residents who are not adults". How many non-adults is it envisaged there will be in the first intake of residents at the nominated declared places that we have at the moment?

Mr J.H.D. DAY: I am advised that initially there will be none in that situation.

Dr A.D. BUTI: The other part of my question related to the paramount considerations in order of priority. The order is: the protection and safety of the community; the protection and safety of residents; and the best interests of residents who are not adults. How is that priority determined and who makes the determination?

Mr J.H.D. DAY: I am advised that it will be the CEO of the centre. If the person is not cooperating, they would lose the normal privileges that they would have.

Clause put and passed.

Clause 6: Objectives for programmes and services —

Dr A.D. BUTI: In respect to the programs and services that are to be provided, clause 6(2) states —

> 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.

What arrangements have been made to provide interpreters for language issues?

Mr J.H.D. DAY: I am advised that there will be an admission procedure. It would be determined on the day, but cultural and interpretive advisers will be available if necessary. It would be determined when the person is being admitted.

Dr A.D. BUTI: Will the government guarantee that every resident who requires a language interpreter, even a person from a remote Indigenous community, will always be provided with an interpreter?

Mr J.H.D. DAY: Wherever practicable, that will be the case. It is my understanding that a range of languages and dialects are spoken in remote areas, so a reasonable approach will need to be taken. The commission will make every effort to ensure that a culturally appropriate person is available to provide assistance.

Dr A.D. BUTI: I refer the minister to clause 6(4), which provides that programs and services for residents are to be based on empirical evidence. Does the Disability Services Commission already have empirical evidence available for designing programs and services? If so, will the minister agree, not to table all the studies, but to at least table the titles of those empirical evidence studies?

Mr J.H.D. DAY: I am advised that a range of justice programs are available. In particular, there is the positive behaviour program. I understand that is in the public arena, but a copy could be provided to the member if he is keen to obtain it and it is not otherwise available. There is also the *Good Lives Model*, which is also available publicly, but if the member wants to follow up information about that, we would certainly be happy to arrange it.

Clause put and passed.

Clause 7 put and passed.

Clause 8: Explanation of resident's rights —

Dr A.D. BUTI: Clause 8(3) states —

> 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.

I have not found anywhere in the bill before us a definition of "close personal relationship". I notice that section 110ZD(5) of the Guardianship and Administration Act 1990, defines a close personal relationship thus —

> … a person maintains a close personal relationship with the patient only if the person —
>
> (a) has frequent contact of a personal (as opposed to a business or professional) nature with the patient; and
>
> (b) takes a genuine interest in the patient's welfare.

I assume that that will be roughly the guideline being used in this bill.

Mr J.H.D. Day: That is correct.

Dr A.D. BUTI: That is very nice to hear, but it is not stipulated in the bill, so that definition could change at the whim of the CEO, could it not? I am just wondering why it was not actually included.

Mr J.H.D. DAY: I am advised that, under the Guardianship and Administration Act, there is a separation of a personal relationship and a business relationship. In this bill there does not need to be such a separation. Does that fully answer the question?

Dr A.D. BUTI: I understand what the minister is saying, but the problem still remains that there is no statutory stipulation of what a close personal relationship means. I will not labour the point, and I am not asking the minister to make a guarantee, but can this be considered when the bill goes to the upper house?

Mr J.H.D. DAY: Yes, that is taken on board. The intention is that the CEO will need to act reasonably and properly. I am sure they would be subject to investigation or scrutiny if that were not the case.

Dr A.D. Buti: It is just to provide an additional guarantee, that is all.

Mr J.H.D. DAY: It is the normal practice of the Disability Services Commission to act in that way, of course.

The ACTING SPEAKER: Minister, do you want to swap with the parliamentary secretary?

Mr J.H.D. DAY: I am happy to do so.

The ACTING SPEAKER: For the benefit of Hansard, the parliamentary secretary is taking her seat at the table.

Clause put and passed.

Clause 9 put and passed.

Clause 10: Restricting freedom of communication —

Dr A.D. BUTI: Welcome back, parliamentary secretary.

Clause 10 deals with restrictions that can be placed on freedom of communication. Clause 10(3) states —

> 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.

Subclause (1) provides the power to make an order restricting communication. I can understand paragraphs (a) and (b), but paragraph (c) seems to be a catch-all provision that will give the CEO great powers to restrict communication, which is something that we should be very wary of.

Ms A.R. MITCHELL: It may assist the member to understand that the guardian must be informed if there is any restriction on rights. It is not something that will just happen; the guardian would need to be informed.

Dr A.D. BUTI: I will not go on about that, but the point is that even though the guardian needs to be informed, that will not prevent the use of the powers to restrict communication. Clause 10(2) is quite encouraging. It states —

> 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.

It is good that the lawyer is mentioned there, because I know that under the Mental Health Bill the lawyer seems to be missing in many places. Clause 10(6) states what the CEO must do. Paragraph (b) states —

> 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.

Does the resident have a right to veto any of those people receiving a copy of the records, particularly the adult whom the CEO is aware has a close personal relationship with the resident?

Ms A.R. MITCHELL: No; those three are there.

Dr A.D. BUTI: Okay. Why does the parliamentary secretary not believe that the resident should have the right to veto any of the people who are to receive a copy of the records? I agree with the parliamentary secretary that, normally, we would want those parties to receive a copy. But what would happen if the resident did not want any of those parties to receive a copy?

