

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

*Second Reading*

Resumed from 8 May.

**MR D.J. KELLY (Bassendean)** [7.01 pm]: I rise to contribute to the debate on the Declared Places (Mentally Impaired Accused) Bill 2013. At the outset, I want to make it clear that I support in principle the centres proposed to be run in accordance with this legislation, and that the opposition supports the bill. However, the opposition believes that the government has seriously mishandled consultation with the local community in which the first of these centres is proposed to be placed. The opposition supports the centres in principle because people with an intellectual disability who have been charged with a crime and who are found by the courts to be incapable of going through the court system should not be put in prison. Better places should be available for people who find themselves in those circumstances. At the moment, the courts are able, if they believe an alleged offender is of no risk to the community, to release them into the community. However, if the courts believe that those people pose a possible risk to the community, prison is the only option for them. That is not acceptable, and that is why we on this side of the house support this bill and an alternative to prison for people in those circumstances.

Having said that, it is disappointing that the government has mishandled this issue and that it has completely corrupted the process. The government's proposal to place two of these centres in my electorate—one adjacent to Lockridge Senior High School and one very close to Lockridge Primary School—has been extremely poorly handled and has resulted in a high degree of anxiety in the community. If people are to support these centres being established, it is imperative that the decisions around where they are placed and community consultation be handled properly so that the well of goodwill in the community for such centres is not poisoned. Unfortunately, that is what this government has done. Because it has mishandled the planning process, it has completely botched community consultation, and the community is now very unhappy about the decisions the government has made. If the government cared about people with an intellectual impairment, it would not have handled this issue in the way it has. It has not done the people whom these centres are supposed to benefit any favours, because, as I say, it has poisoned the well of goodwill in the community.

The government may not really care about that and may think that it can push ahead and locate these centres wherever it wants them located, but the next time this type of centre or something similar is established, the government may find that it is more difficult to get community acceptance. I strongly believe that the way the government has gone about this issue shows that the government really does not care about the people who are going to be cared for in these centres. It has sought a short-term political fix to the problem of finding a suitable location for these centres. That is not only my view, but also the view of the community that I represent.

To explain why that is the case, I will explain a little of the history. The government originally, after receiving, presumably, expert advice over months, decided that one centre should be located in Herne Hill and the other in Kenwick. The government made that announcement in 2012 after almost no consultation with the community. Not surprisingly, some members of the community were concerned about that announcement and were vocal about it. Within two weeks the government had withdrawn the proposal to establish those centres in those two locations. After a very short time, the minister said, "Oh, sorry; we got it wrong", and cited planning problems with those locations. No-one believes that that was the real reason those centres were withdrawn. People believe—I certainly believe—that those centres were withdrawn because the Herne Hill and Kenwick sites were located in two seats that the government hoped to win at the forthcoming election: one in the seat of Forrestfield and the other in the seat of Swan Hills, both marginal seats in which the government wanted to do well at the election. I and the community that I represent believe that the government withdrew those two sites not for planning reasons, but because it wanted the issue to quieten down and disappear, and it did not want the matter to be an issue leading up to the election.

I will not go into too much detail about the so-called planning issues the government talked about, suffice to say that any planning issues that were identified could have been resolved had the government used its powers under the Planning and Development Act to declare planning control areas over those two sites. It could have then pushed ahead regardless of the zoning. I know that because that is what the government has done to the two sites in my electorate. However, the government chose not to do that; it chose to withdraw the sites. The only reason that I or any rational person can see for those sites being withdrawn after less than two weeks of public concern is that the government perceived that those sites would be a problem for it leading up to the 2013 election. I would be very interested to hear any member on the other side explain in any detail why the planning issues were insurmountable.

**Extract from Hansard**

[ASSEMBLY — Tuesday, 12 August 2014]

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The original sites were withdrawn on political grounds. Pretty much nothing was heard on this issue until after the state election. Then, with absolutely no consultation with the local community, contrary to what was said at the time the original sites were withdrawn, on 10 June 2013, which I think was a Monday afternoon, people started receiving in their mailboxes unaddressed advice, telling them that a decision had been made to locate one centre 400-odd metres from Lockridge Primary School and another on land currently used by the Lockridge Senior High School. The letter said that the decision had been made and that there would be information sessions held on the Wednesday and Saturday nights. The letter made it clear that the government had already made the decision and that the community would have no ability to participate. Most of the people who received that letter had no idea what the centres were, who would be in them, or how they would be operated; all they were told was that the centres were to be placed in their community.

If the government had been genuine about the Herne Hill and Kenwick sites, it would have said, “Look, we messed up; we’ll do better next time”, but it did everything it could with the two sites in my electorate to make sure that there was no consultation at all. We now know that cabinet made a decision on those sites on 4 June and that the public announcement was on 11 June. I also know from freedom of information applications that for many weeks before that there was documentation from the Western Australian Planning Commission to show that the process to declare planning control areas over the two sites was in train well before that date. Those sites were chosen by the minister in consultation with the Disability Services Commission, and the Western Australian Planning Commission was then notified so that the planning control area process could begin. Cabinet then made the final decision and there followed a public announcement. All of that was designed to keep the process out of the press and away from the eyes of the public until after the March 2013 election. When the minister was quizzed about this during estimates hearings in the upper house, she acknowledged that she deliberately kept the decision quiet because she was not happy that when the Herne Hill and Kenwick sites were announced, the then member for Forrestfield had said that he would take the issue to the media. How terrible it was for this matter to be played out in the media! It is all very fine for the government to take this issue out to the media and have its media people spin it the way it wants it; but the fact that an opposition MP would go to the media to present a different view was used by the minister as a justification for deliberately keeping the decision about these sites quiet for as long as possible, to prevent any opposition through the local media.

Unfortunately for the minister, that process completely failed because it actually enraged people. A public meeting was called a couple of days after the announcement and was attended by hundreds of people. Out of that public meeting, a group of local residents has continued to meet on a fortnightly basis to voice their opposition to the location of these centres. In the course of that group’s work, we have discovered a couple of other things about the process that have similarly enraged people. Probably the starkest piece of information we found, which has really upset people, was the government’s criteria for the location of these centres, and the fact that the government appears to have completely ignored its own criteria. I received correspondence signed by the minister on 14 June that identified that amongst the criteria that had been drawn up was that the sites be a reasonable distance from neighbours; not in close proximity to schools, kindergartens or childcare centres; and that the locations are likely to be acceptable to local councils. Those are pretty important criteria; however, neither of the sites identified for the first two centres meet those criteria. One site is on land that is currently used by Lockridge Senior High School for its farm; it is part of the school. The second site is about 400 metres from Lockridge Primary School. Lockridge Primary School is sandwiched between the two sites. The sites are only about 1 500 metres apart, both of them are directly across the road from residents, and both of them are unacceptable to the City of Swan. Clearly, the chosen sites do not meet the criteria outlined by the minister. They do not fit the bill, so one has to ask: why have they been chosen?

The minister has, in a number of forums, tried to say that the requirement that the sites not be in close proximity to schools, kindergartens and childcare centres means “not next door to”. Any plain reading of this requirement would be that it is not “not next door to”, but is “not in close proximity to”. Any reasonable person would say that a site that is part of the Lockridge Senior High School farm is pretty close to Lockridge Senior High School, and that a site that is within 400 metres of Lockridge Primary School is within “close proximity to” Lockridge Primary School. During a debate in this chamber, the member for Swan Hills chirped up on this issue; I think it was during earlier debate on this bill. He was asked what he thought “close proximity” was, and he replied, “Within walking distance.” I actually agree with that. We know that one can walk from the Lord Street site to Lockridge Primary School in a matter of minutes because members of the local community have done so. Everybody on this side of the house agrees with that interpretation of the requirements, and the member for Swan Hills also seems to agree. I do not understand why the government still claims that it is not in breach of its own requirements for these sites. When members of the community look at the minister’s black-and-white requirements, they cannot understand why these sites were chosen. When the government’s arguments do not make any sense, it falls back on, “Well, these sites were chosen to resolve a political problem that the government had prior to the last election.”

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The criteria were not met, there was no consultation, and the government provided misinformation about the sorts of people who will be in these centres.

[Member's time extended.]

**Mr D.J. KELLY:** When I asked questions of the Premier on this matter when this information became public, he basically said, "If you're opposed to these centres, you have no compassion for people with disabilities." He talked about a gentleman who had been in prison for stealing an ice-cream and he led people to believe that the people in these centres would be people who were charged with very minor crimes. He led people to understand that they would pose no risk to anyone and that there should not be any community concern. However, as I said at the beginning of my speech, the current legislation provides that if people commit an offence, go to court and are deemed to be incapable of pleading and going through the court process, the Mentally Impaired Accused Review Board and the courts have the ability to release them if they believe that they pose no risk to the community, so someone who has only stolen an ice-cream should be released. These centres are not designed for such people. Robert Cock, QC, chair of the Mentally Impaired Accused Review Board, met with the community group and talked about who would be in these centres. He made it clear that these centres are for people who pose too much of a risk to be released; if they posed no risk, they would be released. The idea that these centres are only for people who have stolen ice-creams is a misrepresentation of what these centres are for.

Currently, people who pose a risk to the community remain in jail. This bill allows for a declared place, which means that people who would otherwise be in jail can be cared for in one of these centres. The whole idea that these centres are just for people who have committed some minor offence and plainly pose no risk to the community is misinformation that the government has used to try to discredit some of the locals who have raised questions about these centres. It does not help. In the briefing the minister gave me a couple of days after the announcement, she identified that these facilities would be medium-security custodial facilities. I am not aware that the minister has repeated that in any other public forum, because she has shied away from acknowledging the security rating of these facilities, but the minister made it clear to me at the initial briefing that they will be medium-security facilities. On the one hand, the facilities will be secure so there is no need worry about who is in them, but on the other hand the fact that they are medium-security facilities reinforces the view that the people who will be cared for in them are there because they pose some risk to the community. In my view, the government has handled this issue extremely badly—absolutely appallingly—from the lack of consultation to the lack of information, and when the government was sprung on this issue, it attempted to discredit the local community that raised questions about it. The community group has met on a fortnightly basis for over a year since the centres were announced. The community group members take great exception to being painted as people who do not care about or lack compassion for people with disabilities. That is an absolutely outrageous way to characterise that community group. Members of the group have been at pains to point out that it is not the concept of these centres that they are opposed to; it is the way the government has gone about choosing the locations for them.

From the freedom of information process and questions in Parliament we got the other potential sites for these centres that were identified by the Western Australian Planning Commission. I have to say, some of the other sites seem to meet the government's criteria much more than the ones it has identified. The Sunset Hospital site in Dalkeith is massive. I think it is 10 times larger than what is needed for one of these centres. One of these centres could easily be established on that site without touching any of the heritage buildings. I do not see why the government cannot spend the money it is proposing to use to build on this site and instead use it to renovate the heritage buildings. The Sunset Hospital site would be a fantastic location for one of these centres. The site meets the government's criteria much better than the sites near Lockridge Primary School and Lockridge Senior High School, but for some reason that site has been discarded.

In recent weeks, the government has announced that it will not proceed with the centre on the site adjacent to Lockridge Senior High School. That is a good decision.

**The ACTING SPEAKER (Mr P. Abetz):** Members, can you keep your voices down a bit, please.

**Mr D.J. KELLY:** It is a decision that the community applauds. Of course, the government said that its decision is not because it listened to the community; it is because it now believes that in all likelihood it will not need a second centre. Quite frankly, I do not think the community cares why the government has come to that view, but the community is happy the government has come to that view. The wonderful student body of Lockridge Senior High School and the great staff who do everything to build up what is offered to students at that site are very happy about the government's decision. The idea that there would be a medium-security custodial facility essentially on the school boundary seemed to them to be beyond the pale. The attitude of the government is, "Oh, well, you were going to get two centres and you are now only going to get one; the community should be happy with that." I find it pretty hard to understand that attitude. The site that will go ahead, and that is currently

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under construction, is still 400 metres or so from Lockridge Primary School. The kids who go to Lockridge Primary School and their parents are still just as concerned about what will happen at that site as they were about the site next to the high school. It is not the case that the community was going to get two centres and the government is now only building one and the community should be happy. The community will continue to agitate against both sites until the government abandons the site next to the primary school as well.

