

**DECLARED PLACES (MENTALLY IMPAIRED ACCUSED) BILL 2013**

*Second Reading*

Resumed from 17 October 2013.

**DR A.D. BUTI (Armadale)** [11.08 am]: I rise to lead the opposition's debate on the Declared Places (Mentally Impaired Accused) Bill 2013. The purpose of the bill is to establish places for the detention and rehabilitation of mentally impaired accused. Of course, by its very nature the bill works with the Criminal Law (Mentally Impaired Accused) Act 1996. I make it clear that the opposition does not oppose the bill, nor does it oppose the need for declared places. However, the opposition is strongly opposed to the process that led to the declaration of the first two sites. I will talk about that a bit later and, of course, on behalf of his constituents, the member for Bassendean will prosecute this case very closely. The declaration of the first two places has been an overtly political process and, just miraculously, they happen to be in the seat of Bassendean. We know a bit about the history of this, which I will allude to later. I make it very clear that we are not opposed to people who have a cognitive disability and who have been charged with a criminal offence from being housed in places such as these because their disability means that they are unable to stand trial. When the Premier responded to legitimate questions from the member for Bassendean, he used the method that he always uses and asked, "What do you have against people who have a mental disability?" We have nothing against people with intellectual disabilities. The Labor Party has been the champion of and advocate for people with an intellectual disability for a number of years; indeed, as far as I am aware, it has been such throughout its history. I did not hear the member for Bassendean utter one word that sought to condemn or vilify people who have an intellectual disability—not one. The member for Bassendean has prosecuted the overtly political nature of this process. It is a shame that the government has instigated such a political process because, in the end, if we want these places to succeed and have community support, the proper processes have to be adhered to. In this situation they have not been adhered to.

By prosecuting the case and outlining the overtly political nature of the decision to place both declared places in the electorate of Bassendean, we are saying that the government is actually doing the cause harm because it is making it less likely that the community will support such a situation. Let us be clear: I am a strong advocate for people with disabilities. The member for Bassendean is a strong advocate for people with mental disabilities. As far as I am aware, everyone on my side of the house is. I am sure there are probably many people on the other side of the house—actually, I personally know that there are. We also have to be realistic. It is obviously part of human nature for people to be concerned when there will be a house nearby with people who have been charged, or have likely been charged, with a criminal offence. It is just human nature to be concerned, whether the people have a disability, mental illness, cognitive impairment or not. We need to try to alleviate that concern but it is not easy to alleviate concern when the government engages in such an overtly political exercise and does not engage in community consultation. The government engaged in community consultation *ex post facto* the decision; that is not community consultation.

It is also hard to get the community to support something when both these declared places are in communities that are adjacent to each other. That is where it is so disappointing. We want these places to succeed; we want the community to support these places. It is difficult for that to happen when the government does not even follow its own criteria, does not engage in appropriate consultation, and engages in a transparently political process; that is quite obvious for anyone to see. Although I believe the member for Bassendean has sought a number of documents under freedom of information. He did not receive all the documents that he should have received but those that he did receive clearly showed the overtly political nature of this process.

Before I move to our concerns about that, it would enlighten the house to go through the history that has led to where we are today, discussing the Declared Places (Mentally Impaired Accused) Bill 2013. In many respects the Marlon Noble case has probably put this issue at the forefront for the government and the community. As people would know, when Marlon Noble was aged 19 he was accused of a number of sex crimes against two minors and held in custody while an assessment was made of his mental capacity. He was charged in 2001 and in 2003 was found not fit to stand trial because of a mental impairment. As a result, a custody order was made, and in Western Australia, if a custody order is made, it is for an unlimited time, so Marlon Noble's imprisonment was open-ended. An accused person subject to a custody order then comes under the control of the Mentally Impaired Accused Review Board.

The Marlon Noble case came to the attention of the government, the opposition and the media in 2010, and in 2011 he was granted conditional leave from prison. That was after he had been in prison for eight years, whereas if he had actually stood trial and been found guilty he would not have served eight years. It is, of course, incredibly unjust that an accused person is incarcerated in the prison system for an extended period that would be longer than the sentence if they were found guilty. He was unable to stand trial because of his mental impairment

and that is why the custody order was made. We are told that in 2011 there were 29 people in Western Australian prisons who had not been found innocent or guilty and 13 people in prison, including Marlon Noble, who were found not fit to stand trial. Seventeen of these people were in Western Australian prisons despite being found not guilty due to being of unsound mind. The chairperson of the Mentally Impaired Accused Review Board at the time, Narelle Johnson, was lobbying the state government to have the option of declared places. She stated —

We think these people should be protected and that the community should be protected, but in the nicest way possible so these people have a good quality of life ... they're vulnerable people and —

Prison —

... is not an optimum environment.

I do not think anyone would disagree with that. In March 2012, Marlon Noble, although technically free, was still in a legal limbo. In 2013 he was granted his first night away from incarceration. This came to the attention of federal authorities and the Disability Discrimination Commissioner, Graeme Innes, wanted permission to come to Western Australia to look at this whole issue. He stated —

I will be travelling around Australia to listen to others who have been denied fairness when it comes to police and the courts, in a bid to make sure the millions of Australians who have a disability, are given equal opportunity to be heard and to make complaints.