Ms A.R. MITCHELL: This subclause is there for the protection of the resident. Also—I am trying to word this nicely—sometimes a resident would not have the best decision-making capacity. That is the reason for the subclauses that the member has referred to.

Dr A.D. BUTI: I understand that. I am just wondering why the resident would not be given that right. But that is okay.

Clause put and passed.

Clause 11 put and passed.

Clause 12: Preparation, review, change of individual development plan —

Dr A.D. BUTI: This also goes to the ability of the resident to veto. Subclause (1) states —

> (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.

My question, minister—sorry; parliamentary secretary, who should be, and will be, a minister—is: does the resident have the right to veto one, or both, of those people? The reason this is important is that one of those persons may be known to the resident and there may be some history between those parties, without the CEO knowing that fact. I believe that, as with all situations, there should be no bias or perception of bias, or conflict of interest—of course we all know about conflict of interest, especially in the Environmental Protection Authority. Therefore, it is incredibly important that the resident be given the right to veto, or at least to argue that a particular person should not be one of the assessors.

I also have a question about subclause (4), which states in part —

> (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 …

If the resident is to be consulted, can the resident say that they do not want a certain person to be involved in the preparation of their individual development plan; because, if that is not the case, what value does the consultation have?

Ms A.R. MITCHELL: We would probably not use the word "veto", but the legal process does allow for asking for another person's opinion. So we are probably more relaxed about using that word, rather than veto. With regard to subclause (4), once again, the member has used the word "right". The whole process at these disability centres is based on a relationship approach. There is no way that they would allow a person to be involved if the relationship between the resident and that person was not healthy and was not supportive of the resident. Those matters would always be taken into consideration. We are trying to achieve the best outcome for each resident. Therefore, if in any way that was not possible because of certain people being involved in the preparation of the development plan, they would certainly look at a different combination of persons to be involved to make sure that it was in the best interests of the resident.

Dr A.D. BUTI: Subclause (4) refers to the resident's advocate. I will, therefore, leave the substance of my comments on this clause to when we get to the part of the bill that deals with advocates and the requirement that residents must be made aware of their right to have an independent advocate.

Clause put and passed.

Clause 13: Content of individual development plans —

Dr A.D. BUTI: Paragraph (c) of clause 13 states —

> 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

Will any consideration be given to providing access to drug and alcohol treatment programs that are specifically adapted for people with intellectual or cognitive disability? I am sure the parliamentary secretary's advisers would be well aware that certain medications can be specifically adapted for people with intellectual or cognitive disability.

Ms A.R. MITCHELL: Yes, that will be possible. I am trying to clarify where that is provided for in the bill. That will certainly be provided for in the comprehensive health checks. I refer the member in particular to clause 5(3) in part 2 of the bill, headed "Principles and objectives", which states —

> 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.

Clause put and passed.

Clause 14: Review of individual development plans —

Dr A.D. BUTI: Subclause (1) states —

> (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 —

Which makes sense —

> (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.

What is meant by "as soon as practicable"? I note that in an earlier draft of this bill reference was made to an advocate being notified as soon as practicable, but as a result of a submission from the Commissioner for Children and Young People, a prescribed period was included, which I think was 48 hours. That is now in this bill, plus that the advocate has to visit within seven days. I am always concerned when we say "as soon as practicable", because that allows administrators great leeway in determining when that will happen. I believe there should be some limit put on that. I do not think it would impose an incredibly onerous task and there should be a prescribed period that has to be complied with.

Ms A.R. MITCHELL: It is probably quite difficult to be specific about that because individual residents' circumstances may be a little different. It may require other assessments to be done before that review can take place, which is why it is a little difficult to be specific. We understand what the member is saying and why he is saying it; however, it is not something I think anyone would delay unnecessarily because the intent of the legislation and the individual development plan is to assist these residents as much as possible, and that means reviewing an individual development plan because it is better that they do so and we want them to do that. Once again, these residents have the ability, if they are not happy with the amount of time it is taking, to go to their

advocate. The member will find that we will be doing as much as we possibly can to assist with the rehabilitation of these people.

Clause put and passed.

Clause 15: Certain incidents to be reported —

Dr A.D. BUTI: I can assure the parliamentary secretary that as we move on there will be greater gaps between clauses.

The ACTING SPEAKER (Mr P. Abetz): That is encouraging.

Dr A.D. BUTI: Subclause (2) states —

> 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 —

Does "reasonably suspects" include constructive knowledge—that is, the person in the circumstances should know of the situation and therefore should be reporting the situation?

Ms A.R. Mitchell: Yes.

Dr A.D. BUTI: That is good. We have that on the record in *Hansard* and when people need guidance on constructive knowledge, they will have that. Subclause (2) then lists the people to which an incident must be reported —

(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 (1);

(e) a police officer.

Are any criteria specified for a person who is nominated by the commission or the CEO?

Ms A.R. MITCHELL: Member, that person is normally a consumer liaison or complaints person.

Dr A.D. BUTI: I will backtrack a little on this clause. Subclause (1) defines what is meant by a reportable incident in relation to a resident. Is an incident reportable only if it occurs in the declared place or could it include an incident that occurs when a person is out on an excursion, at work et cetera?