Far from vilifying members of the community group involved in this campaign, I want to pay credit to them. Quite often the community feels that the government makes decisions and people cannot fight city hall; that the government will plough ahead and do what it is going to do. Certainly on this issue the government has tried to give the community that impression. In those circumstances a lot of people give up. Even when people feel they have been subjected to a really poor government decision, they give up. But the members of that community group have met on a fortnightly basis, at six o'clock on a Thursday night at the Alice Daveron Centre in Lockridge almost since these centres were announced. Group members have collected petitions, knocked on doors, staffed stalls and met with the minister and local upper house Liberal Party members who represent the East Metropolitan Region. I have to say that most people say that the doorknocking and the staffing of market stalls was much more fruitful than meeting with the local members of Parliament. They have done everything they could to be heard on this issue. I think they are a fabulous group of community people. Far from being people who do not display compassion towards people with disabilities, they have said over and over again that they support appropriate facilities for disabled people in their community. The Disability Services Commission has operated in their community for many years and they welcome that, but they are enraged at being subjected to a process that on any rational analysis was a political process that from a public policy point of view had been utterly corrupted. I want to pay tribute to each and every one of the community group members for the work that they have done. Even if the first centre is built, the campaign about that centre will continue.

In the few minutes I have left, I will say something about other provisions in the bill that give people concern. A provision in the bill allows this centre to be privatised. The government argues that a reason to have declared places is because the Disability Services Commission is in a better position than the Department of Corrective Services to provide care and rehabilitation to this group of offenders because the Department of Corrective Services does not have expertise in this area. I accept that as a valid reason. It is good that these centres be run by DSC, not Corrective Services, but the bill specifically allows for the government to privatise the running of these centres. We all know that Serco would be more than happy to put in a bid to run these centres. It seems completely disingenuous of the government to say to people that it wants DSC to run the centres because of the expertise it has, but the government wants to give itself an out to allow it to privatise these centres in the future. This government has an ideological commitment to privatising almost anything that moves. To have this bill, with all the good intentions around it, and then find that there is a particular out clause to allow the government to privatise in the future, just highlights the suspicion that people have of the way the government has handled this issue. If it does not intend to privatise the running of these centres, it should take it out of the bill. While it is there, all the things that it put forward about the expertise that DSC has will just be seen as hollow rhetoric.

As I said at the start of my speech, I support this bill because I believe these centres should be established, but I am strongly of the view that if the government is going to properly provide these services for the people it says it wants to assist, it has to go through a proper process to locate these centres in a way that allows the community to feel as though it has been consulted and it knows what the ground rules are. The government has completely botched the process. It appears to any rational person that it has located these centres to fix a political problem that it had rather than locate these centres in the best possible way.

**MR M. MCGOWAN (Rockingham — Leader of the Opposition)** [7.31 pm]: I rise to endorse the words of the member for Bassendean. I congratulate him on the campaign that he has been running on behalf of people in his electorate on this issue. I want to contribute to the Declared Places (Mentally Impaired Accused) Bill 2013 and make a few points. The government will no doubt argue that the declared places bill is about ensuring that those people who have not been convicted of an offence due to a mental health condition are able to be housed or placed somewhere as an alternative to prison. We support that intent. We think that is a wise thing to do, and it has been talked about for some years. I want to talk about two things in that context. The second thing I wish to talk about is the location of this facility in Lockridge. The first thing I want to talk about is the fact that some weeks ago the member for Mindarie, the shadow Attorney General, brought before this house the Criminal Law (Mentally Impaired Accused) Amendment Bill 2014, which was designed to ensure that people who have never been convicted of an offence yet are incarcerated on the grounds that they are unfit to stand trial should never be imprisoned for longer than they otherwise would have been had they been convicted. That is a complex way of saying that one should not stay in jail for longer than they would have had they been convicted of the offence. We brought those laws in because there had been examples—the Marlon Noble case, in particular—of people who are in prison without ever being convicted and they stay in prison for longer than someone who has been convicted of the same offence. That is a clear injustice. Invariably, these people suffer from a mental infirmity.

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Therefore, we could argue that their culpability in the offence is less than someone who did not suffer from some mental infirmity, yet they are staying in prison for longer than those people who are convicted without a mental infirmity. We brought these laws before the house. They were designed to fix that situation so people could never stay in prison for longer than they would have had they been convicted. Guess what? The government voted it down. Those laws have not gone anywhere. If I hear any humbug or hypocrisy about these laws, which we are supporting, we will point out the humbug and hypocrisy, I suppose. That will be the consequence. We will point that out quite forcefully.

**Dr G.G. Jacobs:** You won't like us anymore.

**Mr M. McGOWAN:** That is right. I find it hard to be angry with the member for Eyre but I will be angry with some of his colleagues. In any event, it is a serious matter; it is not a laughing matter.

We brought that legislation in. The government voted it down. It is bringing in this legislation. Although we support the intent, we do not support the application in this particular case. The member for Bassendean has set out why.

I want to relay to the people of Lockridge that we are supportive of them in their quest not to have this facility established in the location that has been set aside by the government; that is, Lord Street near Lockridge Primary School. I want to set out the reasons. A few weeks ago I went to the Lord Street location with the member for Bassendean and the federal member for Perth to look at the marvellous new Lockridge Primary School that as Minister for Education I commissioned the funding and construction of back in 2007–08. It is much appreciated by the people of Lockridge. If one walks a little way down the street—not very far—there is the site of the new disability justice centre. It is in very close proximity to Lockridge Primary School. Straight across the road from the disability justice centre are all these people's homes. It is like going across Harvest Terrace from Parliament House. That is how close these houses are to this centre. All these people with disabilities had homes across the road. They lived there for a while. The primary school was down the street. It was not an issue of concern. Suddenly, without warning, after a state election in which different sites not near their homes were proposed to the people of that area, the sites changed and the facility across the road from their homes became the preferred site. They were not advised before they voted. They were advised prior to the election that a different site would be selected. Subsequent to the election, suddenly this site became the site for this disability justice centre. When we walked down there, we spoke to a group of very good local people who were concerned about their suburb and the area in which they live. They were annoyed about being misled and not being consulted—not being asked—about whether this disability justice centre would be established over the road from their homes. I do not blame them. If it was established over the road from the homes of any of the government ministers, I am pretty sure they would be annoyed. I am pretty sure we would all be annoyed if it was established across the road from any of our homes after an election in which we were never advised or consulted and all the issues surrounding these things were in other locations over in Forrestfield and Swan Hills. Suddenly a site was selected without the local people being asked. People hate that. They hate having something forced on them. They were not even asked about it; they were not advised. There was no capacity for input or consultation. When we raised all these issues last year in this place after the site solution, the government said, yes, it would consult, but it would not change the location. I saw the Premier sitting there and he said the government would consult, but it would not change the location—so the government consults after the location is decided. What sort of consultation is that? It is very, very poor consultation; in fact, it is meaningless consultation. That is what went on in relation to that issue.

The second point is that I heard the ice-cream story from the Premier; that is, people who are in prison for stealing ice-creams would be contained within this facility. However, there is no legal restriction on the people who can be kept or held in this facility—as I suppose they are; it is a custodial facility—apart from the fact that they have to be over the age of 16. A person can be accused of any offence and imprisoned as a consequence. There is no restriction on who goes to the facility. All those assurances given to the people of Lockridge by the Premier that ice-cream thieves would be the people retained in this facility are meaningless because this legislation clearly states that anyone can be kept there; there is no limit. Persons charged with any offence can be placed there; the Mentally Impaired Accused Review Board decides who goes there. Therefore, there is no legislative restriction on the types of offences for which someone can be accused of and therefore retained in that facility, and I think there should be.

I toured Hakea Prison recently. In a past life when I was in the Navy, I visited Casuarina Prison on a number of occasions to see service personnel who were there and I visited Karnet Prison Farm for the same purposes. They are away from people's residences; they are essentially out in the bush. Here, in the middle of suburbia, there will be a custodial facility in which someone who is accused of any offence, but cannot be prosecuted because of a mental infirmity, can be held. The people across the road were never asked and the school down the street was never consulted. I just do not think that is a fair way to have conducted this process. The government should

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have looked a bit harder for a location. We are the biggest state in the world with, as I learnt recently, the fourth lowest population density, and yet the one site the government finds for this facility is in the middle of a suburban street, where people have never been asked, and in proximity to a new primary school. Quite frankly, I think this is a poor process being conducted by a minister who I suspect does not care.

The criteria announced by the Minister for Disability Services for these facilities were that they are not to be located in close proximity to schools—that has been breached; they are to be acceptable to local councils—that has been breached, because the councils voted against it; and, they are to be a reasonable distance from neighbours—that has been breached. Three of the eight criteria have been breached; nearly a majority of the criteria for this facility have been breached. I think the people of Lockridge have been treated very, very poorly in this process and there should have been a better way of selecting the location. Whenever these things are established, there will always be trouble, but at the least a proper consultative process needs to be gone through. People should be asked their views before the site is established, whether other sites are available and suitable should be examined, and the process should be transparent. None of that was done. I am sure that if a proper consultative process were established across the metropolitan area, sites that are far less controversial than this one could be found. That would have been a better way of treating the people of Perth and Lockridge than what has gone on here. I support the people of Lockridge in their quest and I am disappointed that this has happened to them. All we can say is that if they want to be angry with anyone, they should be angry with the government, the minister and the Premier who have done this to them.

We are supporting this bill, but I will close by reminding members again that if the government had wanted to do something serious about this issue, it would have supported our legislation—the Criminal Law (Mentally Impaired Accused) Amendment Bill. That bill would have allowed for anyone who was incarcerated due to a mental infirmity without having been convicted never being incarcerated for longer than they would otherwise have been had they been convicted. That would have been, I suppose, the other bookend of this policy, but we brought it before this house six or eight weeks ago and the government voted it down. The government does not appear to have any intention of doing anything about this injustice and that is a grave shame. Sometimes the government should show a bit of bipartisanship, as we are doing with this bill, and support good ideas even if they come from its political opponents.

**MS R. SAFFIOTI (West Swan)** [7.47 pm]: I rise to speak on this Declared Places (Mentally Impaired Accused) Bill 2013 and make some further comments on the process of determining the sites for these proposed new places. As has been outlined by my colleagues tonight, the Leader of the Opposition and the member for Bassendean, WA Labor supports the establishment of these facilities. We all agree they are a very welcome and needed addition to the community in general. However, we have comment on the process that has been followed by this government to determine the sites. Any objective analysis of or look at what has happened in this instance would show that this process has been badly handled by the minister and the government. As the Leader of the Opposition outlined, it is not an easy task—we all know that—to determine a site to provide accommodation and support services for people with intellectual or cognitive disabilities who have been accused, but not convicted, of a crime. It was never going to be an easy task, so the government needed to be sensitive and establish a proper process. However, we have seen a complete, in a sense, botch-up, with the complete mishandling and politicisation of the process by this government. The member for Bassendean outlined the history of this debate, but I want to go through it in a bit more detail. As we said, we support the establishment of these centres; they are welcome and much-needed facilities in WA. However, we do not support the locations and the process by which this government has tried to find places to put these centres. As we heard, before the last election the government announced two sites for the location of these centres, one was in the seat of Forrestfield and one was in the seat of Swan Hills.

Soon after the announcement of these sites—two weeks after, as the member for Bassendean has outlined—these sites were abandoned. They were abandoned for one clear reason; there was an upcoming election, and these sites were in marginal seats. So, the government abandoned these sites because of the need to try to hold on to, or, in the case of Forrestfield, secure, those seats. The government basically politicised the process from that point on.

Then, on 12 June 2013, without any community consultation, and without any real process, two new sites were identified and announced. One site was on Altone Road, near Lockridge Senior High School, and the other was on Lord Street. The member for Bassendean and I have had a battle about the exact location, because I have seen correspondence that says Caversham, and there is other correspondence that says Lockridge, so I think it is very much on the border of Lockridge and Caversham.

