## DECLARED PLACES (MENTALLY IMPAIRED ACCUSED) BILL 2013

*Consideration in Detail*

Resumed from an earlier stage of the sitting.

**Clause 24: Searching people and seizing things —**

Debate was interrupted after the clause had been partly considered.

**Clause put and passed.**

**Clauses 25 put and passed.**

**Clause 26: Administration of behaviour management medication —**

**Dr A.D. BUTI**: This clause provides for the administration of behaviour management medication, which of course is a very important issue for the residents. I note that clause 26(1) states —

> A doctor must not prescribe medication for the primary purpose of controlling a resident's behaviour unless satisfied that —
>
> > it is in the best interests of the resident to do so; or
> >
> > it is the least restrictive way to protect the resident's health and safety or to protect others.

In other words, one only has to conform to one of those two conditions and not to both. I would have thought that both conditions would have to be satisfied; at the very least, the first condition would have to be satisfied— that it would have to be in the best interests of the resident. Of course, it would often be in the best interests of the resident that they do not harm another resident, but I feel it is quite surprising that the legislation has an "or" rather than an "and"; it is a less onerous requirement.

**Ms A.R. MITCHELL**: I understand what the member is saying, but I think he will find that one will protect the other. If one condition is satisfied, the other will be protected, and vice versa. I think it is built into the words, but I hear what the member is saying.

**Dr A.D. BUTI**: Clause 26(3) states —

> Sections 40 and 41(1) apply in relation to behaviour management medication.

Proposed section 40 provides for general restrictions on regulated behaviour management, while proposed section 41 provides for the welfare of residents during and after regulated behaviour management. I am looking at proposed section 40 because it relates to clause 26. Clause 40(e) states —

> may be used whether the resident is in or outside a declared place unless to do so is inconsistent with an authorisation under section 30 or 34.

I am taken to all these different clauses because nowhere do I see a penalty for someone not complying with their obligations on the administration of behaviour management medication. As the parliamentary secretary would be fully aware, giving medication to anyone is a very important issue, particularly when it is being given to someone without their consent. The bill before us indicates that it is an important issue because of the inclusion of these requirements that must be complied with, but there do not seem to be any penalties if they are not complied with. There may be a penalty, but I cannot seem to find it. If the parliamentary secretary can point it out to me, I would be very grateful.

**Ms A.R. MITCHELL**: The member is correct; there is no penalty there, but any provision of medication will happen only under the authorisation of the medical practitioner, so they are the bases and grounds on which this clause has been produced, and there are requirements to act accordingly.

**Dr A.D. BUTI**: Granted, it is under the doctor's direction and the doctor may face having to perform a medical procedure. However, that is problematic because it is being dealt with in this context, which is quite unique in the context of normal medical practice. There seems to be no penalty with regard to the CEO. For instance, the CEO may employ or engage a doctor that they know will be more willing to provide or apply medication. When we get to contractual issues, which will be dealt with later, there are penalties in place. I would have thought that improper administration of behaviour management medication is an incredibly serious issue, and probably a much more serious issue for a resident than, say, a breach of contractual obligation between the Disability Services Commission and an outside party. There is an economic penalty for that, but we do not have the stick of a penalty for the administration of behaviour management medication, so what is there to ensure that the doctor acts appropriately? Granted, there might be some medical practice disciplinary procedures, but there is no penalty for the other people who may be involved in the administration of behaviour management medication.

**Ms A.R. MITCHELL**: If the member is concerned about ill-treatment rather than the medical aspect of it, I refer him to clause 16, which we have already dealt with. There is a penalty there for ill-treatment, which is a fine of $24 000 or imprisonment for two years.

**Clause put and passed.**

**Clause 27: Records of behaviour management medication —**

**Dr A.D. BUTI**: I do not want to labour the point about penalties or even delegation of duties. Clause 27(1) reads, in part —

> The CEO must ensure that details of any medication prescribed for a resident …

Can that responsibility be delegated? Further, if confidentiality is not maintained, is there anything to prevent the resident from taking a common law breach-of-confidence action?

**Ms A.R. MITCHELL**: It is my understanding that there is nothing to prevent that from occurring.

**Clause put and passed.**

**Clauses 28 to 40 put and passed.**

**Clause 41: Welfare of residents during and after regulated behaviour management —**

**Dr A.D. BUTI**: This clause provides for the welfare of residents during and after regulated behaviour management. Clause 41(2) reads —

> The CEO must ensure that as soon as practicable after, but not more than 2 hours after —

It then states that the requirements in paragraphs (a), (b) and (c) must occur. My question once again is: what happens if that is not complied with?

**Ms A.R. MITCHELL**: A couple of avenues there would certainly go back then to the ill-treatment of a resident, and there would be internal discipline of the person involved in not complying with it.

**Mr D.J. KELLY**: Obviously these are fairly onerous powers that can be applied to a resident. What is the process if a resident feels as though they are being subjected to regulated behaviour management that, in their view, is unreasonable?