Ms A.R. Mitchell: It is anywhere, member.

Clause put and passed.

Clause 16 put and passed.

Clause 17: Treatment decisions on behalf of residents —

Dr A.D. BUTI: Subclause (1) reads, in part —

> ***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.

It is quite an important decision that needs to be made. Subclause (2) then states —

> The CEO may make a treatment decision in respect of a resident's treatment …

What expertise does the CEO have to make such a decision? I would imagine that often the CEO will not have medical expertise or be medically qualified. I wonder whether this will allow the CEO to have too much power over and above their expertise.

Ms A.R. MITCHELL: The member is certainly right: we would not want someone who did not have expertise to make decisions of such a serious nature. There is no doubt that the CEO would definitely receive expert and professional advice before authorising that decision, but the CEO will want to involve the guardian as well. The other issue is that if an emergency did arise and it was taking time to locate the guardian or to respond to a telephone call, then the CEO has the right to make that decision, but with professional advice.

Dr A.D. BUTI: I understand what the parliamentary secretary is saying, but there is no statutory requirement for the CEO to have any particular qualification or experience commensurate with their having medical knowledge to make the decision. Basically, the CEO will act on advice, presumably from medical professionals.

Ms A.R. Mitchell: Yes.

Dr A.D. BUTI: Subclause (5) reads —

> 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 …

Section 110ZI(1)(d) of the Guardianship and Administration Act states —

> it is not practicable for the health professional to obtain a treatment decision …

How is "not practicable" determined? Will we see an increase in the incidence of treatment decisions being made by the CEO because it was "not practicable" for the decision to be made by health professionals due to insufficient staff numbers? Will decisions on treatment be made on the whims of the department as to how many staff members or medical or health professionals it has provided?

Ms A.R. MITCHELL: The answer is similar to what I said before. Obviously every endeavour is made to include the guardian in those decisions, but there are times when there is no time, particularly in a life-saving situation or something serious has happened on site. The guardian will be contacted as soon as possible, but perhaps the person's life is the issue that needs to be responded to first. It will be a very rare occasion that will occur, but it is in interests of saving that person's life.

Dr A.D. BUTI: Because the Guardianship and Administration Act 1990 is referred to in this clause, does the CEO have the power to override the guardian if he believes that it is in the best interests of the resident? If the guardian has a different view from the CEO, does the CEO have the right to override the guardian; and, if so, on what grounds? Is it the best interests test?

Ms A.R. MITCHELL: Yes, if it is in the best interests of the resident and under the best professional advice that can be obtained at the time.

Dr A.D. BUTI: We are looking at "urgent treatment" in this clause. When debating clause 6 of the bill earlier, under principles and objectives, we mentioned that programs and services for residents are to be designed according to various criteria, including spiritual beliefs, cultural background et cetera. What will be the situation if the urgent treatment that is determined should be administered goes against the religious beliefs of the resident? This is a normal medical issue, obviously. Under this bill, where does a resident stand if they refuse treatment on religious grounds?

Ms A.R. MITCHELL: It is my understanding that that information would be contained in the individual plan and it would be followed.

Clause put and passed.

Clause 18: CEO's functions as to residents —

Mr D.J. KELLY: Before I ask my question, because this is the first time I have had the opportunity to contribute to the consideration in detail stage, I want to thank the public servants who have engaged with the community on this issue in various capacities in my electorate. I found them to be most professional in the way they have dealt with this issue. I cannot say the same thing about the way that the government has handled it. The public servants have tried to engage the community on this issue in quite difficult circumstances. I want to thank them for the professional way they have dealt with it.

Clause 18 provides that under part 5 of the Criminal Law (Mentally Impaired Accused) Act 1996, the board will make a determination as to who is to be detained in a declared place. Can the parliamentary secretary confirm my understanding of this clause? Are there any boundaries within the range of offences with which people may be charged? A person could be charged with any offence. It could be a serious offence such as murder or assault or it could be drug related. Once the board makes a decision, that person could be detained in a declared place. That is my understanding. Could the parliamentary secretary confirm whether that is what would happen under clause 18?

Ms A.R. MITCHELL: The full range of offences could be considered but consideration would also be given within the context of the alleged incident and, at the same time, the risk that it would bring to the residents in the centre and the community. It also goes back to the principles of how the centre would operate and what we are trying to achieve with the person. A raft of things needs to be considered. We cannot just say it is one thing and that is it; we have to consider the whole lot in context before a decision is made.

Mr D.J. KELLY: A person who is charged with murder, for example, and who is determined to be incapable of being dealt with through the courts could be determined by the board to be suitable to be detained in a declared place as this legislation stands. Is that correct?

Ms A.R. MITCHELL: As I said, that might be the first part and then a number of other situations would have to be considered before the board determines whether that person is suitable to move into a centre. I do not want to go into specific details but perchance that case of murder that the member suggested, it might have been a case of using self-defence in a domestic violence situation. We should be very careful how we use the word "murder". As I said before, in the case of an alleged incident, a whole group of principles and criteria need to be worked through before the board can make a decision about that particular situation.

Mr D.J. KELLY: In those circumstances, the government is relying on the board to make the right judgement. There are no criteria or limits in this legislation that would determine or limit the types of offences that could result in a resident being detained in a declared place. Is that correct?