Since that time, the site at Altone Road has been, we believe, abandoned. But the government is still pursuing the site on Lord Street. About seven or eight weeks ago, the member for Bassendean, and the very active and very focused community action group, organised a walk from Lockridge Primary School to the proposed site for the

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new centre. That site is very close to the houses of the residents of Lockridge and Caversham, and Eden Hill more generally. The residents have justifiable concerns that have not been met by this government. Their primary concern is the absolute lack of consultation with them. It is obvious from listening to the member for Bassendean and reading through some of the notes that the way in which this matter was handled is that unaddressed mail was popped into people's letterboxes one night saying, "A justice centre is coming to a place near you." On any objective analysis of what has happened here this has been a botched process, and it has created significant community angst and anger about what the government is doing.

The Lord Street site is less than 500 metres from Lockridge Primary School. The local parents and citizens association and the staff of that school are rightfully devastated and angry about this decision. The site is also across the road from people's homes. I draw the attention of the house to the criteria that the minister stated that the location would be assessed against. The first was that the site not be in close proximity to schools. How can the government choose a site that is in such close proximity to Lockridge Primary School? The second is that the site be a reasonable distance from neighbours. What does "reasonable" mean? Surely it would mean more than 15 or 10 metres.

**Mr D.J. Kelly:** Nothing can be closer than being across the road!

**Ms R. SAFFIOTI:** No, it cannot be. The third is that the location is likely to be acceptable to local councils. Those three criteria have not been met. I want to talk about the community consultation just for a second. Finding a location for these centres was always going to be difficult. However, the government has completely botched the process. It has also completely politicised the process. The government has created a situation in which there is a lot of community angst and anger.

The minister said that these centres have to be located somewhere and he accused people of claiming that they should be anywhere but in their backyard. I recall a debate that took place in 2006 when the then Labor Minister for Health wanted to create community-supported housing accommodation. This accommodation was to support people with a mental illness to live in the community. These were people who had mental health problems but who had not been charged with a crime. At the time, Hon Helen Morton, the now Minister for Mental Health, ran a campaign against the location of these centres in the community.

**Mr M. McGowan:** Seriously?

**Ms R. SAFFIOTI:** Yes, seriously.

Hon Helen Morton wrote to the *Echo* on 14 July 2007 and accused the Labor government of leaving the community out of any sort of genuine consultation. She said also that the residents had been bullied and accused of nimbyism by the Minister for Health when they protested. She went on to say in a media statement that the Office of Mental Health needed to lift its game regarding the importance of early community consultation and improved community education. The now Minister for Mental Health when in opposition accused the government of a lack of consultation on the provision of community-supported housing accommodation for people with a mental illness. A place that holds people who have been charged with a crime would cause far greater community concern and angst, and of course there would need to be far greater community consultation. In 2006–07 the now Minister for Mental Health ran a community campaign against the location of the community-supported housing accommodation that the then Labor government wanted to build.

I now want to get back to the proposal before us. As we have said, the current location on Lord Street does not meet the government's own criteria. It is important to keep emphasising that point. These are not criteria that the opposition or anyone else has set. These are criteria that the government has set. The government has set the criteria, and it has then found locations that do not meet its own criteria. In respect of site selection, we have heard about the alternative sites that were available. However, those alternative sites were not chosen by this government. Instead, the government chose two sites in close proximity to the member for Bassendean's electorate and within the same community. During the march from Lockridge Primary School to the Lord Street site, it became very clear how passionate the residents and the local school community are about this issue. They feel that their concerns have been completely ignored by this government and that they have been treated with contempt. There was absolutely no consultation by the government before this site was chosen. The consultation that took place after the site was chosen was poor and ineffective. The government has also run roughshod over the local council in relation to its role in this decision. It is clear that it would not do it in a Liberal electorate. As I said, I do not think that is a subjective comment; I think it is an objective comment. I think everyone in this place recognises that the minister has completely mishandled this process. As we have said, this is a difficult issue, but handled sensitively and with the correct process, there would not have been so much community angst and anger because one day the Premier said that the people convicted of these charges would be in this place, which is frankly not correct. The government has not listened to the community. My impression is that the community campaign will not stop. It is a passionate, motivated group that understands that the government has

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treated it unfairly. As I said, this place is technically on the border between my electorate and the member for Bassendean's electorate. However, people in the suburb of Caversham live very close to the proposed site and are very angry that they have not been considered in this decision-making process.

We support the bill, but we believe that the way the government has handled the process of identifying the sites has been absolutely poor. This demonstrates the bad processes undertaken by this government on a range of issues.

**MS S.F. McGURK (Fremantle)** [8.01 pm]: I rise to make a contribution to the debate on the Declared Places (Mentally Impaired Accused) Bill 2013. I will commence by saying what nearly every member on this side of the house said at the commencement of their address on this bill; that is, I would like to declare my support for the need for these centres. In fact, in broad terms it is good public policy to create particular places for people who have been accused of crimes but are not able to stand trial because of mental impairment and are a danger to their community or to themselves. The nature of their crime has meant that until now, as we all know, they have had to be located in prison, and that is not appropriate. They have not been convicted of a crime. Again, as we know only too well from some very shameful examples in this state and in other states, people have been incarcerated in prison for much longer than they would have been if they had stood trial and been sentenced. Earlier this year in a private member's bill, this side of the house tried to limit the amount of time that people could be incarcerated because they could not stand trial, but it was not supported by the government. In any case, the development of these declared places where people who have been accused of crimes and are a danger to the community or to themselves because of their mental impairment can be housed and perhaps undergo some treatment and be properly cared for is appropriate. What is not appropriate is the method by which this government has sought to implement this policy, particularly in the selection of the location of the centres. I know that nearly every member on this side of the house has raised these issues, but I want to add my concern to the way that this has played out. As we know, two sites were selected in the first term of this government—in Kenwick and Herne Hill. There was a huge public outcry because of the lack of consultation with those communities about the selection of those sites. As most members of the public acknowledge, the government realised that it had chosen those sites quite poorly from a political point of view. Both sites were located in marginal seats, as I am sure you in particular are aware, Mr Acting Speaker (Mr N.W. Morton).

**The ACTING SPEAKER (Mr N.W. Morton)**: Members, there are conversations on both sides of the chamber that are making it difficult for me to hear the member on her feet, and I am sure they are making it difficult for Hansard.

**Ms S.F. McGURK**: In the lead-up to the election, the location of the sites in Kenwick and Herne Hill were withdrawn by the government, citing planning restrictions. As we in this house know and, I think, the public is well aware, it was for public considerations because both those sites were in marginal seats that the government was keen to retain in the 2013 state election. The community was told that things would be better and different with the selection of the new sites. If only that were the case. Within a month of being elected in March 2013, the government announced two new sites for the disability justice centres. We know that both sites are in the suburb of Lockridge in the seat of Bassendean. We know that the community was not consulted; in fact, it was very poorly notified of the decision, let alone hopeful of some sort of consultation about its view on the location of these centres. I think there was unaddressed mail to members of the community the day before the announcement was made public. We also know that the criteria spelt out by the government to select the two sites have all but been ignored. The politicisation of the location of these two centres is to the government's eternal shame, because it has meant that the community is fearful of what these sites might mean for it. I do not know whether the community is justified in being concerned about the location of these centres within the community, but it has a right to be frustrated and angry and certainly to feel disempowered because the government has disregarded its own criteria, as a number of people on this side of the house have referred to many times. Because of the extent of community outrage at the process by which the government has chosen the location of these centres, one of the centres will now not go ahead. I understand that the Altone Road centre will not go ahead, but the other centre on Lord Street in Lockridge is less than half a kilometre from a primary school, thereby contravening one of the criteria spelt out by the state government.

We have heard about the extent of community frustration and the passion with which the community will continue to take its argument to the rest of the metropolitan area and to the rest of the state if the government does not listen to it by saying that if the government really wants these centres to be successful, a good first step would be for the major parties to take a bipartisan approach, if possible, to see whether sites for these centres can be agreed on, but at the very least the government's own criteria should be abided by. It would be very difficult for us, or any member of the community, to argue against the process if the criteria are adhered to. It would also be difficult for the community or, indeed, the opposition to complain about the location of these sites if the government were to consult the community properly. It could do that through meeting another one of the criteria

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it spelt out, which was at least to have the agreement of the local council. That is another criterion that the remaining site, the Lord Street site, does not meet. We know that the City of Swan has opposed the location of these sites every step of the way. If representatives, through the local council, had been consulted, if the criteria had been met and if there had been a bit more discussion about what these centres mean, who would be located in them and what sort of care and security would be provided to the residents, they might not be controversial and would be something that the local community would not oppose. I am not saying it would be easy. Some of these centres, such as justice centres, can, I am sure, raise concerns among nearby residents, but I think it would have taken a lot of heat out of the situation and dispelled fears of the unknown that I think this government has only fuelled by its disregard for the community and its own criteria.

The more that is learnt about the process and the criteria by which these sites were chosen, the more frustrated we have felt about this whole exercise. I address this to the Leader of the House, who was bemoaning at the dinner break that we were all taking an opportunity to speak on this Declared Places (Mentally Impaired Accused) Bill. I think people feel frustrated that there has been a lack of real discussion with the community, as I said. For instance, Robert Cock, QC, who chairs the Mentally Impaired Accused Review Board, which will decide who will be housed in the centre, said that no-one housed there will have been charged with minor offences such as the ice-cream theft that the Premier referred to a number of times.

**Mr C.J. Barnett:** Do you realise these people are currently in my electorate and will probably continue to be in my electorate?

**Mr D.J. Kelly:** They're not in your electorate, for heaven's sake.

**Ms S.F. McGURK:** By way of interjection, the Premier said that those people are in his electorate. If they are in the Franklin Centre, we understand that. A number of electorates contain mental health facilities or prisons. Of course, these sorts of facilities have to be in someone's electorate. The point I am making is that the Premier has said a number of times in this house that these centres will house people such as the person he said had been accused of stealing an ice-cream.

**Mr C.J. Barnett:** Raise your debate a little, will you.

**Ms S.F. McGURK:** Back at you, Premier, because you are the one who said we were disregarding people with disabilities who might be accused and who would meet the criteria to be housed in these centres, for instance, someone who had stolen an ice-cream. You talked specifically about that person.

**Mr C.J. Barnett:** You can trivialise it if you want to.

**Ms S.F. McGURK:** It is a little rich for the Premier to say that we are trivialising these centres when I am referring to the example that he gave on more than one occasion. We know now that the case he was talking about is not relevant to the sort of person who could be accused of a crime and be eligible to be housed in these centres. It is my understanding that if someone is accused of petty theft, there is no way that they will go before a criminal court, let alone the Mentally Impaired Accused Review Board. I understand that there is a history surrounding the case of the person the Premier referred to previously. There is a history of charges and difficulty with that person being outside a prison that had very little to do with the fact that they may or may not have stolen an ice-cream. As I said, it is a little rich for the Premier to say that we have lowered the tenor of the debate when I am just responding to the example with which I think he deceived this house and the public about the sort of person who might be housed in the detention centres.

Finally, I also add my voice to the concerns about possible privatisation of the centres. One of the concerns I have, and I think the community has, about privatisation of key public services is the reduced accountability for how services are provided and what happens if people have any concerns. Where do people go? Do they need to go to a private company rather than to their elected representative, as would be the case if those services stayed in public hands? We have a new type of centre that, by its nature, the community will be sensitive about. We support the development of those centres. Secondly, the way in which the locations were chosen and the way the policy is being implemented are mired in controversy. I guess the government is writing the rule book on how to mishandle the public consultation and public acceptance of these controversial centres. It is a step above anything I have witnessed before. People are already feeling removed from the process. Thirdly, the possible privatisation of those services means that if people are unhappy about something or feel that the performance of the provider is not to standard, it will be difficult for them to complain about how that service is being run or how it is interacting with the local community. On the whole, I think people feel there is less accountability under a privatised service. One of the opposition's concerns is the capacity within the bill to privatise this service. I think I heard the member for Bassendean say this evening that if the government does not intend to privatise this service, why have the provision in the bill in the first place.

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I commend the other contributions from this side of the house. I, like many people, have been alarmed at the case studies referred to in both the parliamentary debate and the media coverage about the decision to have these centres established, but I think they are case studies that we have heard about for years. We can do a lot better. One of the other areas that other speakers have referred to is the number of people who may fit the criteria for these centres and who may have foetal alcohol spectrum disorder. It might be better for them to be placed somewhere closer to their families and communities. On the issue of building only one centre in the metropolitan area, I wonder whether, in her reply to this debate, the parliamentary secretary can address whether consideration was given to what proportion of residents are expected to be Indigenous and whether they can be connected to their own communities, as they have a right to be. I can only imagine that that is an important part of ensuring they are properly cared for.