**Ms A.R. MITCHELL**: The resident would have access to their advocate to act on their behalf in that matter.

**Mr D.J. KELLY**: Obviously time is of the essence in these sorts of circumstances. If someone felt as though the behaviour management regime or regulated behaviour management was unreasonable, in what time frame could a resident seek to have that matter addressed through their advocate?

**Ms A.R. MITCHELL**: The maximum time frame would be 72 hours for that advocate to be called. But at the same time, a person is monitoring and checking on the treatment that needs to occur on a regular basis as outlined in the legislation.

**Mr D.J. KELLY**: Seventy-two hours seems like a very long period if someone believes that the regulated behaviour management program they are subjected to is unreasonable. Those people have already had their liberty deprived because they are inmates of one of these declared places, but within the freedoms they would normally have within that centre, their liberty could further be restricted by the behaviour management program; 72 hours seems like an extraordinarily long period. If someone says they are not happy with the way they are being treated, why will it take 72 hours for that matter to be dealt with?

**Ms A.R. MITCHELL**: There are probably a couple of things there. Firstly, I said 72 hours was the maximum to get the advocate to be part of that process. That is only one aspect, and that is the maximum. The second of course is that the person can complain to the chief executive officer and can complain to the Health and Disability Services Complaints Office. Of course, the other one is that at all times behaviour management has been instigated because of safety to the person or to the residents, so that will always be to the fore—that is as well as the matter of whether the person believes it is inappropriate. We also have people monitoring and watching, so nothing will occur that will not be for the benefit of all concerned. But there are avenues in place, and obviously they have that right to complain, but we must remember that there is the resident, the other residents and the staff who we also need to be aware of.

**Mr D.J. KELLY**: I certainly understand the need for powers for the management of these centres to ensure that everybody is kept safe, but it seems to me that in the modern context, 72 hours is an extremely long period for the advocate to become involved. Seventy-two hours sounds to me like a time frame that may have been appropriate in the era when the advocate may have been unable to be contacted because they were elsewhere in the state or they were out of communication range or something like that. In the circumstance of having emails, mobile phones, text messages and the like, 72 hours seems a long period. We all hope the people who manage these centres will conduct themselves with the best of intent, but we always have to have safeguards in the

system to ensure that if something does go amiss, a resident has the opportunity to have their regulated behaviour management reviewed. In the era of modern communication, I cannot imagine a circumstance in which 72 hours would be needed to get the advocate involved.

**Ms A.R. MITCHELL**: I have said before that it is the maximum time; that is only one aspect of it. Obviously, the member would think that it would happen quickly, and every endeavour will be made for it to happen quickly. But on occasions a situation might occur that means the advocate is not available to attend within that time, and that is why that is there. In the meantime, there are other avenues. That resident will be monitored and watched, and obviously their health will be most important—as well as the health of the other people. This behaviour management is used only for a reason—not because someone feels like having a practice run on it. Complaints can be made to the chief executive officer, and we have the Health and Disability Services Complaints Office. We have monitoring of the situation. Every endeavour will be made to make sure that if a resident wishes to make contact with an advocate, that will occur and action will happen as quickly as possible.

**Clause put and passed.**

**Clause 42 put and passed.**

**Clause 43: Review of use of regulated behaviour management —**

**Dr A.D. BUTI**: Clause 43(1) reads —

> The CEO must ensure that, every 3 months and any other time as directed by the CEO, the use of regulated behaviour management on any resident is reviewed by a person who, in the opinion of the CEO, is suitably qualified or experienced to do so.

What are the criteria? That is so open-ended. What determines what is suitably qualified and suitably experienced?

**Ms A.R. MITCHELL**: It is listed that way because it depends upon the type of behaviour management that could be used for a resident, and each of those has different suitably qualified persons who would be required to be part of that process.

**Dr A.D. BUTI**: Would the CEO, though, have to somehow put in writing or give reasons for selecting that person?

**Ms A.R. MITCHELL**: They would have a list of suitably qualified people for each form of behaviour management they could choose from. I am sure there would be some documentation in the resident's file for that purpose.

**Dr A.D. Buti**: Would that list be compiled by the Disability Services Commission?

**Ms A.R. MITCHELL**: Yes; the list of persons who would be suitably qualified would be provided by the commission.

**Mr D.J. KELLY**: Obviously, it is a good protection in the legislation that the CEO will review these regulated behaviour management programs every three months. I wonder whether the residents themselves will have an opportunity to have input into that review. Whether it is in these facilities or elsewhere in the system, clearly one of the often-heard complaints is that once people are part of the system, they do not necessarily feel that they have full control over or adequate access to the decision-making that affects their treatment—for want of a better word. It is certainly a complaint that has come to my office on more than one occasion. If the CEO will appoint someone to review the regulated behaviour management for a resident, is there any guarantee that that will be done in an open fashion so that the resident can have input into that review, or will the CEO establish their own procedures for that review?