Ms A.R. MITCHELL: The other factor is that the minister can override a decision.

Mr D.J. KELLY: I am seeking clarification on whether anything in this legislation puts boundaries on the type of offences that people are charged with. The government is completely relying on the board to get it right and make the correct judgement. Is that correct?

Ms A.R. MITCHELL: The other part of that is that it must be an indictable offence. A custody order can be considered.

Mr D.J. KELLY: Given that there are no boundaries around which charges can result in a person being detained in a declared place, can the parliamentary secretary appreciate that the community in my electorate has concerns that a declared place will be located directly across the road from residents and approximately 400 metres from Lockridge Primary School? I know that the parliamentary secretary says that the board, in determining who will be detained in one of these centres, will consider whether an individual is appropriate to be detained in one of these centres but we all know that boards such as the Prisoners Review Board occasionally get it wrong and someone who is deemed to be appropriate for parole, for example, can be placed in a declared place. The concern that the community that I represent has expressed is that if the government places one of these centres directly across the road from suburban housing and 400 metres from a primary school, under this legislation there are no limits on the type of offences with which people can be charged that will lead them to being detained in one of these places. I read something earlier in *Hansard* where the parliamentary secretary suggested that there are some safer places and some less safe places. If the government places one of these centres directly across the road from someone's house, as opposed to placing it in an area that is more removed from residential housing, obviously, distance provides a safeguard. Surely, the parliamentary secretary can understand that the people I represent are greatly concerned that someone who might have been charged with a serious offence, whether it be a serious assault or something even more serious such as murder, could be detained by the board in a declared place across the road from residential housing and about 400 metres from the local primary school.

Ms A.R. MITCHELL: The member has put forward those points of view. As he said, people have discussed this with local residents. It is very important to understand that the Mentally Impaired Accused Review Board has some very strong principles to follow, and the protection and safety of the community is one of them. That can occur in many ways, and it might be through the design of the centre and a number of other safety factors rather than where it might be located. Also, as I said before, the MIA review board has some very professional people on it—psychologists, psychiatrists, members of the Prisoners Review Board and the Department for Child Protection and Family Support. It is not a decision that anyone will take lightly. Obviously, the board will want to make sure the scheme is successful. It will not make decisions that will cause the community problems. As I said, the first thing is the protection and safety of the community, and then the best interests of the residents, so the MIA review board will follow very strong principles.

Mr D.J. KELLY: If the board can determine that even people who have committed the most serious offences can be detained in one of the declared places, the parliamentary secretary is asking the community to trust that the board will always get it right. The government damaged the trust and confidence of the community in its intentions by initially making statements to the effect—I think the Premier is the person most guilty of this—that people charged with trivial offences such as stealing an ice-cream would be placed in these centres. The way the government has conducted the public debate around this issue has severely damaged the community's confidence in the trust that it expects to have in the government. When this issue first became public in my electorate, the Premier's line of attack was to say, "The people who will go into these centres pose no risk at all; they will be people who have committed trivial offences such as stealing an ice-cream, and if you don't support these centres, you have no compassion for people with disabilities." The Premier attempted to ridicule people who were raising concerns about the locations of the centres. Those two things that the government has done have severely eroded the community's willingness to trust what the parliamentary secretary is saying; that is, the

board will always get it right. The community has every reason to be uncomfortable with that. As the parliamentary secretary well knows, boards are made up of professional people and people who make value judgements. Like the rest of us, they are human and they make mistakes. The government really botched the way it dealt with this issue publicly, and then introduced legislation that of itself puts no boundaries around who will go into these centres. All it has done is ask the community to trust what it is doing. Quite frankly, at this point the community is not prepared to do that. What other safeguards in this clause or elsewhere in the legislation will give people confidence that their community will be safe if the centre is built in this current location?

Ms A.R. MITCHELL: I think I have referred to the systems in place. The matters the member referred to are extra to, not necessarily part of this legislation. We believe the systems and the way things are set up within the centre and how decisions will be made for someone to be given an opportunity to move into a centre for their good are worthwhile. I have every confidence in the way it is being set up and will operate, as have other authorised hospitals such as Graylands Hospital. The member has raised his points on behalf of his community. The way forward is well set up.

Clause put and passed.

Clause 19: CEO's functions as to declared places —

Mr D.J. KELLY: Clause 19(1) reads in part —

> … the CEO is responsible to the Commission for the proper operation, control, management and security and for the good order of each declared place.

Does this fall within the chief executive officer's duties? Who is responsible for community engagement with, or liaison about the conduct of, these centres? At the moment there is what I think the member called a community liaison committee. People are very sceptical about the genuineness of that structure, but once the centre becomes operational, who, on a day-to-day basis, will be responsible for engaging with the community? Will that community liaison group continue to operate? Is there anything in this legislation that requires that group to continue to operate, or is that just a Disability Services Commission policy decision? How will that operate into the future?

Ms A.R. MITCHELL: The manager of the disability justice centre will be the person responsible for community liaison, which will be ongoing. It is not legislated; it is policy.

Mr D.J. KELLY: When the parliamentary secretary says "the manager of the disability justice centre", is that the chief executive officer or someone different?

Ms A.R. MITCHELL: The CEO is the director general of the Disability Services Commission who will delegate to the manager of the disability justice centre.