There is no doubt that declared places are needed, and that the legislation before us is needed. That is not what we are opposing, although we believe there are certain areas of this bill that can be improved. The member for Bassendean has a number of amendments on the notice paper that he will move and that we will discuss in consideration in detail.

The Marlon Noble incident needed to be addressed. I remember that, in the previous Parliament, the member for Butler raised this issue with the former Attorney General and Hon Alison Xamon also raised this issue in the other place. On 12 May 2012 the state budget announced that there would be declared place disability justice centres. We knew this in 2012, but on 24 June 2012 the government announced that the first two disability justice centres would be built at Kenwick and Herne Hill. It is interesting that the local councils were told two days prior to the announcement, and I believe the relevant councillors were advised two weeks prior to the announcement. Of course, as we know, those places were incredibly important electorates for the upcoming 2013 election. One of the declared places was going to be in Herne Hill, which is in the member's electorate of Swan Hills; is that correct member?

**Mr F.A. Alban:** Yes, that is right.

**Dr A.D. BUTI:** The other one was going to be in Kenwick, which is in the electorate of Forrestfield, the most marginal metropolitan seat, which at the time was held by Andrew Waddell and is now held by Nathan Morton. Of course there was public disquiet in the local communities and protests about that. Unfortunately, wherever these centres are built, it will be difficult to get the local community on board. That is why we have to be very careful about how we proceed with declaring these places. The government has criteria in place, and it is important that those criteria are followed.

**Mr F.A. Alban:** Member for Armadale, it couldn't have been placed in Herne Hill because it contravened the Swan Valley Planning Act.

**Dr A.D. BUTI:** It is interesting that the member for Swan Hills should raise that—I will get to it very shortly—because a number of the criteria have not been followed for the areas in which the centres are now to be located, so it does not seem to matter. It seemed to be appropriate to use that excuse back in 2012 before the 2013 state election. There was nothing that prevented the government from enacting legislation to allow those places to be built there—nothing. So the member for Swan Hills should not come to me and say that the reason it was not built was that it contravened some planning decision. It is very interesting that the member should actually raise —

**Mr F.A. Alban:** It is a state act of Parliament, member for Armadale, which is quite different.

**Dr A.D. BUTI:** Subsequent legislation overrules prior legislation. I think the member knows that. The government could also bring into the house legislation to amend previous legislation. It is interesting that the member should bring in the issue of planning. As we know, the Western Australian Planning Commission makes the decision about declared places. I refer to a report in *The West Australian* of 24 January 2014, headed "Silence on detention centre nod", which states —

Planning Minister John Day has refused to reveal why the WA Planning Commission overrode local authorities to approve the development of a centre in Lockridge for intellectually disabled crime suspects.

One of the criteria is support of the local government. The member for Bassendean will be able to confirm this during his contribution, but, as far as I am aware, the City of Swan is not supportive of this —

**Mr D.J. Kelly:** It has passed two resolutions opposing the location of both centres.

**Dr A.D. BUTI:** That is very interesting. The Minister for Planning, whom I have a great deal of time for, refuses to reveal why the WA Planning Commission will not release the reasons it overrode the local authority. The article goes on to state —

The choice of Lord Street has angered the local community. City of Swan councillors voted unanimously to advise the WA Planning Commission they did back the application last year.

After the council voted, Premier Colin Barnett vowed to go ahead with the Lockridge centre.

So much for community consultation —

Asked why the report prepared by the Department of Planning for the WAPC's Statutory Planning Committee had been kept confidential, WPC chairman ... said reports to the commission that contained legal advice were dealt with on a "strictly confidential basis". "If a member of the public wishes to have access to such reports, it is open to them to make an application under Freedom of Information," ...

Mr Day said the SPC made decisions based on the merits of an application and whether it complied with relevant planning framework. It was "not necessary to spell the situation out further".

...

Planning lawyer Belinda Moharich said it was "highly unusual" for the report to be kept confidential.

"It therefore appears the department or the SPC dealt with this application in a different manner procedurally," ...

That is quite damning, I would have thought.

The government talks about transparency and seeking community support, but how can it get the community to support something when it keeps the community in the dark or does not follow its own procedures or criteria? Of course, what the member for Swan Hills says about the reason the centre was not built at Herne Hill is very convenient, but it did not actually prevent the government from building it there if it wanted to.

The other place was in Kenwick. On 14 August 2012, Hon Ljiljana Ravlich, in the other house, asked the Minister for Mental Health whether she had advised her nephew, Nathan Morton, about the proposed Kenwick disability centre and whether she supported it, or whether her decision changed to protect his political career. Of course, the minister would deny that that was the case, and she did deny it, but it is interesting. As can be seen in *Hansard*, further information was provided in the other house. The Minister for Mental Health, Hon Helen Morton, rang Nathan Morton and told him about the decision to not go ahead with the Kenwick centre before it was publicly announced. That is interesting. Why would she do that?

