

DECLARED PLACES (MENTALLY IMPAIRED ACCUSED) BILL 2013

Consideration in Detail

Clause 1: Short title —

Dr A.D. BUTI: The short title states —

This is the *Declared Places (Mentally Impaired Accused) Act 2013*.

This bill has a major interplay with the Criminal Law (Mentally Impaired Accused) Act 1996. This legislation is called “declared places” because the minister has set up a scheme so that once we have declared a place, it should be managed by the constraints, duties and obligations prescribed in this bill. This is the place to ask my initial question. The bill is called “declared places” and the government has already declared two locations, although one it is now canning. When did the government declare the two sites to become subject to this act? Could the parliamentary secretary please let us know when that was decided?

Ms A.R. MITCHELL: I am not sure what the member said. If he said when it was decided or —

Dr A.D. Buti: When did the government make the decision as to the declaration of the two sites that are to be the declared centres?

Ms A.R. MITCHELL: I think it was August last year.

The ACTING SPEAKER (Ms L.L. Baker): Member for Armadale, I am just reminding you to stay with the title of the bill.

Dr A.D. BUTI: I am. We are talking about declared places and this is relevant to the declaration of the site. August last year is interesting. I find that hard to believe because the minister made an announcement on 11 June 2013 about these sites and cabinet made the decision on 4 June 2013.

The ACTING SPEAKER: Member, you need to address the title of the bill.

Dr A.D. BUTI: I am.

The ACTING SPEAKER: No; you are talking about —

Dr A.D. BUTI: It is important. If there is a title of “declared places”, it is very important to know when something is actually declared.

Clause put and passed.

Clause 2 put and passed.

Clause 3: Terms used —

Dr A.D. BUTI: I would like to go through a number of definitions of terms. The definition of “board” —

... has the meaning given in the MIA Act section 3;

I presume the MIA is the Criminal Law (Mentally Impaired Accused) Act 1996. Clause 3 refers to the meaning given in the MIA act, section 3, which states —

Board means the Mentally Impaired Accused Review Board established under Part 6;

Section 42, on page 28 of the Criminal Law (Mentally Impaired Accused) Act 1996, refers to the establishment of the Mentally Impaired Accused Review Board. In this bill, the board is to take the meaning found in the Criminal Law (Mentally Impaired Accused) Act 1996. Section 3 of the Criminal Law (Mentally Impaired Accused) Act refers to part 6 of the act. Section 42 of the Criminal Law (Mentally Impaired Accused) Act states —

(1) The members of the Board are —

(a) the person who is the chairperson of the Prisoners Review Board appointed under section 103(1)(a) of the Sentence Administration Act 2003;

Is that person a lawyer?

Ms A.R. MITCHELL: Normally, yes—but the bill does not state that it has to be.

Dr A.D. BUTI: Is it correct that under the sentencing act, there is no criterion that the person needs to be a lawyer?

Ms A.R. MITCHELL: Yes.

Dr A.D. BUTI: I will move on to the definition of “carer”. The bill states —

carer has the meaning given in the Carers Recognition Act 2004 section 5;

Section 5 of the Carers Recognition Act 2004 defines who can be a carer and persons who are not carers et cetera. Section 5(3) states —

A person is not a carer for the purposes of this Act only because —

- (a) the person is a spouse, de facto partner, parent or guardian of the person to whom the care or assistance is being provided; or
- (b) the person provides care to a child under an arrangement with the chief executive officer of the department principally assisting the Minister administering the *Child Welfare Act 1947* in the administration of that Act.

The wording of that subsection is that a person will not be a carer if they are one of those parties. Does that disqualify them from being a carer? What else does a person need to do to be a carer under the legislation?

Ms A.R. MITCHELL: The answer to the first part of the member's question is, no, it does not. The member wanted to know whether the definition in the legislation precluded them or other people from being a carer. No, the legislation does not preclude them or any other person from being a carer. What other person could be a carer?

Dr A.D. BUTI: The legislation states that a person is not a carer for the purposes of this act only because they are a spouse.