**DR G.G. JACOBS (Eyre)** [8.19 pm]: I do not intend to talk for very long on the Declared Places (Mentally Impaired Accused) Bill 2013. I am rather disappointed that all the speakers so far have failed to indicate some of the important milestones in the creation of declared spaces for the mentally impaired accused. I will quote the parliamentary secretary's second reading speech. It is really important to quote this short statement —

The Liberal–National government was the first government in Western Australia to address this issue, and this legislation marks a significant milestone in the provision of social justice in this state.

Tonight we have heard a lot about the placement of these declared spaces; it has been a repeated theme. I have looked a few times and nowhere in this bill does it refer to the siting of these places, but it refers to the Criminal Law (Mentally Impaired Accused) Act 1996, the Disability Services Act and certain other acts, and the setting up of what I believe is a very important establishment in the state of Western Australia. It is a first for Western Australia. If anybody is listening to this debate outside, these positives would escape them because no-one has documented what an important milestone this is in social justice. I thought that the people sitting on this side, which happens to be the side on which I am standing, were really strong on social justice, but no-one this evening has really elucidated anything about how we are providing a therapeutic environment and a place for people who are brain injured, cognitively impaired, intellectually impaired or have a serious autism spectrum disorder. We are not only housing them, but we are giving the department and the Disability Services Commission the powers to operate the places, to control behaviour and to design a suitably secure environment that pays attention to the welfare of the individuals. Declared places will provide individualised care and in some cases people will be rehabilitated to independent responsible citizens.

It is really important not to undervalue the milestone of creating a purpose-built declared place with maximum capacity of 10 residents, operated by the Disability Services Commission. Historically, a lot of governments have been finessed by the fact that we understand there is a better place for these people, but no-one has made the move to create that better place and environment. We understand the intricate balance between housing and securing a place and individualising care in a therapeutic environment. I think that is really very important.

The history goes back to when the Criminal Law (Mentally Impaired Defendants) Act was introduced in 1996. Minister Prince in his second reading speech said —

... the paramount goal of a safe and secure environment for all Western Australians while ensuring that all participants in the criminal justice system are treated fairly and equitably and the process itself is cost efficient and effective.

The parliamentary secretary in the second reading speech for this bill referred to that legislation and said —

That legislation in 1996 established a new procedural framework for the courts dealing with those unfit to plead or of unsound mind and established the currently titled Mentally Impaired Accused Review Board. That body is now responsible for deciding the place of custody of the mentally impaired accused, dealing with leave of absence and advising the minister of the timing of their release.

The major deficiency in all that was that there was no actual declared space for this to be implemented —

The Criminal Law (Mentally Impaired Defendants) Act 1996 established four places of custody—a prison, detention centres, authorised hospitals and declared places.

The authorised hospital is the place of custody for those suffering from a severe mental illness who are not fit to plead, but for those with a cognitive impairment or an acquired brain injury, there is no place other than prison. Everybody has recognised that in this place, to give credit where credit is due. However, we really needed to highlight the positive features of this act. As I said, nowhere in this bill refers to the sites of the declared places. Those are issues outside this bill and we need to recognise the positive nature of the creation of declared places and how they will be run. We should recognise not only the principles and objectives behind declared places, and the residents' rights; it is also about the community's rights.

In closing, we often talk about not only the social justice issues but also the stigma related to disability. We have heard a lot about the stigma related to mental illness, but I also want to highlight the stigma related to disability and how as a community we must break down those stigmas. I believe declared places such as those prescribed in the bill are one very important step in breaking down that stigma. That must also be looked at in light of not only the creation of a declared place, but also the siting of that place. If we want to put, if you like, our money where our mouth is, we need to talk and address these stigma issues with disability. It is important that we recognise this in the creation of declared spaces in Western Australia.

**MR P. PAPALIA (Warnbro)** [8.27 pm]: I appreciate the opportunity to rise and discuss the Declared Places (Mentally Impaired Accused) Bill 2013, particularly in light of the sanctimonious and almost holier-than-thou lecture we just received from the member for Eyre. Members, let me reiterate a little of the history of this subject. In this debate we are not only talking about this particular proposal for a place to put a very small number of mentally impaired offenders incapable of pleading. That is not what started this debate and that is not what this process began with. This process began well before this Parliament; it began in the previous Parliament. The disgraceful situation of Marlon Noble languishing in prison for nine years, having never been convicted of an offence, was brought to the public's attention by the now member for Butler, who drew it to the government's attention as a consequence of being approached by friends of Marlon Noble and the lawyer who was acting on his behalf. What did we see from the government at that time? It was not the caring, concerned attitude that the member for Eyre is claiming we should all be exhibiting at this time to this poorly constructed and completely flawed process that has been foisted on the people of Western Australia. That is not what we saw. We saw Marlon Noble languishing in prison for another 12 months when the government was fully aware of his situation, fully aware that he had never been found guilty of any offence, fully aware that he was mentally impaired and incapable of pleading, and also aware that not only were his lawyer and his friend voluntarily acting on his behalf and advocating for his release and suggesting he would be safe and they would look after him, but also the prison officers in Geraldton were outraged over the fact that he had been there so long in the circumstances in which he had been incarcerated. The government was aware of that for 12 months and it did nothing. Let us be fair and honest about where the government stands on this situation and its history. The motivation was as a consequence of a prolonged, admirable and effective campaign, primarily by Coleen Egan and others at *The West Australian*, including Amanda Banks, who applied pressure on the government. It eventually rolled over and decided it would do something and take some action with mentally impaired people in the prison system. That was not the first time that there was a problem, not only with people who were mentally impaired, but also with those who were mentally ill.

On 16 June 2010, the Labor Party brought into this place a motion urging the government to adopt justice reinvestment as a strategy to deal with the out-of-control explosion in the prison muster. We drew to the attention of the government the large number of people in the prison system who were mentally ill. I am not talking about the mentally impaired. The whole issue of declared places for the mentally impaired has been introduced out of shame and embarrassment by the government to cloud the issue and suggest that it is acting in a noble fashion in some regard because of the initial Marlon Noble failure, and we have subsequently seen other failures like Rosie. I think the government introduced this bill because it did not want to deal with the really tough job, which is to deal with all the mentally ill people in prison who, as the member for Eyre stated, are there because there is nowhere else for them. When our society, out of a sense of goodwill and good intentions, closed the mental asylums, we left them with nowhere to go. There are people who are offending. They are doing the wrong thing and breaking the law, and they end up in prison. I can tell members there are lots of them. There is an entire unit at Hakea Prison that is double-bunked, with more than 80 men, two to a cell, who are not a threat. They have broken the law, but they are pretty easy to deal with, if you talk to the prison officers who look after them in a fantastic manner, with great sincerity and care. They tell me that they do their best, but prison is not the proper place for these people. There are many more throughout the prison system. The number of mentally impaired people is significant. There are a lot more than the number we are going to house in this facility. There are a lot more than the number we would have been able to house in both facilities, if we had been able to pursue them. I will say categorically at the outset—I will not repeat everybody else's arguments, but they have been on the money—that this process was a travesty. The government undermined the entire process. It undermined the credibility of dealing with mentally ill offenders through the way it politicised this issue before the election, saying it would not build the facilities in the locations identified as appropriate, and then post the election it put them into a safe Labor seat, with no contact with the people other than a letter that was delivered to them telling them the government would now start consulting. However, as the Premier indicated in this place, he was not going to listen to the consultation. They are the facts and that is the truth. The government has destroyed confidence in the community over this whole debate. That is a sad thing because mentally impaired offender numbers are pretty big and we need a lot more places than are currently proposed in this facility.

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I have asked the government this question on a number of occasions since 2008 when I first got the shadow portfolio. I asked the government what it knows, as a system, about the number of people who have been diagnosed with mental illness inside our prison system. The answers have never been adequate or comprehensive, and are actually pretty concerning for this legislation. I do not think the government, particularly the Department of Corrective Services—I assume that other agencies will become responsible for these people when they leave the corrective services world—know enough about the people going into the prison system and who will then subsequently, subject to the test for suitability, come out and go into these facilities. I have asked the question on a number of occasions. Most recently, I got an answer, which includes other things. I asked the Minister for Corrective Services what I thought would be a simple question. If the minister is going to come in here and lecture the Labor Party about how poorly we have responded to the government’s well-meaning and empathetic response to mentally offenders, he needs to know a lot more than he currently knows about people in the prison system. In June 2014, I asked the minister —

What number (expressed both as a raw figure and percentage) of adult offenders entering prison between 1 November 2008 and the present time:

...

- (b) had a diagnosed mental illness;
- (c) were intellectually disabled;

That period is the extent of the government’s time in office. I got an answer that is similar to the one I got when I asked the same question four or five years ago. The minister advised —

This information is not recorded in a manner that is easily retrievable and therefore it is not possible to accurately identify those prisoners who have a diagnosed mental illness.

To whomever on the other side is going to respond to this—perhaps the parliamentary secretary can talk to the minister—I ask: what action has been taken? I am pretty certain I first asked this question in the early part of 2009 when the muster was exploding. In the first 18 months of its term the government increased the number of people in prison by 27 per cent. Throughout the course of this government, the prison muster increased by 30 per cent; it is at record levels. I suggest there are record levels of mentally ill people in the prison system and also record levels of Aboriginal people in prison; and there are Aboriginal people who are mentally ill, and they are at record levels. If we look for the legacy that the Premier leaves behind, it will not be the stadium at Burswood or a puddle in front of the city; it will be the fact that he led a government that locked up more mentally ill Aboriginal people than any government in Western Australian history. The government should consider that when I first asked this question, I got the same answer. The government is incapable of providing an accurate assessment. What action has been taken subsequently when prisons continue to be overcrowded and overwhelmed by even more numbers? Members opposite should ask themselves what action was taken by four separate ministers who were thoroughly aware, but incapable and unable to respond, except to provide the answer that they did not know as it had not been brought to their attention. It had been! I am not saying they caused it; I am saying that they did not respond with any action. The minister still cannot give a more accurate answer. I will continue with the rest of that response.

The response to question on notice 2465, about what number of adult offenders entering prison during the course of the government’s term in office had been diagnosed with a mental illness, was that —

This information is not recorded in a manner that is easily retrievable and therefore it is not possible to accurately identify those prisoners who have a diagnosed mental illness.

Defining mental illness is not a perfect science therefore accurate numbers cannot be given because “mental health” encompasses:

Severe psychotic illness

Depression and mania

Personality disorder

Drug abuse and addictions (including post-alcoholic)

Cognitive impairment

Anxiety and post trauma stress disorder

I am not disputing that; I think it is a reasonable observation. Mental illness encompasses those things. The answer continues —

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15% of prisoners in the major metropolitan centres have a diagnosed mental illness for which they are receiving medication. However please note mental illnesses such as personality disorder are managed behaviourally rather than through medication.

The question is: what does the minister know about it? How many are there?

I also asked how mental illness was diagnosed, including for mentally impaired people. I assume that the mentally impaired people who have not been able to plead have ended up in the prison system and would be eligible to come out, would be incorporated in the answer to my question about the intellectual disabled in the prison system; perhaps not. I look forward to that information being provided to the parliamentary secretary. When I asked how many were intellectually disabled, the response was at least a bit more specific —

The Department advises that it does not routinely screen all prisoners for intellectual disability across the State.

This is the same answer I got in 2009, so it does not shock me, although it is disappointing that nothing has been done in the interim. I have not yet had a chance to go back to the response to my original question on notice, but I think it is the same answer that Hon Christian Porter gave me then. The answer is kind of awkward because it initially indicates that the minister does not know the answer and that there is not enough accuracy, but it then gives a figure; we heard that 15 per cent were mentally ill. Even though the government could not give an answer, it was around 15 per cent. When I asked previously, the figure was around 14.75 per cent, so there appears to have been an increase in the percentage, but obviously there has also been since then a massive increase in the number of offenders in the system, so 15 per cent is a significantly larger number than it was last time.