**Mr M.H. Taylor:** Was it in his electorate?

**Dr A.D. BUTI:** He was not the member.

**Mr M.H. Taylor:** Was he a candidate?

**Dr A.D. BUTI:** He was a candidate. Did she ring the then member, Andrew Waddell, and tell him? No, she did not. He was the member.

**Mr F.A. Alban:** Member for Armadale, don't you think that the Minister for Mental Health, knowing full well that the member for Forrestfield was her nephew, would have been clever enough not to place it there in the first place if she was concerned about political ramifications?

**Mr D.J. Kelly:** Her nephew wasn't the member; he was the Liberal candidate.

**Mr F.A. Alban:** It's the same thing. Whether he was a candidate or whether he was elected, don't you think that she would have considered that in the first place?

**Dr A.D. BUTI:** I do not know. The member can tell me.

**Mr F.A. Alban:** It sounds rather silly to choose that site and to pull out for political reasons, when someone who is a minister would have understood the ramifications of placing it there in the first place. So I think your argument falls a bit —

**Dr A.D. BUTI:** What I think happened, member, was that she made that decision not realising the local community unrest. I wish there was not community unrest, but there was. Then she realised the ramifications for the Liberal Party—I do not want to be too personal and refer to the member for Forrestfield—in trying to win

that seat, which at the time was going to be a crucial seat in the forthcoming 2013 election. The Labor Party held it by a slim margin. Then the minister realised the potential ramifications for the Liberal Party in trying to win that seat. Surprisingly, the centre was pulled out of that seat.

When both sites were announced, one site happened to be in a Liberal seat and the other site was in a marginal seat. I do not think the government expected to have the local community outrage. In many respects it is disappointing that there was that outrage. If the government had consulted in a manner that was more appropriate, maybe that would not have been the case.

**Mr M.H. Taylor** interjected.

**Dr A.D. BUTI:** Mr Acting Speaker, I am not seeking interjections from the member.

Several members interjected.

**The ACTING SPEAKER (Mr I.M. Britza):** Excuse me, member for Warnbro! The member for Armadale is not seeking interjections. Until he does, I will have to protect him and I will call members.

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

We had a situation in which both sites were pulled from seats that were considered at the time to be quite crucial in the election. However, we did not have the announcement of other sites before the election, which is interesting. The government decided that it would not have Herne Hill and Kenwick, but it did not make a decision on the new sites until after the election. I think the member for Bassendean will address the house on that process and how it seemed to be such a short period from the state election to the announcement of these two sites. One has to wonder whether these sites had already been earmarked before the 2013 election but had not been announced.

If we move to the criteria, we will see that they are quite interesting. There are eight criteria for the allocation of these declared places. The first criterion is land size, with a minimum block size of 7 000 square metres. Second, it should be a flat block with capacity for landscaping. Third, it should have reasonable access to public transport. Fourth, its location should not be in close proximity to schools, kindergartens or childcare centres. Fifth, its location should be a reasonable distance from neighbours, with a buffer zone. Sixth, its location should be in reasonable proximity to shops and community amenities. Seventh, its location should not be in industrial areas. Eighth, its location should be acceptable to the local council. I think all those criteria make sense; they seem to be very reasonable. It is just a shame that the government has not followed them.

The Community Development and Justice Standing Committee, of which I am a member, carried out an agency review into the declared places. It was quite revealing. The director general of the Disability Services Commission, Mr Ron Chalmers, appeared before us. Eight criteria were set down. It is interesting that the criteria have not been followed in this process. I refer to part of the transcript. I said —

I am not querying the merit of having these centres, —

I am fully supportive of having declared places. The opposition is supportive of declared places. That is not the issue. The issue is the process that has been followed to earmark or select the first two declared places. I continued —

but it is the process issue that I do have some concerns. I have a series of questions; number one, can you tell me what was the reason why the Herne Hill and Kenwick sites—the original sites were disbanded?

Dr Chalmers answered —

Back in 2012, two sites were selected for these two centres. I can go into the reason why we need two of these rather than one, if you require that. The proposal for these sites proceeded on the understanding and advice that they would be defined as residential facilities. So at the heart of this decision and then the reversal of the decision, is that notion of what are they defined as. So originally we proceeded on the basis that, because they are small bungalow-style accommodation, residential, they would be appropriate to be zoned as such in residential areas. Accordingly, residential land was identified for us by the Department of Housing. So we were recommended two blocks of land by the Department of Housing, not the Department of Planning or the planning commission. Subsequent advice, though, was that these facilities could not be defined as residential facilities, and therefore construction of the centres on the Herne Hill and Kenwick sites was likely to be not approved on areas that were zoned residential. On the basis of this advice, the Minister for Disability Services announced that she would not proceed on that basis, and that is when the decision was taken to go to the Planning Commission to say, “Give us a range of alternative sites that are not zoned residential, but could be used for that purpose.”

That is an incredibly flimsy justification for the reversal of the first two sites—because it could not be zoned residential. If the government thinks these sites are so fantastic, it should change the legislation.

