

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

*Consideration in Detail*

Resumed from an earlier stage of the sitting.

**Clause 3: Terms Used —**

Debate was interrupted after the clause had been partly considered.

**Dr A.D. BUTI:** I think we were debating this clause before the lunch break. I am sure many groups will strongly support housing in a declared place people who are of unsound mind if they have an intellectual or cognitive impairment, but it may present some concerns for local residents. My question is not about the merits of it one way or the other, although I can understand the merits of it both ways. My question is: what is before us so that we can be clear about who can be housed in a declared place? I do not see how the parliamentary secretary can say that people of an intellectual impairment who have been accused of a crime but have not been found guilty due to an unsound mind can be excluded from a declared place. It may be the government's policy intention that they not be held in declared centres, so she should state that is the case, but I do not think she can say that the legislation prevents that.

**Ms A.R. MITCHELL:** We believe the proposed consequential amendments to the Criminal Law (Mentally Impaired Accused) Act listed in proposed section 24 will provide that only people with a cognitive impairment or intellectual disability will be considered for a position in a declared place.

**Dr A.D. BUTI:** That is not apparent on plain reading of that clause. Proposed section 24 on page 51 of the bill that seeks to amend the Criminal Law (Mentally Impaired Accused) Act does not state that. I have had a very careful read of this clause. It reads —

A mentally impaired accused is not to be detained in a declared place that is established by the Disability Services Commission under the Disability Services Act 1993 (a DSC declared place) 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.

I agree with the parliamentary secretary that the predominant disability has to be cognitive. That is not the issue. The issue is that proposed section 24 does not provide that the predominant reason for a person being housed in a declared place must be exclusively on the basis that the person is not fit to stand trial. In fact, it does not mention that at all. The parliamentary secretary mentioned a custody order, which is defined in section 3 of the Criminal Law (Mentally Impaired Accused) Act, and a mentally accused person, which is defined in section 23 of that act. Then we have to refer to section 24 of the MIA act, which is about the general effect of the custody order. Nowhere does it say that it relates only to people who are not fit to stand trial.

*Question to be Put*

**Mr J.H.D. DAY:** I move —

That the question be now put.

*Division*

Question put and a division taken, the Acting Speaker (Ms J.M. Freeman) casting her vote with the noes, with the following result —

**Extract from Hansard**  
[ASSEMBLY — Thursday, 21 August 2014]  
p5784b-5794a

Dr Tony Buti; Ms Andrea Mitchell; Mr Roger Cook; Ms Janine Freeman

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Ayes (31)

Mr P. Abetz	Mr J.H.D. Day	Mr R.F. Johnson	Mr D.C. Nalder
Mr F.A. Alban	Ms W.M. Duncan	Mr S.K. L'Estrange	Mr J. Norberger
Mr C.J. Barnett	Ms E. Evangel	Mr R.S. Love	Mr D.T. Redman
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr W.R. Marmion	Mr A.J. Simpson
Mr I.M. Britza	Dr K.D. Hames	Mr P.T. Miles	Mr M.H. Taylor
Mr T.R. Buswell	Mr C.D. Hatton	Ms A.R. Mitchell	Mr T.K. Waldron
Mr G.M. Castrilli	Mr A.P. Jacob	Mr N.W. Morton	Mr A. Krsticevic ( <i>Teller</i> )
Ms M.J. Davies	Dr G.G. Jacobs	Dr M.D. Nahan	

Noes (14)

Ms L.L. Baker	Mr W.J. Johnston	Mr J.R. Quigley	Mr P.C. Tinley
Dr A.D. Buti	Mr F.M. Logan	Ms M.M. Quirk	Ms S.F. McGurk ( <i>Teller</i> )
Mr R.H. Cook	Mr M. McGowan	Mrs M.H. Roberts	
Ms J.M. Freeman	Mr P. Papalia	Mr C.J. Tallentire	

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Pairs

Mrs L.M. Harvey	Mr P.B. Watson
Mr M.J. Cowper	Mr D.J. Kelly
Mr B.J. Grylls	Mr B.S. Wyatt
Mr J.E. McGrath	Ms R. Saffioti
Mr J.M. Francis	Mr D.A. Templeman
Mr V.A. Catania	Mr M.P. Murray

Question thus passed.