**Ms A.R. MITCHELL**: That would occur in the review of the individual development plan as well, plus there will be the carer, the resident and those people who have been determined as having input into that process. The review will therefore be open and they will be part of that review process.

**Mr D.J. KELLY**: I understand the individual development program that will be put together for each resident, but on my reading, this clause refers to a separate process, which is a review of the regulated behaviour management regime for each resident. Perhaps I have misunderstood the clause, but I thought they were two separate processes. I would hope that a resident would have an opportunity to have input into the individual development program, but this clause means that every three months the CEO will have to appoint someone external to conduct a review of the treatment—again for want of a better term. There are many ways that the review could be done if it is to be done by someone external to the facility. A qualified or experienced person could simply review the documentation, interview the people from the centre and give a tick to the program, and the resident themselves may never be involved or even know that the review had taken place. I am just asking whether there is any process to ensure that when this three-monthly review by someone external is taking place,

the resident will know, first, that it is taking place; second, who is doing the review; and, third, how they or their representatives can have input into that review. I suppose that is what I am wanting to hear.

**Ms A.R. MITCHELL**: During that review process, if there is a change to the medication or the behaviour management that the resident may need to proceed with, that will come back into their plan and it will then be open for discussion. They will be involved, particularly because any treatment they have is all about the resident, and that has to come back into the whole plan to ensure that the plan that might have been set at the start is still relevant to what is going on in the resident's time in the centre.

**Mr D.J. KELLY**: I am sorry, but it is still not clear to me. It may surprise the parliamentary secretary to know that, putting aside the issue of the locations, I believe that these centres are a good idea. However, if we are going to do this, we need to do it in a way that ensures that this does not become another institution where residents do not feel as though they have some say and control over what they are doing, and this clause concerns me. When I read that the behaviour management programs would be reviewed every three months, I thought that was great because it is an important safeguard to ensure that things do not roll on. However, it seems to me that it is absolutely important that residents know, first, that the review is taking place; second, who is doing it; and, third, how they can participate in that review. I am sorry, but all the parliamentary secretary said in the answer just given was that if as a result of the review there is a change to people's medication or other factors, they will be involved in that discussion because it involves their individual plan. That to me is just not sufficient. If someone is not happy with how they are being treated, the parliamentary secretary has said that they can go to the advocate within 72 hours and the like. Someone might be in general terms happy to participate in the program as it is rolled out, but on a three-monthly basis I am sure that residents would want to have input into their review. It is not a question of necessarily going to the advocate; it may just be that they or a family member would want to speak to this suitably qualified or experienced person to talk about how the person is being treated—again for want of a better word—while they are in the declared place.

I would have thought at the bare minimum that a resident should be told, first, that the review is going to take place; second, who is going to do the review; and, third, how to have input into the review if they want to do so. None of the answers the parliamentary secretary has given me so far tell me that that will take place. It seems possible that the review will be done externally by someone, and only if there is a change to people's day-to-day life in the declared place will they then become involved. Will they be told that the review is taking place; will they be told who is going to conduct the review; and will they be told how they can participate in it? Those are the three things I would like to know.

**Ms A.R. MITCHELL**: Once again, there is probably not a set answer for every case that will occur in a centre with the use of behaviour management depending on the type of behaviour management. The person will be involved in that review process because there will be an assessment of how that behaviour management treatment has impacted on the resident; therefore, that resident will be involved in the treatment process. It is the follow-on from there that goes into the individual plan so that any potential further development can occur for the person. I cannot tell the member what time that person will be involved in a review of behaviour management treatment; there is a great chance that the resident will be part of that review process. They would need to know that it is occurring, when it is occurring and, obviously, the person undertaking it. However, it is the follow-on from that when others will become involved, and there will still be communication about it. It is not therefore something that will start for a resident, they will get treated and that will be the end; there will be a process to go through to make sure that what has been given to the resident will be useful and ongoing for that resident.

**Mr D.J. KELLY**: I am really unhappy about that answer. The first question is: when the review is conducted, will the resident be told that a review is being conducted? The advisers are nodding, but the parliamentary secretary's answer was, "Well, everything's different. It's going to be different from resident to resident." Will they be involved? I think the parliamentary secretary said that there will be a great chance that people will be involved in the review. All that leaves it grey in my view. If there is to be a three-monthly review of someone's regulated behaviour management, I would have thought the bare minimum would be that every resident would be told, "Your three months' time is up, so your program is going to be reviewed. The person we've appointed to conduct the review is X, and it's going to be done over the next 14 days, and if you want to have input into that review, you or your representative can do it in this way." Why can the government not simply give an assurance that at least those three minimum conditions will be complied with? If the government does not give that assurance, it will leave open the possibility that a resident of a facility subject to a behaviour management program for three months, who may not have family looking after them, is put in the position that before they know it the three months has come and gone and they are reviewed by someone external to the centre—consisting of a review of the documentation and a discussion with professionals—and they have lost the opportunity to raise issues about their behaviour management because the next review will not come around again for another three months. Parliamentary secretary, this is basic. We want a guarantee that everybody will

know who is going to do the review, when it will be conducted and how they can participate in the review. Can the parliamentary secretary give those three basic guarantees?