**Mr D.J. Kelly:** For the two sites that they chose in my electorate, to get around those zoning issues, they had a planning control order declared by the Minister for Planning so that all the problems that they had for the first two sites could be overridden by the planning minister so they didn't even have to change legislation. The only reason they didn't do it for the first two sites is because the minister decided she didn't want to use that process prior to the election.

**Dr A.D. BUTI:** The member is 100 per cent right. The justification that was used to not go ahead with the first two sites that may have major negative political ramifications for the Liberal Party was to use this ridiculous residential requirement or facility definition, which is absolutely absurd. As the member for Bassendean outlined, we know how governments can get around things if they really want to.

I asked Dr Chalmers about being in close proximity to schools. One of the criteria is that its location not be in close proximity to schools, kindergartens or childcare centres. I invite an interjection from the member for Swan Hills. What would he think “close proximity” means?

**Mr F.A. Alban:** I think you would know what that means—close to.

**Dr A.D. BUTI:** I am asking the member what he thinks it means.

**Mr F.A. Alban:** Perhaps walking distance.

**Dr A.D. BUTI:** Exactly. The member is very knowledgeable. That is what we would think it means—“in walking distance” or “close proximity”. Member for Bassendean, how close are these two places to schools?

**Mr D.J. Kelly:** The one on Lord Street is 350 metres from Lockridge Primary School. Just a fortnight ago, I walked the distance between the two—from the school to the site—with a group of about 100 local residents. It was a lovely Sunday morning. It took us about three or four minutes. It is certainly in close proximity. The second site abuts the boundary of the Lockridge Senior High School farm school. You just have to step over the step to go from the farm school to the centre, so you do not have to do much walking. So it is in close proximity.

**Dr A.D. BUTI:** In that case, that one is adjacent. When I pressed Dr Chalmers about what he meant by “close proximity”, he said that it has to be adjacent. I might be gullible but I am not that gullible. I am sure that when this criterion was designed—location not in close proximity to schools, kindergartens and childcare centres—the member for Swan Hills' interpretation was the interpretation that was meant by that criterion. Even if one is to take the definition as “adjacent”—basically right next to—one of the sites is right next to the farm area of the high school. Even on this absurd definition that Dr Chalmers sought to utilise for that criteria, one of the sites would not comply with that criteria.

I return to the point that I kept labouring in our inquiry. Public support and public perception is so important. A bit further along in the hearing, Dr Chalmers stated that public perception is very important. As far as I have read and as far as I have heard from all his public comments, even his private comments, the member for Bassendean has never once vilified the people who may be housed in these declared places. That is my understanding and recollection. These places are necessary but, as Dr Chalmers said, he is very strongly in favour of these sites and they have been working on this for a long period. I applaud him in that respect. I also applaud him for the appointment of Megan Barnett, who will have strong carriage of these sites. She was recently employed by the Disability Services Commission. She was the former principal of a primary school in my electorate. She is an outstanding individual. I applaud her appointment. I applaud Dr Chalmers' advocacy of declared places. They are so important for the rehabilitation of people with a cognitive impairment who are somehow in the criminal justice system but are not fit to stand trial. That is why we have to get the process right. That is why we have to bring the public along.

As I said, it is human nature that people will be concerned. We would also think that maybe it would be advisable not to have two centres in close proximity to each other. The local communities might wonder why they are both being put near them. It is interesting that Dr Chalmers said that locating these two sites next to each other will be good for economies of scale. To me, that is a post-facto rationalisation. The first two proposed sites—Herne Hill and Kenwick—were not located close together. Herne Hill and Kenwick are certainly not within walking distance of each other. It would certainly be advisable if both these centres were not located in the same area.

Let us look at the seat of Bassendean and the member for Bassendean. The member for Bassendean had a very high-profile job in the union movement before he became the member for Bassendean, so the government is very aware of the member for Bassendean's experience and advocacy. It would be stupid to say that Bassendean is a safe Labor seat, because, as we know, there are no safe seats on either side; and any parliamentarian who takes the view that their seat is safe will certainly lose their seat. It may appear reasonable on the percentages to say

that Bassendean is a safe Labor seat, but we know that can change at the next boundary change. However, the government might think, “Why not put these centres in a Labor seat that we are never going to win? Let us put them in the seat of the member for Bassendean, because he is a former union heavyweight, and we can put one over him.” It is just so blatant. It is a shame and a disgrace that this has happened, because these declared places are more important than the member for Bassendean or the Labor Party or the Liberal Party. These places are very important, and we need the community to support them. However, it is very difficult for a local community to support something when there has not been consultation. I think there was a leaflet drop the day before the community meeting was to be held. Is that right, member for Bassendean?

**Mr D.J. Kelly:** It was the afternoon before the public announcement in the morning, and it was unaddressed, so it was in people’s letterboxes along with the Target and Coles catalogues.

**Dr A.D. BUTI:** Yes; and as we all know as members of Parliament, often material that is unaddressed is not read. We cannot bring the community along in a process if there is not proper consultation.