Ms A.R. Mitchell: They have to be providing —

Dr A.D. BUTI: That means that they can be a carer, but what else do they need to do to be defined as a carer?

Ms A.R. MITCHELL: They have to be providing ongoing support to that person.

Dr A.D. BUTI: Section 5(2) of the Carers Recognition Act 2004 with the definition of “carer” states —

However a person is not a carer if he or she —

- (a) provides the care or assistance under a contract for services (other than an agreement entered into under the *Disability Services Act 1993* section 25) ...

Section 25, on page 20 of the Disability Services Act, refers to a grant to be subject of an agreement and states —

- (1) A person is not to be paid funds under a grant of financial assistance until the person has entered into an agreement in writing with the Commission setting out the terms and conditions of the grant.

Taking the definition of “carer”, as outlined in the Carers Recognition Act, is the parliamentary secretary saying that one will not be considered to be a carer if one obtained financial benefit except if that financial benefit comes from the commission? If that is not the case, can the parliamentary secretary please give me the interpretation of that definition?

Ms A.R. MITCHELL: If they are getting paid, they are not considered to be a carer but they can receive a payment through Centrelink and they can receive a payment through, say, Child Protection but not through the Disability Services Commission.

Dr A.D. BUTI: Under clause 3, the term “declared place” means a place —

- (a) that is a declared place as defined in the MIA Act section 23; and
- (b) that is controlled and managed by or on behalf of the Commission;

I turn to section 23, “Terms used”, on page 17 of the Criminal Law (Mentally Impaired Accused) Act. It states —

declared place means a place declared to be a place for the detention of mentally impaired accused by the Governor by an order published in the *Gazette*;

...

mentally impaired accused means an accused in respect of whom a custody order has been made and who has not been discharged from the order;

Section 24(1) of the mentally impaired accused act states —

A mentally impaired accused is to be detained in an authorised hospital, a declared place, a detention centre or a prison, as determined by the Board, until released by an order of the Governor.

Until this act is passed, do we not have any declared places?

Ms A.R. MITCHELL: That is correct. We do not have any declared places.

Dr A.D. BUTI: Clause 3, “Terms used”, on page 3 of the Declared Places (Mentally Impaired Accused) Bill 2013, states —

declared place, in relation to a resident, means the declared place in which the resident is detained under a determination made by the Board under the MIA Act Part 5;

That is what we have been referring to. I read out a bit of section 24. Section 26 states —

The Board may at any time amend its determination as to the place where a mentally impaired accused is to be detained.

I presume that means that one can go from a declared place to a mental hospital and back to a declared place.

Ms A.R. Mitchell: Yes.

Dr A.D. BUTI: That is not really the question. Once the declared place is declared and gazetted by the Governor, are we saying that all declared places will come under the bill that we are debating at the moment?

Ms A.R. MITCHELL: Yes, that is correct.

Dr A.D. BUTI: Would that mean that in determining whether it is a declared place, we would need to follow the criteria as outlined by the minister to determine whether a site should be a declared place?

Ms A.R. MITCHELL: Any site for a declared place does not come under the auspices of the Minister for Disability Services.

Dr A.D. BUTI: That is not my question. In declaring a place to be a declared place, the government has decided that there are eight criteria. Will those criteria be followed and have to be satisfied with regards to declaring any place a declared place?

Ms A.R. MITCHELL: The answer to that is no. They are not criteria; they were policies, and they were gone through by the minister.

Dr A.D. BUTI: I do not think that is 100 per cent correct. In a letter written to Mr Dave Kelly from the Minister for Mental Health; Disability Services; Child Protection, she states in the second line —

Further to our discussion I provide the information you requested in relation to the planning process for the centres.

The criteria for sites were:

- Land size ...
- Flat block with capacity for landscaping
- Reasonable access to public transport
- Not in close proximity to schools, kindergartens, child care centres
- Reasonable distance from neighbours
- Reasonable proximity to shops/community amenities
- Not in industrial areas
- Location likely to be acceptable to local councils

Is the parliamentary secretary saying that the criteria that the government has announced to the public are not criteria that need to be passed or satisfied in order to declare a place?