**Ms S.F. McGurk:** That's diagnosed.

**Mr P. PAPALIA:** That is right. It is farcical for us to be lectured on the treatment of mentally ill or mentally impaired offenders by the Liberal Party of Western Australia. The government knew about this years ago. I know it did not create this situation in 2009, but it knew years ago that that was how poor our data gathering was and how poor our analysis, diagnosis and screening of offenders was. More money and more resources could have achieved that, had the government chosen to allocate more funds. Instead, it spent \$665 million over three years to double-bunk the prison system. One has to wonder whether some of that money might have been better spent on screening offenders to find out whether they were mentally ill and whether an alternative to imprisonment might have been available.

I will continue reading into *Hansard* the response I got. It was not a small number of offenders that were diagnosed with a mental illness; it is a pretty small number compared with 15 per cent of 5 000-odd. According to the minister, the muster at the moment is 5 247. There are probably more going in tonight; the Serco vans take a little while to unload at Hakea. They will be coming from the court system as we speak and there will be eight trucks lined up out there at the moment. I feel for staff at the reception at Hakea; I put it on the record that I have great admiration for them. They are doing a tremendous job under great pressure. That aside, 15 per cent of 5 247 is a fair chunk of people with a mental illness.

For those diagnosed as intellectually disabled, the answer was a bit different. The answer continued —

The Department advises that it does not routinely screen all prisoners for intellectual disability across the State. However, 297 prisoners who entered the prison within the specified date range are identified with a Disability Services Unit Alert on the Department's Total Offender Management Solution database.

That means they were the ones that the department knew about. We need more information. As I said, I think the debate on this has been distorted and it is a travesty because when we started it on 16 June 2010, or whenever it was, we were not talking about mentally impaired offenders who were going into disability justice centres; we were talking about the significantly larger number of people in the prison system who have a mental illness for whom we have only one facility, the Frankland Centre, which is in the Premier's electorate and is very small. Does the minister know offhand how many beds are there? Is it 20 or 30? I think the number was increased.

**Mr D.J. Kelly:** Isn't that scheduled to close?

**Mr P. PAPALIA:** The Frankland Centre? I hope not.

It is a very small facility, but if we want a comparison of the scale of the facility we need, we need only look to Victoria. Despite the fact that that state's population is 2.5 times Western Australia's population, its prison muster is only a couple of hundred more than ours, and it only reached that level under the Liberal clowns who took over in Victoria, because the previous Labor government had a far lower level than that. Victoria used to have fewer prisoners than we did; it has now exceeded our number, but only slightly. The Thomas Embling

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Hospital in Victoria is a secure residential facility for the mentally ill and has 110 beds. There is the comparison; I do not think that is adequate as a facility for that type of individual, but it is a comparison revealing the inadequacy of our system and the lack of resourcing for that particular section of the prison population.

[Member's time extended.]

**Mr P. PAPALIA:** The question that needs to be asked is not whether the Labor Party empathises with mentally impaired offenders—of course we do. We have made the observation all along that what was needed was to gain and retain the confidence of the community. That was sabotaged by the politicking of the Liberal Party during the last election campaign and subsequently. It was further sabotaged by the Premier's comments about the people who are to go into these facilities. It is undeniable; whether or not the government likes it, in all likelihood, at least some of the people who go into these facilities will have committed serious offences. That is not to say that they should not be eligible to go there, but that is the truth of the matter. The Premier came out and belittled people on this side of the chamber and, worse, the people of the communities directly affected by these facilities and suggested that their concerns were all wrong and that the facilities would be for only minor offenders. That undermines confidence in the system, because people know that it is just not true.

The truth of the matter is that any mentally impaired person should be eligible, through the process, to go into these facilities, in the event that they have been assessed by the Mentally Impaired Accused Review Board and deemed to be suitable for rehabilitation. Does the Premier know who had his charge quashed and was then deemed suitable for rehabilitation? It was a pretty serious offender called Levi Hone. The Premier might want to look him up. For the benefit of other members, he is a sick person who murdered his mother and his stepsister and was found wandering the streets of Margaret River naked; it made the national news. He was going to be charged, but was found—appropriately, in my view—to be mentally impaired, assessed by the Mentally Impaired Accused Review Board and was deemed suitable for rehabilitation. I cannot recall exactly the terminology, but it was something like “in the long term”, “over a long period of time”, or “suitable period of time”. Do members know where he is now? He is not in a maximum-security prison; he is at Wooroloo. I do not know what a long period of time or a suitable period of time is in the eyes of the review board, but I would suggest that in all likelihood that he would be eligible—maybe it is the right thing, maybe it is the wrong thing—to ultimately be transitioned back into the community. Where else are we going to transition him back into the community but from the disability justice centre? That is exactly what it is for.

**Mr C.J. Barnett:** You're wrong.

**Mr P. PAPALIA:** The Premier cannot have it both ways; he cannot say that we are not showing sympathy and empathy for individuals who are mentally impaired—they eventually have to come out—when the board that dictates these things itself has deemed that this individual is suitable for rehabilitation over the course of time. I am not making this up; it is in the newspaper. I am saying that the Premier has completely undermined the entire process; he has lost credibility within the community and he has lost its goodwill, as the member for Bassendean indicated.

**Mr C.J. Barnett:** Talk about politicising it; I think the member for Bassendean excels himself.

**Mr P. PAPALIA:** The member for Bassendean did not politicise anything. The member for Bassendean said to the Premier that he was not telling the truth when he said that only minor offenders would go to that facility; that is not true. The Premier undermined his whole case. People did not believe him because they have read the rules and have seen the evidence; they understand what can happen. The point is that it is a difficult policy environment. I commend the Premier for actually trying to do something, but he should not suggest that this is the big solution. It is a significant step and I acknowledge and commend that, but there are some serious issues. I think that in these times of really serious economic austerity being called for and at a time when the Barnett government has blown out state net debt from \$3 billion at the time it took office to in the order of \$24 billion now and unlimited —

**Mr C.J. Barnett:** Twenty-two.

**Mr P. PAPALIA:** Twenty-two billion dollars! I think it will be \$24 billion actually by the end of the financial year.

**Mr D.J. Kelly** interjected.

**Mr P. PAPALIA:** Yes, what time is it? Debt will be going on its way to \$30 billion, with no plan to arrest it, I might add. I am making a serious point that I am not trying to be critical of the Premier here.

**Mr R.H. Cook** interjected.

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**Mr P. PAPALIA:** Stop it! The member for Kwinana is trying to make me laugh, but I am being serious. I think we have to consider priorities. I am not saying that it was not appropriate to release Marlon Noble, Rosie or people of that ilk, but I wonder about who else we might be spending time, effort and money on when at least 15 per cent of our prison population is mentally ill and a large number of them may be far more suitable for rehabilitation at lower expense in a more effective way—I do not know. As cold-hearted as that sounds, as far as economics go, we have to wonder whether we are spending the money in the most efficient fashion, and even if we continue to spend it this way, whether more money or different money, perhaps money we are currently spending on locking up people in maximum-security prisons at Hakea, Casuarina and Albany, might instead be allocated towards a different facility where people who are not mentally impaired but who are mentally ill and have offended and must be put somewhere could be placed and treated in a better environment. It is just a contribution I want to make in light of the debate and particularly in light of the contribution from the member for Eyre, who I think, unnecessarily, attempted to position himself and his government on the high ground. I know he cares and I know he has a long history of advocating for better dealing with mental illness in Western Australia, and that is partly why he lost his job as the minister, which is a sad thing.

In the course of this debate the member for Bassendean has in an appropriate fashion represented his community, whose concerns are legitimate and real, in the face of belittling and inaccurate responses from the government, particularly at the very highest level of the Premier; therefore, in the face of that it is appropriate that we correct the record a little and that we introduce some of the other arguments that need to be considered and some of the other concerns in the prison system. For instance, why, more than five years after it was first brought to the government's attention that there was no resourcing for screening people with mental illness as they enter the prison system or whilst they are there, has nothing been done about it? Is it that we do not want to know how many people with mental illness are in there? Is it that we prefer not to know? The government might say that that is justifiable when confronted with an adult prison muster of 5 247 people, that there is not the time because the Barnett government is overwhelming the prison officers and other staff as it is. It has made conditions dangerous for staff as it is and it does not want to give them any more tasks because they are flat out just keeping themselves alive and the prisons under control. But what about the juveniles? I understand that the minister has a focus on juveniles, but there are far fewer of them. If the government's argument is that it cannot possibly tell us what the situation is with the 5 247 people in the adult system, we would imagine a different system at Banksia Hill Detention Centre, which held in the order of only 150 inmates at the time of the last answer I got to a question on notice, which was on 26 June; the government might be able to get on top of how many prisoners are mentally ill and give an answer about how many have been diagnosed with mental illness. We might think that, might we not? We might think that the number of intellectually disabled prisoners could be identified because there are only 150 prisoners, not 5 247. They are all in one location, they are just juveniles and the centre is pretty well resourced. We spend in excess of \$220 000 a year on each of the prisoners out there.

**Ms S.F. McGurk:** It might be a good investment.

**Mr P. PAPALIA:** The member for Fremantle thinks that might be a pretty good investment, what a good observation! We would think that asking that question to the government about juvenile prisoners might elicit a different response than when asking about adult prisoners, but no. Sadly, the answer is as follows —

(a) This information is not recorded in a manner that is easily retrievable and therefore it is not possible to accurately identify those prisoners who have a diagnosed mental illness.

Defining mental illness is not a perfect science therefore accurate numbers cannot be given ...

The answer stated that 23 juveniles currently in custody had been diagnosed with a mental illness, but it went on to state that an answer cannot really be given. In response to the question about how many prisoners were intellectually disabled, the answer was —

The Department advises that this data is not available.

I asked this question before, so I know the answer. On another occasion I asked how many people had foetal alcohol spectrum disorder. How hard is that to answer? I know it is hard, but there are 150 juvenile prisoners. There is \$220 000-plus spent on each of them every year. I would suggest that it is probably a good thing to know, while they are in custody and when they are going to go out, whether they have FASD. The minister has no idea; his department does not know. I think that is something we should address. I commend the government for this move, but there are a lot of other issues regarding offenders who are mentally ill or disabled that need to be addressed in an honest, open fashion so that we bring the public with us, not in this underhanded, disparaging and spiteful political manner that was engaged in by the Premier.

**Mr C.J. Barnett** interjected.

**Mr P. PAPALIA:** The Premier was; he has forgotten.

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**MR R.H. COOK (Kwinana — Deputy Leader of the Opposition)** [8.59 pm]: I thank members for the opportunity to speak on the Declared Places (Mentally Impaired Accused) Bill 2013. I will begin by commending the member for Warnbro for his galloping dissertation on some of the important issues that are touching upon his shadow portfolio at the moment. I never cease to be impressed with his command of the details of his shadow portfolio area.

I also want to commend the member for Eyre for his contribution. He provided a very eloquent description of why this legislation is important and deserving of support. This legislation will create safe places for the mentally impaired accused so that they can continue to receive the care and treatment that they need in a safe environment. The member for Eyre set out very well the reasons why we should support this legislation. We do support this legislation. This legislation will get through this place with the support of both sides of the house. But that is not what is at question tonight. We support this legislation and we believe that these places are very important. We believe they will create an important value-add for our community in providing places in which the mentally impaired accused can stay. We believe they will provide a just and balanced process through which these people will be able to reconcile what they have done or have been accused of doing, and that it will provide these people with the appropriate response from a compassionate community, as we would expect. Because of that, we support this legislation.

However, this legislation also represents a stolen opportunity for all of us in this place to talk about the detail of the legislation and to embrace the legislation and see it through with the honour and dignity that it deserves. What we see here writ large is the modus operandi of this government and the way in which it treats the community. What we have here is a very important window to examine the way this government behaves before an election and the way it conducts itself after an election. What we have here is another demonstration of the character of this government and the duplicitous way in which it treats the electorate. I am sure the member for Bassendean would have loved to have had the opportunity to talk about the importance of this legislation and the reasons why we support it.

**Mr D.J. Kelly:** Absolutely.

**Mr R.H. COOK:** I am sure the member for Bassendean and others would have loved to have had the opportunity to talk about how these places will improve our justice system. However, that opportunity has been taken from the member for Bassendean, because he has another obligation. That obligation is to support the people in his community. We on this side of the Parliament—indeed, all members of Parliament—have an obligation to inform the government when it is conducting itself in a manner that is unconscionable. The way in which the government has conducted itself in this particular debate is undoubtedly unconscionable.