**Ms A.R. MITCHELL**: Member, my answers are: yes, yes and yes.

**Clause put and passed.**

**Clause 44: Contracts for declared place services —**

**Mr D.J. KELLY**: This clause gives people great concern and sticks out in this legislation like no other clause. Clause 44 makes it clear and provides the power to the chief executive officer of the Disability Services Commission or the government, whichever way the parliamentary secretary wants to put it, to privatise declared places. This clause is in the legislation for no reason other than to enable the government to privatise the running of a declared place. That gives members of the community, and not only the people who live in my electorate, a great deal of concern. They are concerned for a couple of reasons. The government might say that it will never happen. The community is well aware that the Disability Services Commission is currently privatising, I think, 60 per cent of its accommodation services at the behest of this government. The precedent is there and the government policy is well and truly set. The Disability Services Commission does not see itself as a provider of direct services; it wants to be a policy organisation and a manager of other contracts. It manages contracts for the provision of services across a range of disability services. When this legislation was released with a provision specifically allowing the Disability Services Commission to privatise the operation of the declared places, it absolutely rang alarm bells. It is clear to people that there are companies that would want to run a centre such as this one. The company that immediately comes to mind in this state is Serco, and we have seen that fiasco in a range of areas. Serco has contracts for Acacia Prison and prisoner transport services. I think generally that the community does not hold those services in high regard. The community is very concerned that, once this legislation is passed and the first declared place is up and running, in the not-too-distant future the government will let a tender for private sector organisations interested in running a declared place. Parliamentary secretary, if that is not the government's intention, it should remove clause 44 from the legislation.

**Ms A.R. MITCHELL**: It is very important that the government includes a clause such as this in this bill because we want to protect the operations of a disability justice centre. It is through the provision in this clause that we are able to do so. This is a generic clause that would be in many pieces of government legislation. It provides protection if governments and circumstances change, as they do. Within this bill there are a number of proposed provisions to protect the operations of a disability justice centre. We believe that this is a positive clause. It is not anti-privatisation; it is a clause to protect the residents and the operations of a disability justice centre because the provisions in this clause and in clause 20 refer to things having to be in a certain place. The member raised a couple of examples of when governments have changed and operations have gone to external providers. I think it was a Labor government that did that with Acacia Prison and a couple of others. The member is right; it does happen. But the government believes that it is important to protect declared places as much as we can, which we are doing with the inclusion of this clause and clause 20 of this bill.

I think the member referred to the privatisation of the Disability Services Commission. The commission is very much focused on supporting non-government organisations, many of which do an excellent job. This first centre will have a maximum of only 10 residents and it is very, very unlikely that any company would see that as a viable commercial enterprise. It is not in the same league as some of the other examples that the member may have referred to. We see a benefit from having this clause in the bill, because we want to protect the residents and the operators of a disability justice centre. That is what this clause is about. We are not planning on privatising the centres and that is not the intention of this clause at all. This clause is in the legislation to protect a declared place and that is why we believe it should be in the legislation.

**Mr D.J. KELLY**: I do not understand the logic of what the parliamentary secretary has said. She is saying that this government has no intention to privatise the running of a declared place, but the government is putting into the legislation the explicit power for that to happen and that somehow that is a protection. It simply does not make sense, parliamentary secretary. If the government does not believe that these centres should be privatised, this provision should not be in the legislation. There could be an alternative provision. The government could place in the legislation a clause that explicitly prohibits the privatisation of a declared place. Any future government wanting to change that provision would have to bring it back to this house and remove that prohibition before the declared place could be privatised. Instead, the government has put in a provision that, if government policy were to change, would enable the government to go ahead and privatise a declared place without having to bring it to this house because it would have the explicit authority to do so under the provisions of this clause. If it is the current government's view that it does not want to privatise the operation of these centres, we would encourage the removal of this provision or in fact replacing it with a provision that prohibits privatisation. While it is in the bill, it looks to all concerned as though this government is laying the groundwork to, sometime in the future, privatise this centre. I am not comforted by the parliamentary secretary's claim that, because the first centre is being designed to manage a maximum of only 10 residents, that will somehow not

make it an attractive proposition for a private company. Again, companies such as Serco will do almost any government work if the price is right, so it is not a question of it having to take over the centre and turn a profit. The government will put it out to tender and private contractors will tell the government how much they want to be paid to do the work, and the best tender will be chosen. No doubt the government will claim it delivers value for money and will save the taxpayer X amount of dollars. I simply do not understand the parliamentary secretary's argument that somehow this clause protects the operation of a declared place from privatisation. If the government really does not believe these centres should be privatised, it should remove this clause from the bill and put in a provision prohibiting the privatisation of these centres, and then any future government will not be able to privatise the centres unless it comes back to this house. I simply do not understand the parliamentary secretary's argument that this clause in any way provides protection for declared places. It just opens the door for future privatisation.