Mr D.J. KELLY: I express my ongoing dissatisfaction with the parliamentary secretary's answer. My electorate has been given all sorts of assurances about the level of openness and community engagement that will occur around the way these centres will operate. It has been told there is a desire to get the community involved in how the centres are run and that there will be a real desire for openness and accountability about what is going on so that people know and feel comfortable with what is going on in their community. I have looked through the legislation and I cannot see anything in it that requires that to happen. The parliamentary secretary telling me that the principal vehicle, the community liaison committee, is just a Disability Services Commission policy further reinforces to me that the notion of community engagement, openness and willingness to involve the community is absolute fluff. If the government is serious about the community knowing what is going on in this centre and being involved in it, there would be something in this legislation that requires information to be provided to the community. The government is going to leave it to the manager of a centre, but I am sure the manager will be flat out—absolutely flat out—trying to look after the centre's core business, which is making sure that people do not escape into the community; and, the fluffy stuff, such as ensuring that the community is happy with the location of the centre, will be at the bottom of its priority list. That reinforces to me that the government's statements about wanting the community to be fully engaged in how the centre operates is more fluff to get around expressed community concern about the way the government has dealt with this matter. The government has poisoned the well of goodwill in the community for this sort of project by the way it has conducted itself. Unless the government can do better than saying that community engagement is a matter of policy and say that it will not be at the end of a long list of priorities for the centre manager, people have a right to say that all those statements made by the government about community consultation into the future is spin to get around community concern about the location of the centres. Public servants have been out talking to parents and citizens groups about how the centres will operate. Is the parliamentary secretary seriously telling me that the centre manager will have the time and resources to engage in that sort of activity once the centre is operating? I want to hear from the parliamentary secretary that something in the legislation will codify or require community consultation so that the openness that the government has publicly said will apply does apply.

Ms A.R. MITCHELL: I reassure the member that the Disability Services Commission operates services all around the metropolitan area and in regional areas and that it works closely with the local communities in all those circumstances. This situation is no different. I need to clarify that the local community will not be involved in operational decisions of a disability justice centre. However, the liaison work will continue. I am sure the member will find that that will be the case.

Mr D.J. KELLY: The parliamentary secretary may not be aware of this, but this will be the first centre of its type that the Disability Services Commission will run, which is why special legislation has been brought into the house. This centre will not be like every other Disability Services Commission facility that operates around the state. The parliamentary secretary may not be aware of this, but the first declared place will operate on the site in my electorate that for many years provided accommodation for people with disabilities without any community concern. This centre will be completely different, because it will house people who are detained, effectively, by a court order—that is, those who have been charged with an offence. It is not good enough for the parliamentary secretary to stand up and say that DSC happily operates facilities around the state within community settings. This centre will be unlike any other that DSC has ever run, which is why we are dealing with special legislation. I do not think the parliamentary secretary's answer about community consultation is sufficient. The parliamentary secretary also said that the local community will not be involved in operational issues in the running of the centres. Can the parliamentary secretary clarify exactly what the community liaison will involve and what issues the community will be consulted about when the centre becomes operational?

Ms A.R. MITCHELL: I want to clarify that this bill is for the Disability Services Commission and its operations of declared place—a disability justice centre. Therefore, this bill focuses on that component of the operation. As I said, the manager of the centre will liaise, which happens with other centres, albeit each of them is quite different to ensure that there is a positive relationship and a healthy environment for all concerned—the community and residents. I think that is clear. This bill is not about what the community is doing; rather, it is about the Disability Services Commission.

Mr D.J. KELLY: Sure. Finally on this point, can the parliamentary secretary advise the nature of that community liaison and what issues will be covered? She has categorically ruled out operational issues.

Ms A.R. MITCHELL: I do not think that there is a straight answer for that. It is not a yes or no situation nor is it black and white. It may depend on work releases, the residents, volunteering and other bits and pieces. There is a raft of other things. It is difficult to come up with a definition of what that might be because variations will exist and we need to accommodate those.

Mr D.J. KELLY: The parliamentary secretary mentioned volunteering. Is she suggesting that there will be an opportunity for community members to volunteer to work in the centre?

Ms A.R. Mitchell: Yes.

Mr D.J. KELLY: Can the parliamentary secretary tell me what that might look like?

Ms A.R. MITCHELL: I will not keep answering these types of questions, because we are moving away from the operations of the centre. However, for the member's information, people from local working groups have volunteered to see what that might be going forward. Each person is different and wants different things, and it depends on the residents. There is no straight answer, but there is interest and it will be encouraged if it helps us achieve a harmonious relationship with the centre and its residents.

The ACTING SPEAKER (**Mr P. Abetz)**: I think the member has said "finally" a few times, but that is okay!

Mr D.J. KELLY: I said, "Finally on this point".

Clause 19(2) reads —

> 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 Board and the Commissioner of Police.

If someone is absent from leave from a centre—that is, one of the residents absconds from a centre—will the community be notified that that person has escaped from that declared place?

Ms A.R. MITCHELL: That would occur through the police. The member said "abscond", but it may be that the person becomes lost coming back. It does not necessarily mean an escape. There are other reasons that a person may not return within the time that is expected. It will not always mean an escape and it will not always be negative.