*Consideration in Detail Resumed*

**The ACTING SPEAKER (Ms J.M. Freeman):** The member for Armadale is on two calls. I am tired and grumpy so I am not giving you a break. I am just letting members know that I am grumpy and members are bantering across a grumpy woman!

**Clause put and passed.**

**Clause 4 put and passed.**

**New clause 4A —**

**Dr A.D. BUTI:** There is an amendment on the notice paper under the name of the member for Bassendean, Mr Dave Kelly, and on his behalf, I move —

Page 5, after line 1 — To insert —

**4A. Paramount consideration when determining location of declared place**

In determining the location of a declared place under this Act, the Commission must regard public safety as the paramount consideration.

This amendment will ensure that this bill considers not only the actual functions and management of declared places once they are up and running, but also the decision to locate a declared centre. Members on this side of the chamber approve of declared centres, but we are concerned about the process the government has engaged in and we believe it has undermined public support for declared places, which has been a negative consequence of the process. The opposition has asked questions previously during the consideration in detail stage and the parliamentary secretary has stated that she is not dealing with the issue the selection of sites. The opposition wishes to ensure that in future, when other declared centres are selected by a government of any persuasion, the community's safety is of paramount importance. The opposition believes this will go towards ensuring appropriate support for something that is much needed in our system. That is why the opposition has moved this amendment.

**Ms A.R. MITCHELL:** The government will not support this amendment because the purpose of this bill is to provide the Disability Services Commission with the powers to operate a declared place within the legal framework established by the Criminal Law (Mentally Impaired Accused) Act. In addition to providing custodial powers in that act, this bill sets out the principles and objectives that direct the purpose of the custody to be the protection of the community and the individual and the training and development of the residents. The bill does not cover nor does it intend to cover the location of a disability justice centre. The design, security features and management of declared places, along with the selection processes of people who may reside in the centre, are the key features about the safety of the centre. This amendment implies that some locations offer a greater or

lesser level of threat and safety than others. The location of a centre does not influence how safely it will be operated; it is about the operations.

**Mr R.H. COOK:** This amendment that was first put on the notice paper by the member for Bassendean, and now has been moved by the member for Armadale, underscores the trust that people have in the way the government has conducted itself in this area. Of particular concern is the fact that prior to the last election, the government had chosen two sites—one in Kenwick and one in Forrestfield, if I am not mistaken —

**Dr A.D. Buti:** Herne Hill.

**Mr R.H. COOK:** Herne Hill—my apologies. The government chose those sites with, one assumes, all the preparation, sensitivity and informed manner that one would anticipate and expect of a government. However, through that process we have seen how the government will quite happily ride roughshod over those communities and make a cynical play for the politically convenient option. We saw that when it withdrew those two proposals and then said to the community with solemn hand-on-heart that the next time it does this, it will be after extensive public consultation. What happened then? We had the election and the government showed its real colours. We saw a rather cynical, nasty exercise by the government to target a community in a particular member's electorate with no public consultation and, in doing so, it substantially undermined the level of trust that people had in it. The parliamentary secretary has told us on a number of occasions to trust the government because this is not a policy, it will be regulated and this will be the way it is done—it will be the vibe. What the member for Armadale has been so careful and keen to point out is that we require more than that because we do not trust the government due to the way it has conducted itself.

As a result, we now seek assurances through the letter of the law by placing in this legislation the actual process and principles which we would normally expect the government to adhere to as a matter of course but which it did not do in this instance. We do not have faith in the government when the parliamentary secretary asks us to trust the government because it is just a matter of policy, and we do not have faith in the government when she asks us to trust the government because it will consult the public, because it did not. We have moved this amendment because we want to see enshrined in this bill something that compels the government to do the things it said it would do, but then did not. It is not unreasonable for the community to expect the government to act in a particular way when it undertakes to do so. It is not unreasonable for the community to expect the government to act in a way which meets its own policies, requirements and criteria, but which we know in this instance was not the case.