Ms A.R. MITCHELL: That is correct.

Dr A.D. BUTI: It would be quite worrisome and concerning to members of the public that no criteria will necessarily be followed with regards to where a declared place can be put. The parliamentary secretary is saying that a declared centre could be put right next door to a school or even a kindergarten or childcare centre. Nothing will prohibit that.

Ms A.R. MITCHELL: The area the member is going into, as I think I set out in my second reading speech, is policy advice that exists from the Western Australian Planning Commission because it is public works, with support and information from the Disability Services Commission. The location of those sorts of things is not part of this bill at any time.

Dr A.D. BUTI: I will move to other sections of the act, but when we talk about community safety, is that with regards only to the running of the centres, not the location of the centre?

Ms A.R. MITCHELL: That is correct.

Dr A.D. BUTI: I want to get this on the record. The government has not set up any prohibition against a declared place being declared in any site.

Ms A.R. MITCHELL: The situation with declared places is the same as it would be with mental health sites, prisons or child protection sites. There is no differentiation.

Dr A.D. BUTI: If that is the case, why was there a need to change the original location of the two sites before the last election—one in Herne Hill and one in Kenwick?

Mr R.H. COOK: Before I start, I wish the member for Armadale a happy birthday for today.

Dr A.D. Buti: Likewise to the member for Kwinana. We share a birthday.

Mr R.H. COOK: It is a great day to have a birthday.

I just wanted to clarify something. Section 23 of the act states —

declared place means a place declared to be a place for the detention of mentally impaired accused by the Governor by an order published in the *Gazette*;

I cannot see where it states the process for that decision prior to the gazetting of the location. Can the parliamentary secretary take us through where, if anywhere, in the act it states the process by which the government comes to a decision on the location of a declared place?

Ms A.R. MITCHELL: There is nothing on that in this bill because it is not part of this bill. It comes under the Planning Commission and public works.

Mr R.H. COOK: During the time of this government we have had four places, three of which have been ditched by this government subsequent to their declaration. Does it not concern the parliamentary secretary that nowhere in this bill does it stipulate the process by which we will gazette a declared place, given the way in which the government has mismanaged the process in both its last term of government and this term?

Ms A.R. MITCHELL: Madam Acting Speaker, I do not intend to keep talking about locations and guidelines and such things. The information that the member is talking about comes under the Public Works Act, and that is the legislation under which the decision is made.

Dr A.D. BUTI: I refer to “mentally impaired accused” as defined in section 23 of the Criminal Law (Mentally Impaired Accused) Act —

mentally impaired accused means an accused in respect of whom a custody order has been made and who has not been discharged from the order;

Basically, in the criminal system “mentally impaired accused” means people who have a condition that has been determined that they are not fit to stand trial; is that correct?

Ms A.R. Mitchell: With a cognitive impairment.

Dr A.D. BUTI: What about if they have a combination of cognitive and intellectual impairment?

Ms A.R. MITCHELL: The definition covers all cases.

Dr A.D. Buti: Where does it state that?

Ms A.R. MITCHELL: The definition covers all cases that would come under that category or any of those categories. The specifics, obviously, for a declared place would be mentally cognitive problems or intellectual disability.

Dr A.D. BUTI: The parliamentary secretary is saying that the definition of “mentally impaired accused” under the MIA act covers those people who may have a cognitive or intellectual disability; is that correct?

Ms A.R. Mitchell: That is correct.