Mr D.J. KELLY: I will take the parliamentary secretary at face value that people may be absent without leave in circumstances that are not completely negative, but I assume this clause also deals with circumstances in

which someone escapes from a centre. One of the questions that have been asked of me is whether someone who lives across the road from the declared place and whose kids go to Lockridge Primary School would be notified if someone escapes from the centre. Would the school be notified? How will that information be conveyed to the community so that people can take the necessary precautions? We can appreciate that a parent of a kid at Lockridge Primary School would naturally be concerned if someone went missing from a declared place. Would the principals of Lockridge Primary School, Lockridge Senior High School, Eden Hill Primary School and Good Shepherd Catholic Primary School be notified? What would the process be? What comfort can the parliamentary secretary give to those people in the community who are directly affected that they will know what is going on?

Ms A.R. MITCHELL: As I said before, that is the responsibility of the police and they already have systems in place for if and when it happens.

Mr D.J. KELLY: For my benefit, is the parliamentary secretary aware of the process from the police's perspective?

Ms A.R. Mitchell: As it does with any other process with schools and people.

Mr D.J. KELLY: That is what I am asking, parliamentary secretary. Given that under this legislation the community notification would come through the Commissioner of Police, can the parliamentary secretary tell the house what processes the Commissioner of Police would follow in determining when and how the local community would be notified that a resident has escaped from a declared place?

Ms A.R. MITCHELL: I will say again that this bill concerns the operations of disability justice centres and not how the police notify people in the community. One would suspect and confidently guess that the police have a number of different ways of notifying different groups of people about different situations, so it is not possible to put down one process that the police will follow for every case that they come across. This is about the Disability Services Commission operations, not the operations of the police in that environment. It is very comprehensive. They are very good at it, and I am sure the community can access that information.

Mr D.J. KELLY: The purpose of the legislation brought in by the parliamentary secretary is to detain people who have been charged with possibly quite serious offences. Clause 19(2) provides that if someone is absent without leave for whatever reason, the CEO has a duty to notify a range of people, including the board and the Commissioner of Police. The parliamentary secretary is telling me that that is sufficient protection because the Commissioner of Police has a whole set of procedures that will kick in. I am interested to know what those procedures are. If the parliamentary secretary is unable to inform the house now what procedures the government has in place through the Commissioner of Police, will she agree to provide me with that information before this debate is concluded so that we can have on the record the procedures the Commissioner of Police would follow in the event that he or she is notified by the CEO that a resident of a declared place is absent without leave?

Dr A.D. BUTI: I refer to clause 19 and how it interacts with the Criminal Law (Mentally Impaired Accused) Act. Clause 19(3) provides —

> 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 without having been given leave of absence by the Board under the MIA Act section 28; or
>
> (b) having been away from the place on leave of absence, fails to return to the place or another place to which the person has been transferred when the leave expires or is cancelled by the Board under the MIA Act section 29.

What are the consequences for a resident who is absent without leave?

Ms A.R. MITCHELL: Once again, it is difficult to give one solution for every situation, but it may be serious enough that that person would risk being sent back to prison from the disability justice centre. It may be that they would not get any more leave. It would vary from case to case.

Mr D.J. KELLY: Clause 19(4) refers to someone being absent without leave because they are receiving medical treatment, for example. Can the parliamentary secretary clarify whether a resident of a declared place who leaves a declared place will always be accompanied by staff from the centre?

Ms A.R. Mitchell: Yes.

Mr D.J. KELLY: I can see the parliamentary secretary nodding. Will they be staff members of the declared place or will they possibly be staff members who are contracted to the Disability Services Commission from other organisations? The parliamentary secretary has nodded, but for the record could she respond verbally to my question about whether they will always be accompanied by staff supplied by DSC? If the answer to that is yes,

will they always be declared places DSC staff or will they sometimes be contracted to the DSC from other organisations?

Ms A.R. MITCHELL: Once again, as the Disability Services Commission contracts out to a number of non-government organisations, sometimes it may be a staff member from that relevant organisation depending on the situation. Once again, it hard to give one solution for every situation that may arise.

Mr D.J. KELLY: The first part of my question is: will the residents always be accompanied by a staff member or a staff member of an organisation contracted to DSC?

Ms A.R. Mitchell: Yes.

Mr D.J. KELLY: The parliamentary secretary is nodding and saying yes, but I do not know whether Hansard can pick that up.

Ms A.R. Mitchell: They are right beside me.

Mr D.J. KELLY: Hansard is picking that up; okay. I reiterate the request I made earlier to which the parliamentary secretary did not respond. She has told us that when someone leaves the centre without authority, we will rely on the police to apply their normal procedure for these circumstances. That is not in this bill. I am simply asking, if the parliamentary secretary does not know the current procedure, will she provide that information to the house before the debate on this bill is concluded?

Ms A.R. MITCHELL: To add to that first bit on which I commented before, a staff member of an organisation will be with them. If the resident reaches a stage at which they are capable of entering into the community for short periods on their own, that may occur as part of the developmental plan process for integration back into the community. At that stage of a person's program, they may be out in the community on their own, initially for short periods, and then that may extend to a few nights and days at a time. Once again, it is not a simple straightforward answer to a general question that the member for Bassendean has raised. I am sorry; I have that one wrong. They are still accompanied by someone from an organisation or the commission.

Mr D.J. KELLY: I really am not trying to be difficult here, parliamentary secretary —

Ms A.R. Mitchell: I have answered the question.