I commend the member for Armadale for now co-sponsoring this amendment. Other amendments will give fuller expression to what the government says it is trying to do and to what the government says are its guiding principles and policies in this matter, even though we have seen by its own actions that it will not observe those. The government says that its aspirations are to protect the community, and I see on the notice paper other amendments that go to this issue. We think it is reasonable that the government support this amendment because the government has said that it is concerned about these issues. The only difference between the government's position and ours is that the government asks us to trust it, and we say that we cannot because we have seen the way in which it has conducted itself.

*Division*

New clause put and a division taken, the Acting Speaker (Mr N.W. Morton) casting his vote with the noes, with the following result —

Ayes (15)

Ms L.L. Baker	Ms J.M. Freeman	Mr P. Papalia	Mr C.J. Tallentire
Dr A.D. Buti	Mr W.J. Johnston	Mr J.R. Quigley	Mr P.C. Tinley
Mr R.H. Cook	Mr F.M. Logan	Ms M.M. Quirk	Ms S.F. McGurk ( <i>Teller</i> )
Ms J. Farrer	Mr M. McGowan	Mrs M.H. Roberts	

Noes (31)

Mr P. Abetz	Mr J.H.D. Day	Mr S.K. L'Estrange	Mr D.C. Nalder
Mr F.A. Alban	Ms W.M. Duncan	Mr R.S. Love	Mr J. Norberger
Mr C.J. Barnett	Ms E. Evangel	Mr W.R. Marmion	Mr D.T. Redman
Mr I.C. Blayney	Mr J.M. Francis	Mr J.E. McGrath	Mr A.J. Simpson
Mr I.M. Britza	Mrs G.J. Godfrey	Mr P.T. Miles	Mr M.H. Taylor
Mr T.R. Buswell	Dr K.D. Hames	Ms A.R. Mitchell	Mr T.K. Waldron
Mr G.M. Castrilli	Mr C.D. Hatton	Mr N.W. Morton	Mr A. Krsticevic ( <i>Teller</i> )
Ms M.J. Davies	Mr A.P. Jacob	Dr M.D. Nahan	

Pairs

Mr D.J. Kelly  
Mr P.B. Watson  
Mr B.S. Wyatt  
Ms R. Saffioti  
Mr D.A. Templeman  
Mr M.P. Murray

Mr M.J. Cowper  
Mrs L.M. Harvey  
Mr B.J. Grylls  
Dr G.G. Jacobs  
Mr R.F. Johnson  
Mr V.A. Catania

**New clause thus negatived.**

**New clause 4B —**

**Dr A.D. BUTI:** I move the member for Bassendean's amendment —

Page 5, after line 1 — To insert —

**4B. Principles applicable to location determined for declared place**

In determining the location of a declared place under this Act, the Commission must ensure that the location:

- (a) is not in close proximity to:
  - (i) schools;
  - (ii) kindergartens; or
  - (iii) child care centres; and
- (b) is a reasonable distance from neighbouring residential properties.

The major concern of the member for Bassendean's constituents is that the locations for the declared places are in an appropriate setting. I believe one of the declared places has been removed from the agenda. A letter to the member for Bassendean mentioned a number of criteria for the declared places that included that they not be in close proximity to schools, kindergartens or childcare centres and were to be a reasonable distance from neighbours. During the second reading debate we discussed the meaning of proximity, I quote *Hansard* —