[Quorum formed.]

**Ms A.R. MITCHELL**: It is unfortunate that the member probably does not realise that good legislation always provides for all eventualities. This clause makes sure that with this government, a future government or whatever else, this legislation is intact so that certain things cannot just be contracted out. The standards are set, the contracting requirements are there and it is already put in place. Sometimes different things will be looked at, whether by this government or another government. If they are looked at, we have put in place very strong guidelines and restrictions on what has to be in place. That is what we believe is important here. We certainly do not intend to contract out. The member likes to use the word "privatisation", but that is not our intention. The work we have done in setting up this legislation will ensure that at all times the future and benefits of this place will be for the residents, not for any commercial enterprise.

**Mr D.J. KELLY**: How can the parliamentary secretary justify this by saying that legislation always has to account for every eventuality? Legislation is about setting the ground rules on how something will operate. If the government does not think these centres should be privatised, it should not put a provision in the legislation that explicitly allows for that privatisation to occur. It simply does not make sense. I have to say that the provisions in this clause are pretty limited. I give the example of freedom of information. If the centre is privatised, is it ensured that the Auditor General can look at the operations of the centre? Will the Freedom of Information Act apply to the new operator of the centre? A whole range of government safeguards apply to government instrumentalities, agencies or operations. The provisions in clause 44(3) are extremely limited; it just lists powers the commission has. If this is a government-run facility, a whole range of other bits of protection for the public, and probably for the residents, would apply that are not even dealt with by clause 44. It is a completely different beast if the centre is allowed to be privatised. It is fine for the parliamentary secretary to say that the government has no plans to privatise the running of the declared place, but, quite frankly, with this clause in the legislation, no-one believes her. I can see the Minister for Corrective Services over there listening to the debate. When this government sees a problem, its immediate response is to privatise. Inevitably, it ends in tears—for the public that is, not for the private contractor. If the government really did not believe these centres should be privately operated, either it would not have this provision in the legislation or it would include a provision prohibiting privatisation of these centres. However, this provision creates a privatisation door; it puts all sorts of signposts to it and the protections to the public included are quite pitiful. I still do not understand why such a provision would be included in the legislation, if the parliamentary secretary says that this is not government policy. While it is in the bill, people will believe that sometime in the future the government intends to privatise this part of the Disability Services Commission's operation in the same way that it is privatising the accommodation service.

**Dr A.D. BUTI**: In regards to the contracting for declared place services, will subcontracting be allowed under this clause? If there is a contract with a person to operate, control and manage, and to ensure the security and good order of the declared place, will they then be able to subcontract or will that be excluded? If they were able to subcontract, I think it would be quite an alarming proposition.

**Ms A.R. MITCHELL**: I will clarify a couple of points. At the moment, some subcontracting goes on for things such as laundry that perhaps the staff at the place do not do. I do not know whether that is called privatisation, but such things need to operate. Within any formal arrangement that might occur at another time by another government down the track, those specific arrangements under clause 20 that are quite clear about delegations and such matters would also be brought into play quite considerably with the full backing and support of the State Solicitor's Office and things like that to ensure that the intent of the legislation remains.

**Dr A.D. BUTI**: Basically the clause does not prevent subcontracting, but let us move on from that. Clause 44(2) states —

> The functions that can be performed under a contract are subject to section 20(6).

This does not allow the delegation of certain functions, which is a good thing, but what if that provision is breached? There is a penalty for a breach under clause 47. Does that relate to this provision or to other breaches of contract? If the functions under clause 20(6) dealing with prohibition against certain delegation are breached, is that considered a penalty-for-breach provision? What is the remedial situation if there is no financial penalty for a person not complying with the obligation under clause 20(6)?

**Ms A.R. MITCHELL**: The member referred to the situation with the chief executive officer and his or her delegation, and they are responsible to the minister. Therefore, depending on the breach, the repercussions would flow from that, but that is not printed in the bill.

**Dr A.D. BUTI**: I refer to clause 44(3), which deals with the interaction with the Disability Services Act. Section 12A of the Disability Services Act is titled "Contracts to provide goods or services to Commission". Clause 44(3) of the bill states —

> Subsection (1) does not affect —
>
> (a) the powers … or
>
> (b) the constraints on the exercise of those powers under section 12A(2) of that Act; or
>
> (c) the obligation under section 21B …

If there is a conflict between the contract that is signed under clause 44 and the powers, functions or constraints under the Disability Services Act, what will happen?

**Ms A.R. MITCHELL**: This bill is not constrained by section 12A of the Disability Services Act; it is obviously relevant to it but not constrained by it. I said previously that the CEO is a public sector employee and responsible to the minister, and the penalty for a breach will flow through in the way that any public sector employee is dealt with when they breach their duties.