Mr D.J. KELLY: The parliamentary secretary just said that people may be away on their own, but she then said that they would still be accompanied by staff members of an organisation. Can the parliamentary secretary please clarify this? I do not want to go out into the community and say that there will be times when people will be out on their own if in actual fact they will still be accompanied by either a staff member from the Disability Services Commission or a staff member from another organisation. People will be much more concerned if people are out on their own. Even though the parliamentary secretary used the term "on their own", will they still be accompanied by another staff member? Could the parliamentary secretary please clarify that?

Ms A.R. MITCHELL: Member, I did make a mistake; I apologise. There is always someone accompanying them.

Mr D.J. KELLY: I thank the parliamentary secretary very much for that clarification.

I ask the parliamentary secretary one more time whether she is prepared to provide further information. She said that she does not have those procedures now. Is the parliamentary secretary prepared to inform the house of the procedures that the Commissioner of Police will follow to notify the community if someone absconds from one of these centres? Is the parliamentary secretary willing to provide that to the house before the conclusion of the debate on this bill?

Dr A.D. BUTI: I refer to a previous question I asked about a person who is on leave or does not return. I want further clarification of the answer the parliamentary secretary gave when she said it would depend on the circumstances. Who actually makes the decision that they may be returned to the prison or they may stay at the declared place?

Ms A.R. MITCHELL: The board would make that decision.

Mr D.J. KELLY: I have asked the parliamentary secretary three times whether she will provide some information to the house about what will happen if people are absent without leave from one of these centres. If the answer is that she will not, she should at least have the courage to stand and say that she will not provide it. The parliamentary secretary has just sat there cemented to her seat and said nothing. People are expected to trust the government and its assurances about how these centres will operate, yet a legitimate question that people have asked is: if someone absconds from one of those centres, will the community be notified? The parliamentary secretary said the police commissioner would be notified, and the police commissioner will do whatever the police commissioner sees fit and there are guidelines and processes, but the parliamentary secretary

says she does not know what those guidelines and processes are. Will the parliamentary secretary inform the house, before debate on this legislation finishes, what procedures the police commissioner will follow? If she is not prepared to do that, she should at least have the courage to stand and say that no, she will not. Do not sit there and refuse to answer the question. That sends the completely wrong message to the community. I ask for the fourth time: is the parliamentary secretary prepared to inform the house what procedures the Commissioner of Police will follow if police are notified by the CEO that someone has absconded from a declared place?

Ms A.R. MITCHELL: I disagree with the member's comment that I have been sitting around. I will say, as I have said already, that this bill is about the operations of the disability justice centre, not about the operations of the police force when someone is reported to them for not being in a certain place at a certain time. Many of those are obviously quite varied as to how they respond. I am in no position to make commitments on behalf of the police commissioner about the operations, and I do not intend to. We have gone through that.

Clause put and passed.

Clause 20: Delegation of CEO's functions —

Dr A.D. BUTI: I do not want us to have a repeat of the debate we had on the Mental Health Bill, but I feel that I need to bring this up. Clause 20 is about the delegation of the CEO's functions. It states in part —

> (1) The CEO may delegate to another person … any power or duty of the CEO under another provision of this Act …

I retain my position that the CEO can delegate the power but not the duty. If the parliamentary secretary believes the CEO can delegate the duty, do they also therefore delegate the liability? While I am on my feet, subclause (3) states —

> The delegation may expressly authorise the delegate to further delegate the power or duty.

I am concerned about how far we can delegate and how far we will delegate the duty. I can understand the power, for operational reasons; but I have a major concern about continuing to delegate and sub-delegate the duty.

Ms A.R. MITCHELL: I can confirm that there is no delegation of liability as that goes down. Once again, the degree of delegation is obviously reflected in the appropriateness of the job and obviously more delegations. There is always paperwork, including rules and reports, as well as confirmation and support, that need to be done, so no-one is left wondering where everyone is at.

Dr A.D. BUTI: There is no delegation of liability, but how does the CEO retain the liability? I do not think there is anything in the bill—maybe there is but I have not seen it—or is the parliamentary secretary saying that the CEO will retain vicarious liability for the duties and powers that have been delegated? Would that vicarious liability fall under common law? There is nothing in the bill to say that the CEO retains vicarious liability, so we have to refer to the common law. Of course there would be a difference between a person who has that power and/or duty delegated to them as an employee of the Disability Services Commission and if they are a contractor. Vicarious liability generally attaches more to an employer–employee scenario rather than a non-employer–employee scenario, although I grant that the law has developed to the extent that subcontractors can be caught up in the vicarious liability issue. But there is a difference. I am concerned about the provisions of the bill because they do not actually state that. Liability does not go with the delegation. The parliamentary secretary has given an assurance that it does, but we would have to refer to the common law. In other provisions that we will deal with later, the government is setting up the declared places to be contracted out. Of course we know the great record of Serco in other areas. I am sure it is front and centre to possibly take over the management of these declared places. As the parliamentary secretary would know, when someone has liability attached to their duties, they generally seek to perform them at a higher standard than if they do not have liability attached to them.

Ms A.R. MITCHELL: The CEO operates under the Public Sector Management Act. I think that is the most important part. The member also brought in some other acts that obviously need to be complied with as well. I think he will find that we are fairly well protected in the way it is set up. It is well thought through.