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

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

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

Walking distance does not mean that something is adjacent to a kindergarten or a school. Declared places are a great initiative. The opposition supports declared places, but the political reality is that it would be very hard to get community support for a declared place adjacent to a primary school or kindergarten. We want the public to support declared places, because they will serve a very useful purpose. We have ascertained that although the Criminal Law (Mentally Impaired Accused) Act mentions placing people in declared places, we do not have any. The Declared Places (Mentally Impaired Accused) Bill 2013 should provide another option. We can pass whatever legislation we want, but there has to be community support for it out in the burbs, because as our population grows we will need to seek other declared places. It is a bit rich for the government to say that it has criteria, but it does not follow those criteria. The government did not satisfy all the criteria for the sites it has selected. In consideration in detail of this bill yesterday, the parliamentary secretary mentioned that it is not criteria, it is only policy. But the minister's own words in her letter to the Minister for Health mention criteria. The director general of the Disability Services Commission, Dr Chalmers, referred to criteria at a parliamentary committee inquiry. The government has criteria and they have not been followed and that is the purpose of this amendment. As the member for Kwinana stated, the process here has made it very difficult for the opposition to trust the government, because we believe that the selection of the locations was politically motivated. It is necessary to enshrine in legislation the selection criteria, because that will galvanise existing support for these centres and, hopefully, improve on that support.

[Quorum formed.]

**The ACTING SPEAKER (Mr N.W. Morton):** Members, can we please keep private conversations down for the purposes of Hansard.

**Ms A.R. MITCHELL:** Member, I have responded to the proposed amendment in my response to the second reading debate in which many members talked about the location of the declared places. I say again that the determinant of the location of a declared place does not come under this proposed act. In fact, all matters relating

to the location of any declared place—current or future—will come under the Public Works Act 1902 and planning legislation. I repeat it does not come under this bill.

**Mr R.H. COOK:** This amendment should not trouble the government at all. As the member for Armadale said, this amendment simply codifies the government’s criteria for the declaration of a place to be a declared place. We heartily expect the minister to accept this amendment as moved by the member for Armadale. Although the parliamentary secretary may be correct in saying that the processes to make the declaration of a place as a declared place are not included in the bill, the decisions that the board will make to identify those places are very much part of this bill because this is a function of the board. As we have noted in the Criminal Law (Mentally Impaired Accused) Act, it is the board that makes the declaration. Therefore, obviously, it is appropriate that the act prescribe the criteria and the definition of a good location for a declared place. As the member for Armadale pointed out, the criteria in the amendment are simply the criteria in place at the moment. One assumes that they are self-explanatory and reasonable, and will not change. From time to time they may be added to, but one would certainly not want to subtract from them. It goes without saying that these are the sort of things one would want to see in the criteria. As we have reiterated on a number of occasions, the government had its own criteria and for rank political expediency it decided to ignore that criteria. It is unfortunate that we have a government that cannot be trusted at the moment, but we have a mechanism with which we can insure ourselves against that sort of behaviour. We want this bill to describe in chapter and verse the process that the government aspires to have, which it has already stated, for the identification of a declared place.

The process is important because it is the community that bears the burden of the location of a declared place, and the community expects government integrity in that process for selecting a declared place. It is not unreasonable for the community to ask what the criteria are. If the government said to the community, “Here are our criteria: we don’t want it to be close to schools, kindergartens or childcare centres and we want it to be a reasonable distance from neighbouring residential properties”, the community would say, “That seems fair enough and therefore we expect the government to find such places.” However, that expectation is no longer there. Obviously, it is not there for this government, because we have seen the way it behaves, but for a future government there will be a certain amount of circumspection from the community as well because of the way this government has behaved. That is unfortunate, but that is as it is. We now need to restore that community faith and trust that have been so badly broken by this government. Therefore, we need to put in these sorts of clauses, not because they are clauses that mirror our political persuasion, because the government has already said that that is the sort of thing it would have in its process anyway, but because we know that we want the board to make a decision based on these criteria. These are the criteria that the government has said it will adhere to. The fact of the matter is that the government should be looking at this amendment and saying that it seems like a fair thing. It is not the way the government would do it, but it should understand that there is a lot of hurt and distrust in the community, so it should accept these amendments because this is what it would have done at the end of the day anyway.