**Clause put and passed.**

**Clause 45: Minimum matters to be included in contracts** —

**Mr D.J. KELLY**: Clause 45 provides for certain minimum matters to be included in the contracts in which the CEO has, under clause 44, contracted out or privatised the running of the declared place. I cannot see those minimums covering anything to do with employee conditions. One of the motivators for governments to contract out or privatise government services is the belief that they can get the job done more cheaply because the contractor can engage labour at a lower rate than can the government. I have had plenty of experience of that from Liberal–National governments in this state. The pattern of Liberal–National governments in this state for the past 30 years has seen many examples of Liberal–National governments privatising or contracting out services in such a way that allows the contractor to pay a lower rate of pay and conditions than the government would have to pay if it had employed the staff itself. When I saw this clause in the legislation, I wondered whether there would be anything in the minimum standards to say that if a government entered into a contract with a private operator to run one of these centres, the contractor would have to provide the pay and conditions equivalent to that which the state itself would have to pay if it directly employed the staff—and, lo and behold, I cannot see it in there. For example, if the DSC employed people to clean the declared place and they were paid under an award or an enterprise bargaining agreement to which the government is currently a party, and if these centres were privatised or contracted out, the contractor would be at liberty to pay a significantly lower rate of pay to the cleaners. Some members on the other side of the house might say, "Who cares what they pay cleaners to clean a declared place?" I certainly do because there are thousands of people in this state who make their living cleaning government buildings, and they should be paid a reasonable rate of pay. People often shuffle their feet when we start talking about their cleaners; they are not particularly interested in the matter. However, it is a distressing scenario for a cleaner who often gets up at very unsociable hours for an already paltry wage to clean a government building, and then finds that the government has decided to privatise or contract out their job and, lo and behold, their only option is to work for a contractor who will cut their rate of pay. Can the parliamentary secretary point to anywhere in this clause where it states that if a declared place is privatised, the contractor would not be able to pay lesser rates of pay?

**Ms A.R. MITCHELL**: Nowhere in this bill does it state that any employee would be paid at public sector rates or salaries, but of course any organisation that may take over part of that process—that might be laundry—would obviously need to comply with award rates and standards set by people other than the government. There is not a set statement that says that any person would be paid government rates.

**Mr D.J. KELLY**: That is what I thought. I am staggered by the way the government views these matters. The parliamentary secretary says that a declared place is all about providing a high-level quality of service through the Disability Services Commission to give residents of these centres the best possible chance—to use another

term—of rehabilitation so that they have the best chance of reintegrating into a useful life in the community. But the legislation is set up so that these centres can be privatised. The parliamentary secretary's previous answer said that legislation will protect the operation of these centres, yet the government has seen fit to put a clause in the bill that says that any contract must contain minimum standards. But nothing is being done to protect the wages and conditions of staff who will lose their positions with DSC and who may choose to work for the private contractor. I use the example of cleaners, but the government probably does not care what cleaners get paid. The government has certainly never shown any interest in what cleaners in this state get paid, whether they are employed in schools, government buildings in the CBD or hospitals. The Liberal–National governments in this state in the past 30 years have been happy to see cleaners' wages cut through privatisation. The government does not care about cleaners. What about professional staff who will operate direct services to residents? I do not know what they are going to be called, but DSC currently employs social trainers who do similar types of work. I assume these centres will have people with similar skills to social trainers. The accommodation services are currently going through a process by which people who worked for the government for 20 years are having their lives and careers turned upside down because the government is privatising services.

*Point of Order*

**Mrs G.J. GODFREY**: The member for Bassendean has continually mentioned wages of cleaners and I fail to see the relevance to this clause of the bill.

**Dr A.D. Buti**: You haven't been listening to debate, have you? Of course it's related.

**Mrs G.J. GODFREY**: I have been listening to debate.

**Dr A.D. Buti**: No, you haven't; you just came in here.

**The ACTING SPEAKER (Ms L.L. Baker)**: Can we let the member on her feet finish the point of order.

**Mrs G.J. GODFREY**: It includes the minimum matters to be included in the contract; I have been listening to the debate. I believe the member for Bassendean is being repetitive and not relevant.

**The ACTING SPEAKER**: Repetition is not necessarily a cause for a point of order.

*Debate Resumed*

**Ms M.M. QUIRK**: I draw attention to the state of the house.

[Quorum formed.]

**The ACTING SPEAKER**: Make sure you stick to the point, member for Bassendean.

**Mr D.J. KELLY**: Thank you, Madam Acting Speaker. I am talking about the minimum standards referred to in clause 45 of the legislation and, for the benefit of those in the chamber, the lack —

**The ACTING SPEAKER**: Could members please take their fraternity group out of the chamber for its conversation.

**Mr D.J. KELLY**: For the benefit of the member for Belmont, who is clearly upset because I have been talking about a lack of protection for cleaners who may be affected by the privatisation of these centres, I was then going to go on to —

Several members interjected.