Dr A.D. BUTI: I do not think the Public Sector Management Act necessarily deals with the liability once the delegation has been made, especially of the duty, and particularly if that duty is contracted out. That may be determined by the provision of the contract. If the bill delegates the power, that probably would have been the easiest way to proceed, but we do not have "power" or "duty". I am concerned that liability may also be sought to be delegated in a private contractual scenario. I am concerned that the liability may also be sought to be delegated in a private contract scenario.

Ms A.R. MITCHELL: The member raised these points in dealing with previous legislation as well. Those situations that the member presented are covered under contract law, and terms and conditions that deal with the member's concerns under those circumstances.

Mr D.J. KELLY: Is one of the functions that the CEO can delegate determining where the declared place may be located? Maybe the parliamentary secretary can tell me if I am right, but I am assuming that the office that would make the decision about where a declared place will be located is the CEO. Is that one of the functions that could be delegated under this clause?

Ms A.R. Mitchell: No, member.

Mr D.J. KELLY: The parliamentary secretary can wait until I am finished and then stand up and give the answer so that I am sure it appears in *Hansard*. Is that one of the functions that can be delegated? If it is not the CEO who actually makes the decisions on where these centres are to be located, can the parliamentary secretary clarify for me who that is under this legislation?

Ms A.R. MITCHELL: The answer is no. The CEO does not have that power.

Mr D.J. KELLY: Can the parliamentary secretary point me towards the section of this legislation that grants the power to determine where these declared places will be? Who has that power? If it is not under this legislation, where is it?

Ms A.R. MITCHELL: The member was absent for a while last time we were discussing this bill. It is not part of the operations.

Mr D.J. Kelly: You were absent yourself for a while this morning.

Ms A.R. MITCHELL: Thank you, member. As I was saying, the subject of the bill is the operations of disability justice centres. The issues that the member is raising come under the Planning and Development Act and the Public Works Act.

Clause put and passed.

Clause 21 put and passed.

Clause 22: Powers to control and manage declared places —

Dr A.D. BUTI: This clause deals with the things the CEO may do for the purposes of managing and controlling a declared place. It refers to refusing entry to the place by people who may be carrying prohibited substances, or if there is a reasonable suspicion that they are carrying something. Paragraph (a) simply states that the CEO may prevent people from entering the place. That is an incredibly broad power. My concern is that if a loved one wants to visit a resident, but the loved one is not the easiest person to deal with, they could easily be prevented from visiting the resident because the CEO could argue that it is for the purpose of controlling and managing a declared place. Obviously, if the person's behaviour is of such a standard that it is affecting the management of the declared place, this action could be understood, but this is being left completely at the discretion of the CEO. I am concerned that some people who may be just a little difficult may be prevented from entering. There is nothing preventing that from happening.

Ms A.R. MITCHELL: Decisions will always be made in the best interests of the residents.

Dr A.D. BUTI: I suppose there is no other answer that the parliamentary secretary can give me, but I hope that is the case. That is all I can say.

Mr D.J. KELLY: Is there anything in the legislation that would guide the CEO in making that sort of determination? It is a very broad power. We would hope that decisions are made in the best interests of the residents. We might also hope that they are made in the best interests of the community. Is there nothing in the legislation that would regulate that very broad power that is given to the CEO under clause 22(a), or is that the extent of it?

Ms A.R. MITCHELL: It is not in the legislation, but it will be in the procedures and rules for the operation of a centre.

Clause put and passed.

Clause 23 put and passed.

Clause 24: Searching people and seizing things —

Dr A.D. BUTI: This clause applies to any search of a person done and to anything seized under clauses 22 and 23. Clause 24(2) states —

> 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.

That is good, but if it is not practicable for that to be the situation, and for religious reasons the resident refuses to be searched by a person of a different gender, what would be the situation then?

Ms A.R. MITCHELL: The concept of a search here is not a full body search. It is an external pat-down type search. If the person chooses not to go through that, they may want to come back to the centre at another time.

Dr A.D. BUTI: I understand that it is just an external body search, but there may still be religious reasons that would prevent someone being searched by a person of a different gender. Hopefully, it will not be a major issue, but we never know. Clause 24(4) states —

> The searcher may do all or any of these things —
>
> …
>
> (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 …

The issue of underwear is also covered under the Criminal Investigation Act. I know that amendments were made to the Criminal Investigation Act in respect of headwear, but there may be religious reasons, again. For instance, what would be the scenario with male Sikhs with their turbans, or the Muslim hijab?

Ms A.R. MITCHELL: The wording of that clause says "may", not "must". I think the member will find that every endeavour will be made to be as culturally sensitive as can possibly be done in the circumstances.

Dr A.D. BUTI: I understand that, but if the person refuses to be searched, and the searchers determine that they want X, Y and Z to occur—the searchers may want the headwear to be removed—they will have the discretion to order that to happen, but if the person being searched, for religious reasons, does not want that to happen and is refused entry, they could quite easily argue that they are being discriminated against on the basis of religious or cultural reasons, in violation of the Equal Opportunity Act. How does the interplay between this bill and the Equal Opportunity Act or the federal Racial Discrimination Act work? The federal act would take precedence over this legislation.

Debate interrupted, pursuant to standing orders.

[Continued on page 6158.]