**Ms J.M. FREEMAN:** I have heard the parliamentary secretary’s response to the effect that this legislation is not the appropriate place for this particular measure, and I note my colleague’s contribution pointing out that this legislation is the appropriate place, given the history of the passage of this bill through this house. Part of that history, as the parliamentary secretary will be aware, was that the process caused great mistrust in the community. Part of the principles and objectives that the government is setting out is the protection and safety of the community and residents, and the best interests of residents who are not adults. On the basis of those objectives and principles that the parliamentary secretary is talking about, particularly the objectives for the program and services of dignity, courtesy and compassion without discrimination or stigma and with equality of opportunity, it is very important that this new clause be inserted into the act. It fits within the principles and objectives of the legislation. It ensures that these places will have the best opportunity for the protection and safety of the community and the protection and safety of residents, and ensure that the community, which was treated with some disregard and disrespect in the process, can be included. Some of the community’s greatest concerns about proximity of these declared places to children can be taken into account, and people can see quite clearly what the principles and objectives are. People can say that they are both for the community and for ensuring a very holistic, dignified and compassionate service to people who require it in declared places. The government can feel assured that these things will happen, because it can be very sure that the declared place will not be in close proximity to schools, kindergartens and childcare centres. It will be at a reasonable distance, and “reasonable” is obviously a word that gives some capacity for the government to argue around, but it ensures a successful declared place that fits within the principles and objectives. For the parliamentary secretary to say that this is not the appropriate place for this measure indicates that these principles are not the principles that she wants to uphold with this bill.

**Mr R.H. COOK:** I want to go on and explore the concept of the parliamentary secretary saying that this legislation is not an appropriate place for this measure. She talked about the criteria under which a place

becomes a declared place. I draw the parliamentary secretary's attention to section 23 of the Criminal Law (Mentally Impaired Accused) Act 1996, which provides a range of definitions of different places that may be considered. For instance, the section states —

*authorised hospital* has the same definition as in the Mental Health Act 1996;

*detention centre* has the same definition as in the Young Offenders Act 1994;

*prison* has the same definition as in the Prisons Act 1981.

*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;

There is no actual acre for this declared place. It is simply a declaration by the board. I am yet to find a part of the bill that provides the board with the authority to make such a declaration, but we will assume that it does that.

**Ms A.R. Mitchell:** Actually, the Governor does that.

**Mr R.H. COOK:** Okay; but there is nothing that actually describes what a declared place is and how it should be formed. These other places, which are all part of the Criminal Law (Mentally Impaired Accused) Act 1996, all have their own definitions within their own legislation, but a declared place is simply a place that is declared. I think it is appropriate, therefore, that we spend some time trying to work out what is a declared place and an appropriately defined place. The government has provided us with some guidance on what it regards as suitable for a declared place, because it wrote to the member for Bassendean providing a range of criteria that we find ourselves unable to disagree with. It is unfortunate that the government should then ignore its own criteria and just pick these places—seemingly making sure that they are as far away from its own electorates as possible—that are contrary to its own criteria. Let us set that aside, because we have talked about that. There is no argument with what these places should be, and in that way we can provide some sort of definition or appropriateness for them. As a result of that, we think it is only reasonable that, given there is no other act that we can refer to in order to understand the nature of a declared place, it is appropriate that we use this bill, which is about declared places, to provide that definition and a sense of how a declared place is structured or selected. As I said, we do not have any truck with the criteria; we have some grave misgivings about the way those criteria have been used or ignored by this government in its selection of two of the sites, and the way it has gone about that. Having said that, it is a very reasonable thing for the Parliament to ask the government to include in this bill something that defines and properly encapsulates the area and space in which we think declared places should exist.

**Ms A.R. MITCHELL:** I appreciate what the member is saying, but in the other areas he mentioned—authorised hospitals and things like that—there is no mention of location in any of the acts that cover those institutions. I say again that the location of declared places is dealt with under the Public Works Act as public works sites, and under planning legislation. That is the most appropriate place for them to be.

**Mr R.H. COOK:** Do I take it that the parliamentary secretary thinks that the more appropriate approach would be for us to make consequential amendments to the Public Works Act, where this definition of places could be encapsulated?