Dr Chalmers can say what he wants. But there is no way that the criterion of “location not in close proximity to schools, kindergartens and childcare centres” can be read as meaning that it has to be adjacent. The member for Swan Hills’ interpretation of those words is the interpretation that would be taken by any objective bystander anywhere.

It is interesting that 11 sites in total were looked at. In a letter dated 14 June 2013 from the Minister for Mental Health to the member for Bassendean, she lists the eight criteria for the sites. She then states —

Public works do not require a building permit to be issued from the local government. However, the buildings are still required to comply with the relevant standards set out in the Building Code of Australia.

Public Works do not require approval from the local government under their local planning scheme but they do require approval from the Western Australian Planning Commission ... where a region scheme is in place.

It is interesting that the minister talks about the WAPC. The letter states also —

While local planning approval for the project to proceed is not required, WAPC will consider local issues in the development of the project at both locations, including the siting, design and access to the developments.

What does the minister mean by the word “consider”? The City of Swan has moved motions to oppose the building of these centres on these sites, and the Minister for Planning will not release the reasons that the WAPC has overridden the local authority. That makes a mockery of that letter from the Minister for Mental Health.

I turn now to a question without notice asked by Hon Amber-Jade Sanderson in the other place to the Minister for Disability Services. The question was —

I refer to the proposed disability justice centres.

- (1) What are the locations of the 11 different sites short-listed by the WA Planning Commission referred to by the minister?
- (2) What were the reasons for not choosing each of the rejected sites?

Hon Helen Morton replied as follows —

I thank the member for some notice of the question.

- (1) The 11 sites considered by the WA Planning Commission and the Disability Services Commission were located at ... Lord Street, Caversham, bordering on Lockridge; ... Berrigan Drive, Cockburn Central; ... Curtin Avenue, Cottesloe; ... Jutland Parade, Dalkeith; ... Hayes Avenue, Dianella; ... Corfield Street, Gosnells; ... Forrest Road, Haynes; ... Altone Road, Kiara; —

That is the other proposed site —

... Champion Drive, Seville Grove; ... Tindal Avenue, Yangebup; and ... Thome Place, South Yangebup. I was presented with options in Caversham—Lockridge, Gosnells, Kiara and Yangebup.

- (2) The Disability Services Commission identified eight broad criteria for the site requirements of the disability justice centres. The Department of Planning and the WA Planning Commission

considered those criteria and other planning matters when short-listing the sites they could make available for this project. The only sites that met all the criteria were the selected sites.

That is rubbish! Those sites did not meet all the criteria. So the Minister for Disability Services has misled Parliament.

*Withdrawal of Remark*

**The ACTING SPEAKER (Mr I.M. Britza):** Member, that is an improper statement.

**Dr A.D. BUTI:** Okay. Sorry. I withdraw that statement.

*Debate Resumed*

**Dr A.D. BUTI:** The fact is the current sites do not meet the eight criteria presented by the minister. They do not meet the criterion of location not in close proximity to schools, kindergartens and childcare centres, and they do not meet the criterion of location likely to be acceptable to local councils. There might be one or two other criteria that they do not meet, and that might be addressed by the member for Bassendean. The minister's answer continues —

The other sites were not selected because they were not as suitable as they did not meet all the criteria. They were either next door to a school or adjacent to a proposed primary school, —

As is the case with one of these sites —

there were heritage buildings to consider, they were earmarked for other developments, there were limited services available or the block size was not large enough.

There is nothing to prevent the building of one of these centres on a heritage site. I remember that in this place not so long ago, we discussed the Sunset Hospital site in Dalkeith. That would be a fantastic site for a declared place.

**Mr D.J. Kelly:** It is one of the 11 sites listed by the minister.

**Dr A.D. BUTI:** Yes. That is a beautiful location, with a great vista. It is quiet, and close to public transport and shops. There is no school close by. Why was that site not selected? Was it because there are heritage buildings on that site? So what? The existing buildings on that site will be renovated and used for some other purpose. There would be no need to pull down those heritage buildings in order to have a declared place. We are trying to rehabilitate people with a mental impairment who have found themselves in the criminal justice system. Would it not be great to put them in a fantastic location in Jutland Parade, Dalkeith? That would give some merit to the Premier's argument that the government is seeking to assist people with a mental impairment who find themselves in the criminal justice system. I am incredibly supportive of declared places, as are all members on this side. There are some issues with the legislation, as there always will be issues with all legislation, and we will prosecute those issues throughout this debate. However, the fact remains that the selection of these first two sites—in fact, these are not the first two sites; those sites were pulled because of the political ramifications—is blatantly political, and there has not been appropriate community consultation. As I have said, it was always going to be incredibly difficult to get community support, but that process was made more difficult when both declared places were placed in close proximity to one another and the government did not engage in community consultation. The fact is that the government contravened the criteria.