Dr A.D. BUTI: But the parliamentary secretary and her government has stated that the only people who would be resident in declared places are people with mental illness and not an intellectual disability. Unless the parliamentary secretary can point me to somewhere else in the bill, there appears to be a contradiction or inconsistency here. The bill states —

declared place, in relation to a resident, means the declared place in which the resident is detained under a determination made by the Board under the MIA Act Part 5;

Sections 24 and 26 under part 5 deal with mentally impaired accused. The minister is saying that “mentally impaired accused”, as defined in section 23 of the act, could mean a person with an intellectual as well as a cognitive condition, but the government is saying that the only people who will be detained or housed or reside in these declared places are people with cognitive conditions. However, if the bill is to be believed, that is not correct. Nothing in this bill will prevent a person with an intellectual disability from being housed in a declared

place. The parliamentary secretary might say to me that that is the policy, but the parliamentary secretary cannot have it both ways. A minute ago when we talked about criteria, she said that that is policy and we are dealing with the act. Under the bill, people with an intellectual disability can be held in a declared centre. It is not very comforting to say it is only policy because, as we know, the government did not stick to its policy on the criteria for declaring a location. Therefore, what confidence would we have in the government sticking to its policy on who should and should not reside in these residences? The government has made a song and dance about the opposition not caring for people with intellectual disability et cetera, which is very offensive, if I may say so. The parliamentary secretary is unable to show me that this bill will guarantee that the only people housed in these declared places are people with cognitive conditions. Under the bill that we are discussing now it is quite clear that the government has taken the definition of “mentally impaired accused” found in section 23 of the Criminal Law (Mentally Impaired Accused) Act, and that a resident will be able to be in a declared place as a result of part 5 of the MIA act, which would not restrict it to people with only a cognitive disability. The parliamentary secretary is now saying that is the policy. The parliamentary secretary would have to agree that that is very inconsistent. It is inconsistent with the parliamentary secretary’s explanation of the locations and with assuring the public of public safety. By the sounds of it, the parliamentary secretary is unable to show me that people with an intellectual disability will not be housed in these declared places.

Ms A.R. MITCHELL: If I could go back and assist the member in understanding that the Mentally Impaired Accused Review Board makes all the determinations about who goes to a declared place and it is not an automatic thing for someone to go to a declared place. I refer the member to clause 66 in part 12 of this bill, which contains consequential amendments and how that will come through.

Dr A.D. BUTI: But I do not think that clause 66 prevents a person with an intellectual disability from being housed. Proposed section 24(5A) states —

A mentally impaired accused is not to be detained in a declared place that is established by the Disability Services Commission ... unless the Board —

(a) is satisfied that the accused is a person with disability as defined in the Disability Services Act 1993 section 3 and the predominant reason for the disability is not mental illness;

However, it does not prevent someone with an intellectual disability. It states that the predominant reason has to be a mental illness. Someone could have a combination of both. That proposed section will not prevent someone with an intellectual disability from being housed in a declared place. Also, it has been left up to the board to determine, but the board has to act according to the legislation and its statutory duty, and under the legislation nothing prevents them from saying that someone with an intellectual disability, as long as they also have a mental illness, cannot be housed in a declared place.

Ms A.R. MITCHELL: I am sorry if this is not coming across clearly to the member, but any person with a mental illness has the opportunity to go to an authorised hospital for treatment. Having a cognitive impairment is the critical point for them going into a declared place.

Dr A.D. BUTI: Who are the people under this bill who can be put into a declared place?

Ms A.R. MITCHELL: People with an intellectual or cognitive disability and there are other criteria in the act.

Dr A.D. BUTI: It is people with an intellectual disability, but not people with mental illness; that is right—fine. Under clause 66, if they have an intellectual disability but also—sorry, I had it the wrong way around—have a mental illness, they could still be held in a declared place.

Ms A.R. MITCHELL: The primary situation has to be the intellectual disability, and they can have treatment, obviously, if there is a mental illness as well.

Dr A.D. BUTI: So intellectual disability has to be the main condition, but someone with both an intellectual disability and a mental illness could also be housed in these declared places, so we are not necessarily, under the bill, prohibiting anyone with a mental illness from being housed in a declared place.

Ms A.R. MITCHELL: As long as the prominent condition is intellectual disability and the mental illness is treatable and is not causing any safety issues to anyone involved.

Debate adjourned, pursuant to standing orders.