**Ms A.R. MITCHELL:** It may be, member. I cannot respond to that. That is the information I have been provided with.

**Mr R.H. COOK:** The parliamentary secretary must have some idea because she is already so sure that those matters cannot be prescribed in this bill as they have been taken care of in another act. She must have some idea about what goes on in the other act and therefore the appropriate place to do it. She could refer to her colleague the Minister for Planning, who is sitting behind her. He could provide her with some guidance because I am sure he has a detailed understanding of how that process works.

It is quite appropriate for us to point to some instrument of the Parliament that provides members of the community with some sense of how it would happen. The parliamentary secretary is simply saying that it should be in another act and she is very sure about that, but she is not sure about how anything else would happen. I beg her to give us a more considered response in this case.

**Ms A.R. MITCHELL:** I think that I have been quite clear about that. As to the detail in the act that the member is talking about, he may well ask which part of the act this matter falls under. I do not know that. I am advised—this is the way it will be done—that the location would come under the Public Works Act 1902 and planning legislation. I will say again that the bill that we are discussing provides the Disability Services Commission with the authority to operate a declared place.

**Mr R.H. COOK:** I thank the parliamentary secretary for her sincerity. It is of little comfort, though, because essentially the parliamentary secretary is asking us to accept in blind faith that the government will meet these

criteria that it previously said it solemnly stands by. Now we should take her word in blind faith that these sorts of principles have been enshrined in policy and move forward. I am not quite sure why she expects us to take that in blind faith given that her government has already transgressed those criteria. I am not quite sure why she should so vehemently resist having some sort of legislative instrument that allows us to take comfort, and go back to the community and say, “This is the way it will work because this is the way it is enshrined in legislation.” I am sure it would be of little comfort to the community to know that they have been duded once and they could be duded again because in this particular instance the parliamentary secretary has said, “We know we did the wrong thing last time. Trust us that we will do the right thing next time”, and the next time the government has the opportunity, it does the wrong thing again. Now the parliamentary secretary is asking the community to trust the government again. I am not sure we can. She is telling me that we should not place these community confidence-building amendments in the legislation. She is saying that this is not about her but it is about the Disability Services Commission: “This is not about the community and the way that we accommodate these people; this is about the DSC.” I do not think that is good enough. I think she understands the point that we are trying to make. We are simply trying to give everyone a stake in this legislation by having this simple amendment adopted that provides the community with greater confidence that the government will do the right thing next time.

**Dr A.D. BUTI:** I assume that there is nothing preventing the government from announcing a declared place and having a residence in a declared place without this bill being operational. But of course it is wise to have legislation in place to govern how these places will operate to ensure there are appropriate checks and balances and appropriate statutory duties and guidelines. The government has decided that that is the appropriate way to operate. Of course it was always appropriate to have a legal framework in an area such as this. Why would it also not be wise to have a statutory framework for the location process—the selection of the declared places? As I have said, these declared places should, if properly operating, serve the community well and serve the people who will reside in these centres well.

This legislation has been very much needed for a long period. It is good governance and hopefully will act as a catalyst for further public confidence in these centres by having a statutory regime in place. Surely, though, if we get off on the wrong foot, it is hard to build that public support or win that public support back. The government got off on the wrong foot by the process it followed in the declaration of the two sites in the member for Bassendean’s electorate. If the government had followed the criteria, it would probably have resulted in at least one and probably both of those sites being selected in a different location. Why not have a statutory regime that a government of any persuasion has to comply with in order for these centres to be located? She must think it is important enough to have some guidelines because the government set up a number of criteria that seemed to be very sensible and reasonable. It is a shame it did not follow those criteria but it did set them up. The Minister for Disability Services stated in a letter to Mr Dave Kelly —

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

The criteria for sites were:

They were then listed—X, Y, Z. The government believes that it needs criteria. Why not put that in a statutory format so that any government, unlike what the parliamentary secretary has engaged in, will follow that criteria and therefore improve its chances of starting off with the public being supportive from the beginning because, as she knows, it is very hard to win back public support once it has been lost.