Who will be held in these facilities? They will be people with a cognitive or intellectual impairment who find themselves in the criminal justice system but are not fit to stand trial, and that is why they should not be in prison. I think that is a justifiable reason for people not to be incarcerated in the normal prison system. There is confusion about whether some of these residents—I think that is what they are called in the bill—can also have a mental illness. There are different issues to consider. A person with a mental illness may present a different safety issue for the community from someone with an intellectual disability. I was always of the understanding that people with a mental illness would not be held in these facilities, but I do not believe that will be the case. My understanding is that if the mental illness is a secondary condition, those people can be held in these facilities. That raises a different issue with safety and public perception. I do not want to make too much of that, but that issue needs to be addressed.

Although we are very supportive of declared places and the people who will meet the criteria to be held at these facilities, it cannot be denied that there may be a public safety issue at some stage.

[Quorum formed.]

**Dr A.D. BUTI:** Safety, of course, is an issue and it is recognised in the principles and objectives outlined in the bill. 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.

The government rightfully recognises that the safety and protection of the community is an issue that has to be considered, even if it is only for reasons of perception, because people naturally will have concerns about community safety. Even though people cannot stand trial, the fact is that, prima facie, they may have committed a crime. They cannot stand trial, but they may have committed an act that would have led to a conviction. Of course, there may at times be some elements of community safety that need to be considered. When I asked Dr Chalmers why that seemed to be the first order of priority, he said in part that it was because of public perception and that the Disability Services Commission wants to ensure that people feel confident that these places will be safe. It is interesting that it contradicts other aspects that the government has outlined about the sorts of people who will be housed in these facilities.

Interestingly, there are provisions in the bill to allow for these places to be privatised. I compliment the Disability Services Commission for the appointment of Megan Barnett. I think her job description is very closely linked to the running of these declared places, but it is within the Disability Services Commission. The issue is that the bill allows for the services to be contracted out to private providers. That raises many, many concerns. When I raised this matter with Dr Chalmers in the agency review, he said that the agency was not proceeding on the basis that the management services of these declared places will be privatised. That may not be the case at this stage, but when the government provides in the bill the ability for the management of service delivery to be contracted out, that of course makes us very concerned. Working in the disability area is a very demanding task.

The Disability Services Commission has built up, over a number of years, expertise in the delivery of services to people with disabilities, so it raises a major concern when the government provides in its legislation the ability to contract out the management of these declared places.

**Mr D.J. Kelly:** Member, who do you think might be interested in a contract to run a custodial facility such as this?

**Dr A.D. BUTI:** I am not 100 per cent sure, but there is a provider in Western Australia the name of which starts with the letter “S”—that is, Serco Australia. I am sure it would be incredibly interested in getting its hands on a contract to run these places. I am sure that the Minister for Corrective Services, after a horrid summer, would not be overly encouraging of Serco taking on the role of managing these declared places because its record over the past few months has not been encouraging.

With the privatisation of these services, there is always a profit motive. How does an organisation make a profit? In a private situation, it tries to keep its costs down and make sure that they are much less than the remuneration it receives for its services. I am always incredibly concerned when a private operator is involved. Whatever criticism people may direct at the Disability Services Commission, it does have at its foundation the best interests of people with disabilities. It may not always succeed, but if an organisation à la Serco were to take over the management and delivery of services in these declared places, its commitment would not be to people with disabilities; its commitment would be to the underlying profit that it could make. That is what it is interested in. It is not about the interests of people with disabilities. Serco’s headquarters are in the United Kingdom. It is not a local company. It does not have an inherent mission to improve the lot of Western Australians. It is a global organisation that seeks to make a profit. It has been incredibly successful in being awarded a number of contracts by this government and, I believe, by other Liberal governments throughout Australia.

It is incredibly distressing that this proposal has not even commenced with the Disability Services Commission managing these declared places, and included in the founding bill is the ability for the government to basically privatise—resist its responsibility for—the service delivery and management of declared places. That is incredibly alarming for both the residents and the workforce. As I said, one of the ways to make a profit is by decreasing the cost element, and one way to do that is by reducing labour costs and working conditions. I am always amazed at people’s short-sighted view on this. If we do not commit to the workforce it is difficult to attract the people we need to attract and it is difficult to keep people in the workplace. One of the areas that disability services has been hampered in is the retention of its workforce.

**Mr D.J. Kelly:** Attraction and retention is an enormous issue.

**Dr A.D. BUTI:** Yes, retention. If we do not have retention of the workforce in the disability services area, often the quality and understanding of people working with people with a disability is severely compromised. The inclusion of the contract clauses of the Declared Places (Mentally Impaired Accused) Bill 2013 is incredibly alarming.

I understand that no underage person in Western Australia who would come under consideration to be placed in a declared place is incarcerated. I might be corrected by the parliamentary secretary on that. I think when Hon Helen Morton answered a question in the other place, she said that no person under 16 years is in a declared place. However, the Commissioner for Children and Young People provided a very comprehensive submission on the Declared Places (Mentally Impaired Accused) Bill 2013. If people have not read it, I suggest they do so. The commissioner makes some very interesting comments and some recommendations should young people be eventually considered for housing in these facilities. I imagine that at some stage there will be some juveniles who should be in declared places. The question is: should we have a separate declared facility for juveniles or will we seek to house them in the one place? Under our criminal justice system, children should not be housed with adults in the prison system. Although this is not about the prison system, I would be interested to know how it will play out in the system. There is no doubt that at some stage there will be the need for children to be housed in these facilities.