**Mr C.J. Barnett:** Just for your information, a group of people from the member for Bassendean's electorate came to see me. They were totally civil and totally courteous, and that probably in part led to a change in our decision about the site. They behaved absolutely impeccably—not like the way you have behaved in this debate.

**Mr D.J. Kelly:** What did you expect?

**Mr C.J. Barnett:** In contrast to your behaviour is the point I am making.

**Mr D.J. Kelly** interjected.

**The SPEAKER:** Member for Bassendean, let the member for Kwinana carry on.

**Mr R.H. COOK:** I say in response to the Premier that I know these people. I have been to one of their meetings and have met with them. They, too, have had an opportunity stolen from them, because within that community there was a huge sense of goodwill and a huge sense of obligation to respond in an appropriate manner to this important policy issue. However, that opportunity has been taken from them because of the way in which this government has conducted itself.

Prior to the election, the government had made the decision that it would install these facilities in Kenwick and Herne Hill. There was a range of public debate about that process, and the government withdrew those proposals and stated that it had learnt its lesson and would consult better next time. The implicit message from the government was, "Trust us, because we have learnt our lesson, and we will consult with the community to make sure these public debates do not spill over in this way again. Trust us, because we have learnt our lesson, and if you elect us again in March 2013, we will do things in a very different way." However, the people whom the member for Bassendean represents are angry. They have essentially been betrayed by a government that in point of fact did not undertake a consultation process and in point of fact should not have been trusted by the community, because, straight after the election, the government began a very different process.

This reminds me of another debate that we have had in this place recently around the amalgamation of local government authorities and the so-called reform process, which this government has undertaken with a great deal

**Extract from Hansard**

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of vigour. The government said prior to the last election that there would be no forced amalgamations. The government said, “Trust us, good folk of Western Australia, because we can be trusted with the keys of government once again, and you have nothing to fear from this local government amalgamation process, because we will not force any local government authority to amalgamate.” However, fast-forward to the post-election period, and we all know what happened. We have a government that has disowned all of its pre-election rhetoric and in one of the greatest acts of electoral dishonesty has flipped back to its original process of forcing local governments into an amalgamation process. We saw the angry scenes on the steps of Parliament House from local government and community representatives. We saw how the mayors, who would otherwise wear their glamorous chains and conduct themselves in a dignified process, found themselves boiling over with anger because of the lack of integrity with which they were being treated by this government. We saw the total lack of consultation and, quite frankly, the rank dishonesty of the government in saying, prior to the election, “Trust us; we have learnt our lesson and we will not force local government amalgamations”, and how post the election the government reverted to type and the local government reform process was steamrolled forward, taking all in its path.

I think people have the right, when they are treated so badly, to react with anger. I am sure the member for Bassendean and the people in his community group would want to talk about the treatment of the mentally impaired accused in an inclusive and compassionate manner, with just language, and in a way that does this community proud, but they cannot do that, because the government has stolen that opportunity from them. The government said in the lead-up to the election that it has learnt its lesson and in future it will consult, but immediately after the election, with lightning speed, we have this new proposal from the Western Australian Planning Commission, and the government comes up with a couple of proposals that land in the electorate of one of its government’s opponents. It is all just a bit too cute. The government now has the gall to say, “How dare the member for Bassendean be angry? How dare the member for Bassendean stand up for his community?” The government had the gall to try to take some sort of moral high ground, on the basis of what this legislation does in principle. In the context of how the government has behaved, which is totally unprincipled, the government simply has no claim to take the moral high ground. So, as in the local government process, there has been this boilover of anger in the community.

As I said earlier in my speech, I went out to meet the members of this community group. If I remember correctly, member for Bassendean, it was a stinking hot day and we could not find the air conditioning. Nevertheless, on this Sunday morning they were all there to talk about this issue because they care for their community. In that room there was a very conscious acknowledgement that these centres are important and a very conscious acknowledgement of the obligations that we all have in our communities to make sure that we have safe places for these people to stay. However, they could not let go of the fact that they had been badly mistreated. That is what happens when there is a complete breakdown in the integrity of the government process. No matter how principled the legislation and the jurisdictional mechanism by which the government implements these policies are, if the way it implements that policy is dishonest and a bastardisation of its own policies and guidelines, people will see through the so-called principles in the legislation and see the government for what it is. It is trying to mistreat them and ride roughshod over their concerns, so it gets back in buckets and spades the anger that it deserves.

The two sites that the government identified, the Lord Street site and the Altone Road site, did not even meet the government’s own criteria. I would have thought that if the government was trying to cook up this sort of scheme, it would at least have covered itself with its own arguments, but it did not even do that. The Lord Street site failed to meet three of the criteria; that is, it was too close to schools, it was too close to homes and it did not have the support of the local government authority. By the government’s own definition, the policy approach it took lacked any integrity at all, so it is not surprising that the community responded. It is not surprising that the only mechanism that members of Parliament have at their disposal is to mobilise public opinion and the people in the community, to utilise the time and opportunities we have in this place to put forward our arguments and to try once and for all to make this lot see just what it is doing to the community. If it is expecting a dignified debate, as the Premier insists, it should treat the people in the community who will be affected by this legislation with the same dignity. If it is looking for much more compassionate and inclusive language, it should make sure that the measures by which it is implementing its policy have at least some modicum of integrity. The government said that it would consult the community. Why did it not consult the community? Why did it simply plonk an unaddressed note into letterboxes the day before it made the announcement? Why did it treat the community so badly? Why does it expect the community, and us as its representatives, to now sit back and say, “That’s fine; off you go”? Of course the member for Bassendean gets up and rails against this decision, not because he does not believe in the purpose of this legislation, but because he believes in his community being treated with respect. It is the same respect that the government should have given the electorate. If it made one commitment prior to the election, it should have stood by that commitment. But as with all its broken promises,

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the ridiculous so-called reform process around the forced local government amalgamations and this issue, it has not treated the community with integrity. It has not provided the community with the opportunity to use the right language. It has not allowed the member for Bassendean to take the stance that he is naturally inclined to take by saying that we support these things and that everyone in the community has a responsibility to share that burden. Instead, because of the government's duplicitous, slippery language and, quite frankly, the misrepresentation of its position, it has created this boiling point. It has brought out the very worst in the community because the community has been treated so badly. If the government wants the community to respond in the appropriate way to this sort of just legislation, it should treat the community justly. If the government wants the community to respond in a dignified manner to its proposals, it should treat the community with dignity. If the government wants an honest debate about this, it should treat the community with the same honesty. But it has not.

I am interested that the government has withdrawn one of these proposals, and that must come as some relief to the community. Indeed, I think many people in this place will be relieved that the government is at least rethinking its approach and understands from the response from the community that there is a lot of anger about the way the government has conducted itself in this particular case. It is interesting to note that the Premier said that part of that decision was motivated by the way in which members of the community conducted themselves when he met with them. I also met with members of the community, so I am pleased that the Premier at least had the respect to meet with them. They are reasonable people.

**Mr D.J. Kelly** interjected.

**Mr R.H. COOK:** In what sense?

**Mr D.J. Kelly:** Because they were polite. The rational argument was lost on him because they were polite.

**The SPEAKER:** Thank you, member for Bassendean.

**Mr R.H. COOK:** I thank the member for Bassendean for his interjection. Perhaps through that meeting, the Premier realised how badly his government had treated the community and that it had to rethink its approach on this issue. Indeed, they are reasonable people but they are angry people and they will continue to be angry while they are treated so badly.

In conclusion, I thank the member for Eyre for his lofty speech, as the member for Warnbro described it. It was a good enunciation of why we all support this legislation. However, this is too good an opportunity not to bring the concerns of the community to the attention of this Parliament. As I said at the beginning, this is a lost opportunity. The opportunity to respond to this debate in a dignified way has been stolen from members of Parliament and members of the community. The opportunity to respond in a dignified way using that inclusive, just and compassionate language was stolen by this government, not through its decision to introduce this legislation, but through the way it has conducted itself in implementing this policy. It stands as another reminder of the dishonesty with which the Liberal Party treats the people in the community. It stands as another demonstration of just how poorly this government treats, and the low level at which it holds, the views of the people of Western Australia in that it can at one moment say that it will do one thing, flick through an election and then turn on a dime and change its position. We see it with issues such as this and the forced amalgamation of local governments. One day it talks about the redevelopment of Royal Perth Hospital and the next day it is off into the never-never. One day it is going to build a light rail system but the next day it is not particularly convenient to build light rail. This government constantly retreats from any pre-election commitments it has made only to reinvent a world of absolute convenience after the election and do as it sees fit.

**MR J.R. QUIGLEY (Butler)** [9.19 pm]: I also rise to lend support to the Declared Places (Mentally Impaired Accused) Bill 2013. The Labor opposition, of course, supports this legislation. It is a process by which the government has stated its intention to position the first two declared places, and that has caused all the angst. The legislation will fill a hole in the Criminal Law (Mentally Impaired Accused) Act, which was introduced in 1996 and which provided that people who were found by a court to be unfit to plead to a charge could be detained in a declared place. There was, of course, no declared place, nor has there been in the ensuing years. In recent times, the community has been disturbed to learn of the indefinite detention in Marlon Noble's case and more recently, the case of Rosie from Kalgoorlie. I say "indefinite detention" because these people were released from detention only under a welter of media publicity about the terms of their indefinite detention when convicted of no offence and suffering from no mental illness other than a cognitive disability that rendered them unfit to plead. I think Mr Noble's cognitive disability happened at birth due to the dreadful aftermath of hypoxia, or oxygen deprivation, at birth. In Rosie's case it was due to the terrible ravages of foetal alcohol spectrum disorder, a condition that the Premier spoke publicly about a few weeks ago when he described the sufferers of that mental disability as perhaps among the most tragic in our society. They suffer their withering disabilities due to their mothers' ingestion of alcohol during pregnancy. I am personally acquainted with other cases that are just as tragic in which people have suffered closed-head injury. I am thinking of a five-year-old child who suffered

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from a closed-head injury when he was in a vehicle driven by his mother, which was T-boned by another car that failed to give way to its right. Through this young boy's childhood and progress into adulthood his condition deteriorated. He comes from a wonderful family but he started offending in all sorts of antisocial ways that included assaults, but because of his impairment he is unfit to plead to any charge.

The member for Warnbro has quite rightly and properly pointed out during this debate that within the prison system in Western Australia, a phenomenal number of people with a mental illness are incarcerated. This legislation does not address that, because it deals with people who have been declared unfit to plead. This legislation provides for places of detention for those who are not suffering from mental illness but are burdened with mental impairment; nonetheless, it is appropriate at this time to pause to reflect upon those issues raised by the member for Warnbro and the hundreds, if not thousands, of people who are within our prison system at the moment suffering from mental illness and whose condition is largely untreated. I am aware of a research paper for a doctorate being prepared at the moment. I have been speaking to the supervisor of the doctoral thesis, who is examining the cognitive ability of prisoners within maximum-security institutions in Western Australia. He estimates that up to 40 per cent of them are suffering from severe cognitive disability and would rate their level of cognitive functioning to be worse than what we would see at a drug and alcohol treatment centre in Perth, such as the Drug and Alcohol Authority. These people are not functioning cognitively. They have offended and have been incarcerated.

I and the Labor opposition agree with the government that people who have been found unfit to plead by reason of mental impairment have to be housed not within a prison but within supervised residential facilities that will ultimately be within our community. It is not unreasonable to expect people in communities where these facilities are to be located to be concerned. Of course, they will be concerned. It is a matter of the government trusting in communities and taking them along with it by explaining the situation. I have high regard for the reasonableness of people in my electorate and in our community generally. Generally, the community will come on board when the process is explained, the sort of people to be housed are described and the conditions under which they will be housed are explained and, as the bill provides, there will be community consultation groups. Once we do something sneaky behind people's backs and break trust with the community, it is very hard to recover. I will juxtapose this government's approach to housing—bearing in mind these people have not been convicted—possible offenders within the community with what happened under Dr Gallop's government. It was decided to provide intermediary housing for women prisoners who were released from higher security prisons. Of course, I refer to the institution of Boronia in Kensington. The member for Victoria Park has had to leave us this evening, unfortunately, but he gave me the address. It was located, not politically, in the Premier's own electorate. He made the call as it was his government. A recommendation was made on the appropriate place to locate the facility and Boronia was decided upon. What a steaming success it has been. There it is in the Premier's electorate. What was the rank cynical reaction from the Liberal Party when it was in opposition? Its reaction was to rail against this. The former member for Nedlands, "Ms Lighthouse", together with the member for Cottesloe went across the Causeway to Victoria Park and caused as much trouble as they could cook up.