**Mr D.J. KELLY**: Sorry, the wood is creaking at the back here.

**Mr J.M. Francis**: It must be misogyny!

**Mr D.J. KELLY**: It is the member for Bateman.

I was going to go on to the plight of people who might be called social trainers who work in those centres. I do not know what those people who have those skills will be called, but let us describe them as social trainers. They are the people the government will rely on to deliver a high level of professional services to residents to give them the best chance to reintegrate into the community. Clause 45 provides no protection to them. It is not as though people in those circumstances do not have good reason to be concerned, because this is being done to this class of employees currently in accommodation services. Social trainers who work in DSC accommodation services and have given loyal service to the government, in some cases for 20 years and have dedicated their lives to providing a high quality service to people with disabilities who live in those accommodation services, are currently going through a process by which their jobs are being privatised out from under them. In that process, they have no protection for their wages and conditions. Some of those people may even be electors in the electorate of Belmont. The member's government has gone to such lengths to ensure that the contracting process can facilitate the cutting of wages that the government has even rearranged the timetable for the program of privatisation to avoid provisions under the federal Fair Work Act. That measure would have given some

protection for a period for those social trainers, but I understand that the government has deliberately jigged the timetable to get outside the time frames provided by the Fair Work Act.

It is absolutely relevant to this debate that the government has seen fit to include minimum standards in clause 45 of the legislation, but those minimums that the government has seen fit to include do not provide any protection whatsoever for the staff who might be adversely affected. The parliamentary secretary might think this is union tripe—some bloke banging on in Parliament because he comes from a union background—but she should see past her prejudice and look at the people that this will affect. It is not only cleaners, but also social trainers and people who are there to provide professional services in these centres. These people will have no protection for their livelihood, because clause 45 is a substandard clause.

**Dr A.D. BUTI**: This clause provides for minimum standards and a later clause states that the chief executive officer must establish minimum standards. Do the minimum standards in this clause comply with the standards that the Disability Services Commission operates under at the moment?

**Ms A.R. MITCHELL**: The answer to the question is yes.

**Dr A.D. BUTI**: As a point to the previous discussion, I note that clause 45(a) refers to compliance by the contractor or any subcontractor, which provides an answer to my previous question about subcontracting.

**Clause put and passed.**

**Clause 46 put and passed.**

**Clause 47: Penalty for breach —**

**Dr A.D. BUTI**: This clause provides a penalty for breach of a contract that is established under clause 44. Clause 47 reads —

> (1) A contract under section 44 may provide for a party to the contract to be liable to pay an amount determined under the contract, by way of penalty, in respect of a breach of the contract.
>
> (2) The contract may provide for an increase in the amount of the penalty because of each day or part of a day during which a breach continues.
>
> (3) A penalty provided for in accordance with this section is recoverable even though no damage may have been suffered or the penalty may be unrelated to the extent of any damage suffered.

In other words, this does not follow normal contract law that the penalty be related to the damage that has been incurred by the breach. What guidelines will be established for the severity of the penalty, or will the penalty be written into each contract that is made between the commission and any other third party?

**Ms A.R. MITCHELL**: The member is right. It will depend on what occurs going forward. This is not something that is planned to be done; it may be many years down the track, so it would be inappropriate to include in the bill a figure or a severity measure when it may be totally irrelevant if and when this clause is brought into operation.

**Mr D.J. KELLY**: Clause 47 provides that contracts may contain a penalty for a breach. I am aware that the DSC currently has contracts for service—if that is the term given to them—with a whole bunch of private providers for a range of the services it provides. I have three questions: What is the nature of the services that are currently contracted out? Do any of those contracts currently contain breach provisions; and what is the range of penalties that apply for breaches of those contracts?

**Ms A.R. MITCHELL**: The Disability Services Commission has contracts with a number of organisations, mainly for accommodation, therapy and clinical services, as well as community access and support. Those contracts are quite varied and different, so once again it is difficult to give the member a specific answer on such a wide variety of contracts and the breaches that may occur within a contract. Penalties do apply for contracts the Disability Services Commission has with non-government organisations. Contracts do contain penalty clauses.

**Mr D.J. KELLY**: Given that the parliamentary secretary has said contracts exist with these types of breach provisions in them, can she tell me, say, for the last 12 months, how many breaches of those contracts there have been and how many penalties have been imposed as a result of those breaches?

**Dr A.D. BUTI**: In relation to the penalty provision in clause 47, I understand the parliamentary secretary not being able to put a figure in the bill now. My question related to the formula or equation that the department will use to determine the penalty that may have to be paid for a breach of the contract. Of course, the amount will change over time, but there must be some sort of equation or calculation that the department will use as a guide with regard to the penalty clause.

**Ms A.R. MITCHELL**: Once again, it is difficult to say what the penalty will look like in the future. At this stage, it will probably be an agency within the Department of Finance that is responsible for contracts and making sure they are relevant and appropriate for the services that are on offer; but, as I said, in many years that may not be the organisation that is responsible for that.