In her submission on this bill, the Commissioner for Children and Young People states —

While the Mentally Impaired Accused Review Board is required to consider whether detention at a declared place is in the best interests of the mentally impaired accused, it is my view that the legislation should also provide that in performing a function under the Act in relation to a child resident, a person or body must regard the best interests of the child as a primary consideration.

I understand that. She made a recommendation about clause 5 of the bill. The wording in that clause differs from the wording in the clause in the current bill, so she may have been referring to an earlier draft of the bill. Her recommendation reads —

That clause 5 of the Declared Places (Mentally Impaired Accused) Bill 2013 be amended to provide that in performing a function under this Act in relation to a resident who is under the age of 18 years, a person or body must regard the best interests of the child as a primary consideration.

The report states further on —

**Recommendation 3: Protection of the community is the paramount consideration**

That clause 5(1) of the Declared Places (Mentally Impaired Accused) Bill 2013 be amended to provide that:

The protection and safety of residents and the community are the two principle considerations in performing a function under this Act; however, if there is any conflict between these two considerations, the protection and safety of the community is the paramount consideration.

That is a recommendation of the Commissioner for Children and Young People. One could assume that by “principle considerations in performing a function under this Act”, in order of priority, the protection and safety of the community is in subclause (1), so I presume that complies with the commissioner’s recommendation. If we are to ensure proper protection and safety for the community, we should not contract out these facilities to Serco. That would be the last body I would contract it to; I would keep it within the government to ensure that government workers —

**Mr J.M. Francis** interjected.

**Dr A.D. BUTI:** We are not talking about prisons, minister. The whole idea of the bill is to get away from prisons. Has he not read it?

**Mr J.M. Francis:** We are talking about Serco.

**Dr A.D. BUTI:** Yes; we are talking about Serco. Serco does not look after only prisons; it looks after naval bases and other defence areas.

**Mr J.M. Francis:** I didn’t know that.

**Dr A.D. BUTI:** The minister knew that, surely. We are not talking about prisons here.

**The SPEAKER:** Member for Armadale, calm down, please.

**Dr A.D. BUTI:** Okay, I will.

In my last three minutes I want to make it clear that the opposition fully supports the need for declared places for the mentally impaired accused. In many respects, we support the bill before us, but we have concerns. I have expressed some concerns about the privatisation element and we have concerns about a number of other provisions, and the member for Bassendean has a number of amendments on the notice paper.

These centres are incredibly important. That is why it is important that the government follow its own processes and does not take overtly political action in determining these sites. I will not stand by and allow the Premier to vilify the opposition or vilify the member for Bassendean for standing up for his community. I repeat that at no stage have I become aware—I know he would not—that the member for Bassendean has vilified people with cognitive intellectual disabilities; nowhere has he done that. He has been standing up for his community. We want these places to succeed, but they will succeed only with community support. The process the government has followed will ensure that community support will never be forthcoming. The fact that two proposed sites do not comply with the eight criteria is a damning indictment on the Minister for Disability Services and on this government. We will not be deterred from advocating for the proper process by any cheap shot by the Premier saying, “What do you have against people with a disability?” That is an absolute personal insult and an insult to my colleagues. Shame on the Premier for saying that. There is a perfect location in Jutland Parade, Dalkeith, where at least one of these declared places could be established. May we have more of these declared places in time, but they can only come with community support.

**MS M.M. QUIRK (Girrawheen)** [12.08 pm]: I believe the prosecution of the case for these centres has been flawed. We need to separate fact from fiction. If the Barnett government had undertaken a frank, open and lengthy process of consultation, issues it now claims are misunderstandings or misinformation would not have been compounded. If the government had not reneged on one of the preferred sites for venal political reason, that might have engendered more trust. How can a community in one neighbourhood be described as legitimate whereas in another it is termed as lacking compassion, misinformed and politically motivated? If double fencing similar to that at Boronia Pre-release Centre for Women and \$700 000 worth of security were not incorporated into the zone and if the centre were not to be located next to a school, this bill might not have produced as much apprehension from neighbouring residents. There might be less scepticism if the government had not moved the preferred site, ostensibly on the basis that the local government would be unlikely to approve it; if it had not ridden roughshod over another council, indicating that the project would proceed irrespective of council’s views; and if the bill had not contained a special provision for private contractors to run such centres while at the same time giving us assurances that this would not occur.

What does the opposition do now after seeking the answers to questions that were not readily provided at the outset? People convicted of an offence will not come into the centres because, obviously, they would have been deemed fit to plead to charges and they would have understood the court system. As an aside, I should say that nevertheless there is a cohort of people in that category who should have access to decent forensic medical facilities within the prison. That is an area that still needs some investment and some provision of further infrastructure.

