

DECLARED PLACES (MENTALLY IMPAIRED ACCUSED) BILL 2013

Consideration in Detail

Resumed from 20 August.

Clause 3: Terms used —

Debate was adjourned after the clause had been partly considered.

Dr A.D. BUTI: I got myself confused yesterday afternoon. It was my birthday; I could say perhaps it was a silly moment. The whole idea of declared places is to have a place other than a hospital or a jail where people with cognitive impairments or intellectual disabilities may be located. That is to be very highly recommended. The issue, however, was whether people with a mental illness could also be housed in a declared place. As was noted by the parliamentary secretary, one goes to clause 66 of the bill, which seeks to amend section 24 of the Criminal Law (Mentally Impaired Accused) Act 1996. Proposed section 24(5A) states —

A mentally impaired accused is not to be detained in a declared place ... unless the Board —

- (a) is satisfied that the accused is a person with disability ... and the predominant reason for the disability is not mental illness ...

When I was trying to obtain a guarantee that people with mental illness will not be housed in these declared places, the parliamentary secretary referred me to this proposed section. I understand that the mental illness cannot be the predominant reason, but it can still be a part of the person's condition. The other aspect to that proposed section to which the parliamentary secretary referred me, is that the board must also be satisfied that the accused has reached 16 years of age. The idea will be that a person with a mental impairment can also have a mental illness, but that cannot be the predominant reason for the impairment, and can be housed in a declared place if they are over 16 years of age. I think the parliamentary secretary would have read the submission made by the Commissioner for Children and Young People in relation to this bill. She was referring to a previous draft of the bill, and from reading her submission it appears that some slight amendments made to the bill before us may have taken up some of her concerns. I would like to read a couple of statements she makes about this issue —

I have concerns about children and adults being accommodated together in the proposed disability justice centres. There is nothing in the Bill that addresses how residents aged 16 and 17 years will be accommodated separately from adult residents or how their specific needs will be met. It is acknowledged that a 16- or 17-year-old mentally impaired accused is not to be detained in a declared place unless the Mentally Impaired Accused Review Board is satisfied that it is in the best interests of the accused ... The criteria to be considered in determining whether detention in a declared place is in the best interests of the accused sensibly require the Board to take into account relevant factors such as the care and support that the accused will receive at the place; the accused's age and maturity; and the extent to which the accused will be compatible with other residents in the place.

However, even if it is determined that it is in the best interests of a 16- or 17-year old mentally impaired accused to be detained in a declared place (ie, in contrast to being detained in a detention centre) it is still necessary to ensure that while that child is a resident at a declared place, his or her needs and interests are being met. For example, it would not be appropriate for a child to sleep in the same room as an adult or in a place where adults have free access. It may also not be appropriate for a child resident to participate in a particular programme with adult residents.

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.

We have this issue about priorities, which I will talk about later. Granted that children under 16 will not be housed in these declared places, but if they are 16 or 17 years old they can be, nothing in the legislation, bar the woolly words about what is in their best interests, prevents a 16 or 17-year-old being in close proximity, engaging in similar programs or even sleeping near an adult. As the parliamentary secretary would know, there is much literature and empirical evidence on the incarceration of adults and children, and that it is not in the best interests of children; and people of 16 or 17 years of age are still very vulnerable. I am wondering what measures have been taken to consider this. I can see nothing in the legislation, but if it is there, can the parliamentary secretary please point me towards it? What policies will be in place to ensure that the 16 or 17-year-old's interests are fully and properly considered?

Ms A.R. MITCHELL: I was going to interrupt the member, but could he just direct me to the term he is seeking clarification on?

Dr A.D. Buti: It is not a term.

Ms A.R. MITCHELL: But is it in clause 3?

DR A.D. BUTI: When I asked the parliamentary secretary a question last night, she referred me to clause 66 of the bill before us, which states that a person can be placed in a declared place if they are 16 years old. It is very sensible that no-one under 16 years is allowed, but if someone is 16 or 17 years old, they can be in a declared place. My issue is that people who are aged 16 or 17 should not be housed in the same place as an adult or even engaging in the same programs as an adult. My concern is about what is in place to ensure that their interests are taken into consideration, as outlined by the Commissioner for Children and Young People in her submission.

Ms A.R. MITCHELL: There is nothing specific in the bill, but it would be in the policies and procedures for any operational matter that it involves, because at this stage we are not always sure what construct a declared place will be and so each one might be a bit different. The policies and procedures would ensure that all those security measures would be in operation and that 16-year-old person would be considered as a 16-year-old and not just put in with the other residents who might be there.

Dr A.D. BUTI: Just for clarification, there will be a policy that will take into consideration those people, but, as the parliamentary secretary knows, policies can be changed and they do not have the legal vet that legislation has. Have any policies been drawn up on this issue? I am sure there will not be many such people and I can understand why it may not have been put into legislation, but will there be policies that we can observe or discover?

Ms A.R. MITCHELL: Yes, there will be policies that will be able to be observed.

Debate interrupted.

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