**Mr D.A. Templeman:** I remember.

**Mr J.R. QUIGLEY:** I thank the member for Mandurah. People who have been here a while will remember that in this chamber the former members for Nedlands and Cottesloe said that they would not let the government get away with putting the prison in the electorate of Victoria Park. They said that they would go over there and tell the community what the government was doing and let them know that it was putting these people in the community. They tried to cause as much disturbance as was possible. It was not in their electorates or their own communities. A Labor Premier leading a Labor government put the facility in his own electorate and brought his community along with him. He explained what sort of facility it was and what sort of processes would be involved. He explained the low security risk involved and brought the community along with him. As I said, it was that dreadful cynical cheap political response by the Liberal opposition that caused members from the western suburbs to spend any time in Victoria Park for the first time in probably months by going there and trying to drum up trouble. This shallow and cynical response from the Liberal Party did not work because the bond of trust was not broken between the people and their local member. The facility went ahead and, as the Minister for Corrective Services knows, it is a very well-run and well-regarded facility in the suburb.

**Mr J.M. Francis:** You know what I've been reading today? It is Jim McGinty's report from when he went to Canada in 2001, which is where he got the idea from.

**Mr J.R. QUIGLEY:** That is right, but I am saying it was placed in the Premier's electorate. The government did not go around trying to figure out the most politically advantageous position to put this prison. It did not say it would not put it in a Labor electorate because it could have a bit of blowback. It said it would put it in the Premier's own electorate and take the community along with it. It made the decision based on what Hon Jim

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McGinty found in Canada and the government explained all that. The Minister for Corrective Services knows how well-run it is and that there is no blowback or community protest about the running of Boronia.

**Mr J.M. Francis:** There's a community consultation group.

**Mr J.R. QUIGLEY:** Of course there is a community consultation group. Compare that with the process here. The trust with the community was shredded. Governments have to make calls. The government made a call to build these facilities in Kenwick and Herne Hill. In 2012 that is where they were originally planned to go, but running into the election of 2013, the Liberal–National government decided to dump those two sites. Then after the election, without any consultation, it chose the sites that then became controversial. Surprise, surprise! The government has dumped two facilities that were going into Liberal electorates and put them into Labor electorates. What is the community going to think? It will think that these facilities are of such a nature that no Liberal would have them in their own electorate. Instead of building trust with the community, the government immediately caused suspicion. These facilities, for some reason, are too dangerous or too problematic to have in a Liberal electorate. The government cancelled them and put them both into a Labor electorate. The government politicised it when it was not necessary.

The government could have followed the exemplary example of Premier Gallop when he established Boronia Pre-release Centre for Women in his own electorate and brought the community along. The people are not silly. The people heard that these facilities had been dumped from Kenwick and Herne Hill in the Liberal electorates of Swan Hills and Forrestfield. The Liberal Party wanted to win Forrestfield, so it did not want to put the facility there. Then straight after the election, the government announced Lord Street in Lockridge–Caversham and Altone Road in Kiara–Lockridge, which are both within reasonably close proximity to schools. It comes out, of course, that the Disability Services Commission identified about 12 sites that were suitable and these, of course, included sites within Liberal-held electorates, but they were avoided. The government then announced that it would put these facilities near schools in a Labor electorate. They have to go somewhere—schools and shopping centres are all over Perth—but the process shredded trust. The government did not try to bring along the community. Is it any wonder it has blowback? The minister must be sitting there wondering how Dr Gallop did it. How did he put an open prison within his own electorate? He did that by trusting his community and explaining to the community what would happen.

[Member's time extended.]

**Mr J.R. QUIGLEY:** He did not do it through a cloak-and-dagger process. Firstly, the government announced that it would create these two facilities. That was not long after Marlon Noble was released. The government realised the demand for these facilities and it knew it had to respond. It said it would have declared places and it would build a couple so that both sexes could be accommodated. It said it would put one in Kenwick and one in Herne Hill. As the election closed in, the government said that those are two Liberal electorates and these facilities were not fit for Liberal electorates. Therefore, the government decided to dump those sites, and then straight after the election it announced that the facilities would go in a Labor electorate. That stinks of politics and the people of Lockridge–Caversham and Kiara are entitled to ask, "Why us? What do you know that we do not know? Why were these unfit for those communities and suddenly going into our communities in proximity to schools? Why aren't they going to the Sunset people's home?"

**Mr D.J. Kelly:** Beautiful place.

**Mr J.R. QUIGLEY:** It is a beautiful place. It is nice and calm. The Waratah Avenue shopping centre is nearby in Dalkeith. It has all the facilities. There is a lovely bus service, the 203, which hooks down there through Dalkeith.

**Mr D.J. Kelly:** There is the river.

**Mr J.R. QUIGLEY:** There is the river and recreational grounds—good neighbours!

**Mr D.J. Kelly:** So I have heard, but I could be wrong there!

**Mr J.R. QUIGLEY:** They would have good neighbours. Curtin Avenue, Cottesloe, was then identified as a site. I know the facility—the cable station with the false roofs. I know there is a Montessori school there, but I can remember when it was the McCall Centre, a home for delinquent boys. It did not worry the Montessori school, selecting the shed next door as it was then, to locate itself next to a school full of delinquent boys. It would have been more problematic being located next to that school than next to some of these people who have been detained. Who knows? Quite frankly, it astounds me that these centres are not closer, say, to Graylands Hospital, which has mental health services to hand, but perhaps that is another issue.

The Premier sought to say that Labor is trivialising the argument by referring to his ice-cream thief analogy, but we are not trivialising the argument at all. I do not wish to make any political mileage out of the circumstances

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of Marlon Noble, but it is helpful to go to that case. He suffered a very serious mental disability from birth and was charged with several circumstances of indecent dealing with young females. He was never convicted of those offences because of his mental impairment. He then languished in prison for a decade, as we all know. We all know also that his case was first brought to light by a lawyer contacting me who had been approached by prison officers in Greenough Regional Prison to say that a prisoner was languishing there who had never been convicted of anything and no-one knew what to do with him. Certainly, the charged offences were more serious than stealing an ice-cream. At the time of his eventual release, when Hon Christian Porter was the Attorney General, the Prisoners Review Board, as I recall, set forth about a dozen conditions pertaining to his release, including that he not go near children unaccompanied and that he live in a certain place. They were akin to strict parole conditions. I raise this only to say that the authorities had some concern about his future behaviour, so it is not just people who might commit the most petty property offences like that Indigenous lad some years ago who was imprisoned in Northam for stealing a Freddo Frog chocolate as he left the shop. It is not those Freddo Frog chocolate thieves who will end up in these declared places; it is other people, too, who have been brought before the courts on allegations of sometimes quite serious antisocial behaviour offences and who have been found, by reason of their mental disability, unfit to plead.

I am also concerned about the size of the facilities proposed, because the 10-bed facilities being proposed will be grossly inadequate and we will find the courts being asked more often in the future to consider a person's mental impairment, especially given the mandatory sentencing laws. I notice from the government's own report on mandatory sentencing as it applied to those who assault public officers that its main recommendation was that the government give consideration to changing the law insofar as it applied to those people with mental illness or mental impairment. I suspect that the courts will become more sensitive to this whole area as we go forward. They will be reluctant to deal with a person who is suffering from heavy mental impairment, be it foetal alcohol syndrome disease, extreme autism or mental impairment from a head injury, and will be much more sensitive to their disposition. I will not take that further at this stage, but I do not think that a 10-bed facility is going to cut it.

The opposition welcomes the legislation. The opposition welcomes the structure of the legislation and the safeguards for those who are detained. These are all very positive developments. As I say, for the Premier, who has returned to the chamber, I recollect him and the former member for Nedlands, the former Mrs Lightfoot, travelling over to Victoria Park to cause as much trouble as they could about the siting of the Boronia Pre-Release Centre for Women in the then Premier's own electorate. For this Premier to turn around and announce two of these places in Kenwick and Herne Hill before the state election and then, running into the election, to cancel those and, without consultation, relocate both into a Labor electorate breaks the community's trust. There was no need for that, and the Premier cannot get that trust back. The community is going to say, "You did not want them in your Liberal electorate. You cancelled that before the election and cynically dumped it on us after the election." Although I support the construction and location of the facilities proposed under the bill, I ask the government to take a leaf out of former Premier Dr Gallop's book and take the community along with him in any future decision to find a better location than the one remaining at the moment.

**MR D.A. TEMPLEMAN (Mandurah)** [9.48 pm]: I would like to make a contribution to the Declared Places (Mentally Impaired Accused) Bill 2013, and I think I might be the final contributor tonight before the parliamentary secretary responds. This is an important bill because it deals with people who are significantly vulnerable in our community and in many ways have not been justly dealt with prior to the decision that is contained in this bill to create a suitable place where they are able to have their needs addressed as they progress through life. As a number of speakers on this side of the house have highlighted, the problem is not with this bill. The opposition supports the bill and the creation of appropriate places to ensure that some of our most vulnerable people are indeed catered for and protected. The problem, of course, is with the process, and that has already been highlighted by a number of speakers on this side during the debate. Some 15 of my colleagues on this side of the house have had their say, as is their right, with regard to the Declared Places (Mentally Impaired Accused) Bill 2013, and I have listened with interest to some of their contributions. I want to reiterate the importance of the example given by the member for Butler just prior to my standing. He referred to the example of Boronia Pre-release Centre for Women in the then Premier Gallop's electorate of Victoria Park. We on this side remember that very well, particularly those of us elected to Parliament in the 2001 election, when the Gallop government came to power. The member for Butler is very correct about the example shown by Premier Gallop in recognising the necessity of having a low-security prison for women, many of them with children, and that the facility needed to be in a place where those women could be rehabilitated as quickly as possible. The member for Butler also quite rightly and quite eloquently highlighted that there was no proposal to be political about that decision. Indeed, the then Premier, in recognising the need for a detention centre of that nature, was quite happy to have it situated in his electorate because the final site was found in that area. As the member for Butler highlighted, it was about process. Yes, there were concerns raised by the communities within the former Premier's electorate and, yes, it is true to say that there were significant attempts by the former member for

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Nedlands and the current Premier to conjure up a range of community angst against that proposal, but if we compare the processes that led to the establishment of the Boronia facility with the process that has led us to where we are now with this facility, the differences are stark. In many respects, the Barnett government's handling of the establishment of declared places for mentally impaired accused has been botched. I think it is important for the opposition to highlight that, because if we ever need in future to look at examples of how not to do something, we will need only to look at the Barnett government's handling of this particular issue.

The opposition has said that it will not oppose this bill because we recognise that it is important to have these facilities. However, the concerns of local communities and key stakeholders must always be part of the consultation process. The good people in the communities that make up part of the electorate of Bassendean—in this case, the people who have an immediate interest in the two original sites and now one designated site—should have been listened to right from the beginning. Of course, what we instead found was that they did not even know that they were to have these two sites until it was announced and was already a *fait accompli*. There was no initial consultation at all, and it was only through the good advocacy of a range of people, including the member for Bassendean, that those people's concerns were heard.

I refer to the final paragraph of the second page of the second reading speech of the bill, which talks about the importance of the purpose of a declared place being articulated clearly in the bill. It highlights that although it is important that vulnerable people with a disability who have not been found guilty of a crime be separated from mainstream prisoners, the principles and objectives of the bill go much further than establishing separate accommodation that will be more home-like. I quote from the second reading speech —

The principles and objectives require, in order of priority, the protection and safety of the community, —

It is important that we remember that the order of priority, first and foremost, is indeed the protection and safety of the community. Therefore, when a government seeks to foist such a centre on a community, one would think that the people who are expected to accommodate such a centre would be central and pivotal to the consultation process, but we know that in this case, that did not happen. The second reading speech continues —

the protection and safety of residents, and an environment where residents are provided with the best possible training and developmental opportunities to promote their physical, mental, social and vocational abilities.