We also accept that insufficient options are currently available in the justice system for dealing with people with an intellectual disability or cognitive impairment who do not understand or appreciate the court system and who are charged with criminal offences and deemed unfit to plead by the court because of that impairment. The centres are therefore seen as a suitable alternative response other than prison, and the other alternative that is certainly not acceptable to the community of releasing people back into the community. Those are frequently the only options available currently and were the only options available in past years.

We have heard that people with a primary diagnosis of mental illness will not be housed in the centres but in an appropriate psychiatric or mental health facility. I do stress in that context the reference is to “primary diagnosis of mental illness”. As the member for Armadale stressed, that does not totally exclude housing people with some mental health issues in these centres.

As we know, this bill makes provision for the establishment of declared places. The notion was developed that they would be community-based, small-scale, residential-style accommodation for individuals who are found unfit to plead but for whom prison is obviously the wrong place to be spending months, years or even decades, given that they would not have been convicted of any crime. In the model under this bill, from day one people sent to one of these centres will be given exposure to training and education with a view to getting them out of the centre once they have attained more skills, and there will be a heavy focus on rehabilitation and the treatment of residents’ particular issues.

It is asserted that the evidence says that if this is done right, normal return to the community can be facilitated with a significant drop in recidivism rates. It is asserted that residents in communities experiencing normal life again as soon as possible will ultimately function appropriately in the broader community, such as going to the bank, going to the shops, reconnecting and getting back to employment, if that is possible. It is contended that normal access to the community is needed and that if the centres were located well away from the community, those objectives could not be readily achieved. The notion therefore of positioning the centres adjacent to a prison or within a prison site has been rejected.

The Disability Services Commission claims that the design, architecture and concept for the operation of these centres and the work done with the Mentally Impaired Accused Review Board are all driven by how these changes can make the residents return to and be embedded in the community. It is important to note what the commission says about the location of the centres. Our inquiries have disclosed that security at the premises will include restricted access to buildings; entry through a single reception area; swipe cards for door access; lock-down capacity for rooms and larger areas; closed-circuit television; perimeter and internal fencing; motion sensors on the perimeter fence; building perimeters well established with security protocols; highly trained staff; skills development; and so on. That all begs the question, Madam Deputy Speaker.

Evidence given by the director general of the Disability Services Commission, Dr Ron Chalmers, to the Community Development and Justice Standing Committee last year disclosed that these security features were put in place after very close consultation with Judge Robert Cock, the chairman of the Mentally Impaired Accused Review Board. The import of the evidence is that for the facility to be acceptable to that board, which will actually determine who goes into those places, an acceptable level of security is required consistent with holding these residents in detention. Dr Chalmers further opined that if none of these physical security features is in place, he imagined that the Mentally Impaired Accused Review Board would say that it was not totally comfortable with the commission's approach that the primary security revolved around well-trained staff.

The last time I inquired, which was last year when we expected this legislation to come into the house, eight people then under the oversight and supervision of the Mentally Impaired Accused Review Board were deemed suitable to be housed in such a declared place. Seven were in prison and one was being assessed by the courts. Two were in Wooroloo Prison Farm, one in Acacia Prison, one in Karnet Prison Farm, one in Casuarina Prison and two in the Eastern Goldfields Regional Prison. We know that Karnet and Wooroloo are low-security prisons so that a person going there would be consistent with going to a residential setting. Two are in the Eastern Goldfields Regional Prison, and I suspect that they are there because they come from that part of the world. However, I am concerned about those who are currently in Acacia and Casuarina, because that effectively means that they are in medium security. We are told that the majority of individuals under consideration are Aboriginal, and some far away from home. It is arguable that the regime to be implemented in these new declared places for teaching residents to integrate into the community will be unlike any community to which they will ultimately return. I think that regime is therefore somewhat flawed.

I also want to briefly touch on the oversight of residents in these centres. To ensure that there is no potential for abuse of human rights and mistreatment of residents, we are told under this legislation that there will be oversight by the Council of Official Visitors. I asked during the briefing whether the council would receive any resources to undertake this role and I was advised that as this was a political matter, no information could be provided on that front. It is almost trite to say that the council has been struggling for some years in undertaking its existing statutory functions, yet these additional functions are required to be performed with absolutely no indication of whether it will have the resources to perform them. Providing an oversight mechanism without adequately resourcing it, frankly, is illusory.

We know from debate on the Mental Health Bill that the Council of Official Visitors will be abolished and replaced by the Chief Mental Health Advocate. I therefore probably need some clarification of whether that person will perform the oversight role or whether the Council of Official Visitors will do so, and again with what level of resources. As I said, the Barnett government has made a rod for its own back in how it has tried to handle this issue. If people are kept in the dark, given little notice, fed half-truths and faced with what are seen as politically motivated rather than sound public policy and planning decisions, it is no wonder there is some disquiet.

I contrast this process with what occurred when this government, then in opposition, campaigned vehemently against the siting and construction of the Boronia Pre-Release Centre for Women in Bentley. In 2005 the member for South Perth campaigned strongly, along with other members of the coalition, against —

Debate interrupted, pursuant to standing orders.

[Continued on page 3091.]