**Mr D.J. KELLY**: I am sorry, parliamentary secretary, I still find it hard to grasp the process in this place whereby members can ask a question in consideration in detail, as I did, and the parliamentary secretary can just sit there and ignore it. I asked the parliamentary secretary whether she could give me any information about how many occasions DSC has imposed a breach on contractors it currently engages. I asked that, not just to be difficult, but to highlight one of the issues around this whole contracting issue. It is fine to enter into contracts with private providers to provide government services and to put in them all sorts of breach provisions, but my experience has been that governments very rarely use those provisions to impose a penalty when they find a breach. That is why I asked the parliamentary secretary, with the dozens of contracts that DSC currently has, whether any penalties had been imposed on existing providers for a breach. I would be surprised if that had happened. When government services are privatised, two things happen. Whatever is put into the contract, it is really difficult to prove a breach against a private sector contractor who is skilled at what they do. The things that private contractors get away with are incredible. They say, "You might not be happy with this; you might not be happy with that, but if you breach us, we'll dispute it and you'll end up in court." The government throws up its hands and walks away. Conversely, when governments privatise services because it is a contested area of public policy, people oppose it and the government says it is a good idea. However, once it is done, to then say the contractor is in breach and to impose a penalty is almost seen as a failure. If contractors X, Y and Z are said to be in breach because they have not done the job they should have done under the contract, that is seen as a vindication to those who said it should never have been privatised in the first place.

I find it very difficult that I can ask the parliamentary secretary a reasonable question in the context of this clause, and objection is raised. This clause says that there may be a regime in a contract that sets up penalties, and I simply want to know, seeing that the Disability Services Commission has such contracts with other providers, whether the parliamentary secretary can give any instances in which DSC has breached an existing provider and imposed a financial penalty. If she sits there and says nothing, I will just assume that the answer is, "No, DSC never does it."

**Ms A.R. MITCHELL**: I want to say to the member for Bassendean that before I had a chance to respond to him last time, the member for Armadale stood up and asked another question. Therefore, before he is so quick to make comment, I advise him to watch what else is going on in the chamber. I respond to the Acting Speaker's call on who I go to. I will also say that some of the member for Bassendean's questioning in his previous commentary was not relevant to the bill. He went off to a completely different act. He might have been asking about areas to which he wants to go, but they were areas that I am not in a position to respond to. He brought it back a little bit to breaches and things like that, which are still, as we said before, standard contracting clauses that may be put in place at a later date given certain circumstances. It is very, very difficult to make a comment on what that might look like, given the situation we are in. These are standard clauses that we are trying to include in the legislation for protection. The member asked some particular questions about contracting; it may be that some organisations do not have their contracts renewed. It may be that they have gone into negotiations about improving things; there is a range of matters. But to ask me what will occur in a clause down the track—it may never occur; it might occur—is quite difficult, and it is not appropriate for me to talk about contracts that the Disability Services Commission has with other non-government agencies when this is about a completely different area.

**The ACTING SPEAKER**: We have an answer from the parliamentary secretary, member, so you probably need to move on with your questions.

**Mr D.J. KELLY**: Well, it is a very important point. The whole purpose of this clause is that it is a safeguard; it is there to say, "If people don't comply with the contracts that are entered into, they can be breached. They can be breached and you can have a financial penalty imposed." I am not asking about what is going to happen in the future, because who knows? I am simply asking, with the agency which will enter into these contracts, has DSC for its existing contracts ever breached a provider and imposed a financial penalty? If the parliamentary secretary does not have that information, I would be happy for her to provide it at a future date. I do not want the names of the providers; I do not even want the amount that they were fined or penalised. I would simply like to know —

*Point of Order*

**Mrs G.J. GODFREY**: I refer to standing order 97, "Repetitious or irrelevant debate". This is what I raised before. The member for Bassendean continues with repetitious and irrelevant debate against standing order 97.

**The ACTING SPEAKER (Ms L.L. Baker)**: Thank you, member for Belmont. I have mentioned to the member for Bassendean that the parliamentary secretary has responded. I do not find it tedious or boring at the moment in this context, so I will permit the member for Bassendean to finish the question he is asking. He knows I have said that we have probably come pretty close to the end of this discussion, so I will let him finish his question.

*Debate Resumed*

**Mr D.J. KELLY**: I am not asking about information in the future; I am asking whether the parliamentary secretary can give me any information. If she does not have the information now, I will be happy if she can provide it later. I simply want to know whether the DSC has in the past utilised provisions such as this with its existing providers and imposed a financial penalty.

**Ms A.R. MITCHELL**: As the member said, I am not in a position to provide that information at the moment, and it will be subject to aspects of commercial confidentiality and a number of other areas, but I will have a discussion with the director general and see what information can be made available to the member at a later time.

**Clause put and passed.**

Debate adjourned, on motion by **Mr J.H.D. Day (Leader of the House)**.