I think we all agree that a facility of this nature is always going to have an element of controversy or potential controversy, and the issue of trust is crucial. The member for Butler is quite correct that, in many respects, trust was trashed in the early parts of this whole process. That is why so many people turned out to rallies and community meetings and wrote to local members; I am sure the Premier got some letters, along with the relevant ministers. One can completely understand how the way in which this decision was made could ignite a range of issues for many, many people.

The member for Butler raised another important point, and I would be interested to hear the parliamentary secretary's response to it. It is my understanding that this proposed facility will accommodate a maximum of 10 people, and I am very interested to hear what guarantees we have about it being delivered in terms of that number actually being the maximum. I understand there are concerns within the community that although it is intended for the facility to accommodate a maximum of only 10 people, there is no rock-solid guarantee that that will be the maximum number. As the member for Warnbro very clearly and effectively articulated in his contribution to the debate, we have only to look at the broader prison system to see increasing numbers, resulting in double-bunking and other mechanisms to accommodate more than what the prisons were initially built to accommodate.

As has already been highlighted by the member for Warnbro, in some of our prisons there has been an increase of 30-odd per cent in prisoner numbers during the Barnett government's tenure. Some of our prisons are accommodating greater numbers of inmates than they were constructed or designed to cater for. I understand that a lot of people in the communities affected by this decision are listening to this debate and will watch it and read the transcript of it very closely, and I would like the parliamentary secretary to answer that question in her response and guarantee that this facility will allow a maximum of only 10 people. If the parliamentary secretary cannot make that guarantee tonight, again, the community has every right to question the honesty of the government and its intentions. I will repeat that there is concern that although there is a proposal for a maximum of 10 people to be accommodated in the facility, will the parliamentary secretary guarantee that there will be no more than 10 in the future? It is a question that really comes not from me, effectively, but from the community. I have cited the example of our current prison system in which we know there are swollen numbers and prisoners are being doubled-bunked.

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I understand that the member for Bassendean will be proposing some key amendments to this bill. I am not sure whether those amendments have been widely shared yet.

**Mr D.J. Kelly:** They are on the notice paper.

**Mr D.A. TEMPLEMAN:** They are on the notice paper; good. I will make sure I avail myself of them! From memory, one of them seeks to enshrine the criteria for where future facilities of this nature are to be located. I think the member for Bassendean is proposing an amendment that enshrines in the legislation itself the government's own criteria. I would be interested in the comments of the member for Kingsley, as the parliamentary secretary handling this bill, in her response to the second reading debate about whether she will support the inclusion of that specific amendment, given that that criteria is the government's own rhetoric. I am interested in the parliamentary secretary's response to that group, because I would like to see government members support the inclusion in this bill of the government's own definition, if you like, of the criteria for the placement or location of these particular centres. I ask that the parliamentary secretary, the member for Kingsley, respond to that.

Finally, I have a reflection, I suppose, on the process. I will always remember that when I was a City of Mandurah councillor in the 1990s, a community group came to the council seeking to establish a day facility for people with mental illness. I was deputy mayor at the time and they came to the council because, as members know, mental health has been, and continues to be, a growing issue—this was in the mid-1990s. A lot of people with sons and daughters with mental health conditions and illnesses were seeking a place where they could come together during the day and be assisted with support programs and even some therapy programs in a neighbourhood in the community. I will always remember very, very starkly the initial community angst. What we did as a council, and indeed as a committee, was talk about the importance of these sorts of facilities as part of the health and wellbeing of people suffering from mental illness—as an important starting point of their healing process. It was a very interesting process; we did not rush the decision and we allowed wide consultation. I remember at one council meeting there were numerous deputations from people who were very angry. I also remember a fellow standing up to speak; he has passed away now, but he was the father of a son who had a fairly serious mental health condition. His name was Mr Porter and I remember him very, very vividly. Having heard a lot of the angst, he stood up in the council chamber to make a deputation. He took a very interesting approach. In those days, and it is still the case, a person faced the council when they made a deputation. He did something that I do not think had been ever done before. He actually turned and addressed both the people in the crowd, in the audience, and the councillors and the mayor as well. It was a very powerful way of addressing an issue that was important to him.

[Member's time extended.]

**Mr D.A. TEMPLEMAN:** He had very much a vested interest, because he was talking about his son, but he stood and positioned himself so he was talking to both parties—the audience, including protagonists, and us, the councillors and the mayor at the time, who were to make this decision. I had not seen for a long, long time the capacity for someone to be simply persuasive. He was not a man of many words, but it was the words he chose and the way he delivered them that I actually think swayed not only a lot of the councillors, but also many of the antagonists in the audience on that night. I will always remember this: he talked about how he understood the fears that people had, but he also advocated the importance of such a facility. I think from memory we still deferred the decision that night because the council decided it wanted to have more time to explain the situation to the people who were concerned. The beauty of this story in the end was that the facility was approved. I still remember it was on the corner of Elizabeth Street and Anstruther Road in Mandurah. It was called Elizabeth House because it was on the corner of Elizabeth Street. It would be open during the day for people with mental health conditions and would be staffed by experts or support staff from Peel mental health and some volunteers. The beautiful end of this story was that a number of people who lived in the neighbourhood ended up volunteering there. The centre was very well run. The importance of working with the community, who were neighbours, and the people in there was paramount to its success. I do not propose that this is the same situation that communities in Bassendean face, but I think it highlights that if the process is inclusive and is based upon and developed with trust, there can be positive outcomes. I think an example of that was given very clearly in former Premier Gallop's electorate and the process that was achieved with the siting of the Boronia centre. The process that has led us to this legislation, but also has caused the angst and concern in the communities in Bassendean, is a bad example because of the lack of trust and faith in the decision-making. Because of the way in which decisions were made and articulated, that trust was, as the member for Butler said, trashed at the beginning. It is very important to ensure that we look after people who are vulnerable. The people who will go to these places are some of the most vulnerable citizens in our community. But the example of the process in this case has been less than exemplary.

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Finally, I ask the member for Kingsley in her response to please provide a rock-solid guarantee that the number of people in the facility will be no more than 10. I would appreciate it if the parliamentary secretary could answer that particular element in my questioning of her.

**MS A.R. MITCHELL (Kingsley — Parliamentary Secretary)** [10.10 pm] — in reply: I thank members for their support of the Declared Places (Mentally Impaired Accused) Bill 2013. Although these declared places were approved a while ago, they have not been able to come into operation because we have not had the legislation. That is why it is important that we have bipartisan support for this legislation. I believe we all recognise and agree that there is a very important need in our community that at this stage is not being met, and that is what this legislation will be able to achieve. So I once again thank members for that support.

There are a number of issues that I would like to address in my reply, and I will do so very briefly due to the time, but that does not mean that they are not serious. The first thing that I would like to say is that this bill will provide the legal framework for the Disability Services Commission to operate declared places. That is why I said before that we have not had that legal framework in place. That is very important.

I was a bit disappointed that much of the time was spent talking about the location of these declared places. Of course, the location of declared places is determined in accordance with the Western Australian Planning Commission, whose processes are used when it comes to public works. This is a public work, and, as is the case with all public works, it follows the Western Australian Planning Commission and not enabling legislation such as this bill. Therefore, to answer one of questions that the member for Mandurah asked, no, we will not be supporting the amendments proposed by the member for Bassendean on location.

Can I say also that the main part of this bill is about the operation of declared places so that we can ensure that the purposes and objectives for the individuals and the community, and the processes and programs that will occur, will achieve the best results for everyone involved.

The member for Willagee asked a number of questions regarding admission to and discharge from a declared place. The members for Armadale and Girrawheen asked about residents who may have co-existing mental issues. The Mentally Impaired Accused Review Board will determine whether a person is suitable to be housed in a disability justice centre and also any discharge processes that may occur. We are very pleased that we have such a strong board in the Mentally Impaired Accused Review Board that will be able to make those decisions. It is also important that the centres have set criteria to work from. I should note also that many of the people who will fit into this category are probably already receiving services from the disability justice group, and that is very important for the next phase of their transition. A lot of people got a bit confused and started to talk about mental illness. This bill does not concern people with mental illness; they already have a place that they can be transitioned to from the prison system if they cannot stand trial. This is quite different. I will not respond to the comments about mental illness or situations in prison because this is not about prisons; this is about a declared place, which has an entirely different focus.

The criteria are that they have a disability that is a cognitive impairment or an intellectual disability, not a mental illness; that they are at least 16 years of age; and that the Mentally Impaired Accused Review Board has taken into account the degree of risk that the resident presents to the community or any individual in the community. Because this is quite specifically about people with an intellectual disability or cognitive impairment, the Mentally Impaired Accused Review Board needs someone with that expertise, so a Disability Services Commission member will sit on the board. In fact, the new member with disability services experience will sit on the review board for all cases, not just these cases.

The discharge will also be determined by the Mentally Impaired Accused Review Board, and it will depend on how the resident has progressed and developed skills through the programs and services undertaken at the centres. There is no doubt that, because people will be in a much more positive environment than prison, we will expect to see a marked improvement in how they progress and reintegrate into the community. The Mentally Impaired Accused Review Board is responsible for deciding the place of custody of the mentally impaired accused. It will deal with all the issues that come with that and also, as I said, the timing of the resident's release.

The member for Gosnells also asked several questions about the use of medication and behaviour management. I assure the member that residents' rights will be respected and protected under the clauses already in the bill.

The member for Cannington asked about the possible restriction of communication. Once again I say that this is very clearly set out in clauses in the bill.

The member for Nollamara and the member for Fremantle raised part 9 of the bill, "Contracts for declared place services". Obviously, some people wanted to use words such as "privatisation". This part is a very generic provision. It is a very good provision. Governments change over years, and it is very important that part 9 provide a very strong protection for the people in this situation so that it will not be changed even though things

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might occur later. There is no doubt that previous governments have used this very standard provision in contracting out. I am sure that the opposition knows that that has been the case within the prison system and with the support for hospital services. It is nothing new. It is a standard provision and we believe it is very important to put in the bill so that it protects and does not leave things open for misuse. I would also like to add that 80 per cent of the services that are contracted out within the Disability Services Commission go to non-government organisations, not private companies.

A couple of other members mentioned regional support for people. As part of that training and working with those people, there is awareness of cultural diversity and the ability to work with them. I think most people automatically think of our Aboriginal population, but there are also other people from overseas communities. At this point, there is only one in Perth, but that is one of the reasons this government decided that, rather than doing two the same, it is important to look at the best way forward for the future. Those things will continue to be assessed to make sure that we are doing the best we can at that particular time for those people.

I have another little sticky label for the member for Mandurah. Yes, 10 is the number; 10 is the number.

**Mr D.A. Templeman:** Ten?

**Ms A.R. MITCHELL:** Yes, 10 is the number. I have said it three times for the member.

**Mr D.A. Templeman** interjected.

**Ms A.R. MITCHELL:** Thank you. In summary —

**Mr D.J. Kelly** interjected.

**The SPEAKER:** Member for Bassendean!

**Ms A.R. MITCHELL:** As I said, the Declared Places (Mentally Impaired Accused) Bill will enable the operation of declared places. The Criminal Law (Mentally Impaired Accused) Act has provided for that for some time, but we can now get this declared place operating. It is for people with an intellectual or cognitive disability who are deemed unfit to plead. It is very important that these people who are unable to plead are not indefinitely detained in the mainstream prison system. It is important that these places exist under legislation simultaneously with current legislation that impacts on custodial orders.

We are very fortunate to have the expert judgement of the Mentally Impaired Accused Review Board, along with the minister of the day, to make sure that these people are in a very safe place that will see them transition back into the community at the progress they are capable of. The highest guiding principle for these centres is community safety, and it will be closely considered at all times and will have a very significant impact on the decision-making of people involved. Strong safeguards are contained in the bill to ensure that the rights and dignity of people with a disability who are housed in the centres are upheld. There is also strong provision for planning and development activities to support the residents' reintegration into the community.

This bill represents yet another positive step for people with disabilities in Western Australia and I commend the bill to the house.

Question put and passed.

Bill read a second time.

*House adjourned at 10.22 pm*

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