*Division*

New clause put and a division taken, the Acting Speaker (Mr N.W Morton) casting his vote with the noes, with the following result —

Ayes (13)

Ms L.L. Baker  
Dr A.D. Buti  
Mr R.H. Cook  
Ms J. Farrer

Ms J.M. Freeman  
Mr W.J. Johnston  
Mr F.M. Logan  
Mr M. McGowan

Mr P. Papalia  
Mr J.R. Quigley  
Ms M.M. Quirk  
Mrs M.H. Roberts

Ms S.F. McGurk (*Teller*)

Noes (28)

Mr P. Abetz	Mr J.H.D. Day	Mr S.K. L'Estrange	Mr D.C. Nalder
Mr F.A. Alban	Ms E. Evangel	Mr R.S. Love	Mr J. Norberger
Mr C.J. Barnett	Mr J.M. Francis	Mr W.R. Marmion	Mr D.T. Redman
Mr I.C. Blayney	Mrs G.J. Godfrey	Mr P.T. Miles	Mr A.J. Simpson
Mr I.M. Britza	Dr K.D. Hames	Ms A.R. Mitchell	Mr M.H. Taylor
Mr G.M. Castrilli	Mr C.D. Hatton	Mr N.W. Morton	Mr T.K. Waldron
Ms M.J. Davies	Mr A.P. Jacob	Dr M.D. Nahan	Mr A. Krsticevic ( <i>Teller</i> )

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Pairs

Mr D.J. Kelly	Mr M.J. Cowper
Mr P.B. Watson	Mrs L.M. Harvey
Mr B.S. Wyatt	Mr B.J. Grylls
Ms R. Saffioti	Dr G.G. Jacobs
Mr D.A. Templeman	Mr R.F. Johnson
Mr M.P. Murray	Mr V.A. Catania
Mr P.C. Tinley	Ms W.M. Duncan

**New clause thus negated.**

**New clause 4C —**

**Dr A.D. BUTI:** I move the amendment that is in the name of Mr D.J. Kelly on the notice paper —

Page 5, after line 1 — To insert —

**4C. Declared place to be approved by relevant local government**

A place cannot be designated as a declared place unless it has been granted planning approval by the relevant local government under its applicable planning laws.

This new clause has been brought about because of the way the government has structured its planning process. It states under the criteria that it should be a location likely to be accepted by local council. But, as the parliamentary secretary has stated, because we have a definition of public works in the act, the public works do not require approval from local government under their local planning scheme but they do require approval from the WA Planning Commission when the region scheme is in place. As we know, the sites that were declared by the government did not receive the support of local government. The City of Swan passed two motions opposing both sites, but, of course, it has been sidelined as a result of the Planning and Development Act, which controls the planning control areas. The Minister for Local Government is in the chamber. It is interesting that the government is spending considerable time on local government reform. I presume it considers local government to be very important. As the Minister for Local Government mentioned in an answer to a question today, the important people are the ratepayers. Ratepayers are more likely to receive a greater say about something being accepted by their local council rather than something being approved by the WA Planning Commission.

I believe the Minister for Planning refused to release the report or the advice received by the WAPC about at least one of these sites. So the determination of where these sites will be located is not a very transparent process. I am sure we would all prefer that the public did not start off in the position of being suspicious and so forth, but, unfortunately, that is the political reality. The public are sidelined because the views of their local councils are sidetracked by a process governed by the WAPC and the advice that the WAPC receives is not released to the public. Therefore, we can understand how the public may feel that it is being duped. The Minister for Local Government mentioned that ratepayers are the most important people. It is interesting that he says ratepayers are the most important people, but they are being sidelined by a process imposed by government. Further, when a decision is made by the body that now has responsibility for these sites or planning control areas, we do not even get to see that advice. I think that is an appalling situation and I am surprised that the Minister for Planning agreed that that was an appropriate way to process this controversial area.

This amendment is quite simple. It seeks to ensure that the local government has a say in the granting of the planning approval for the declaration of a site that will be located in their local community. Surely the local community should have some say.

**Ms A.R. MITCHELL:** I have a couple of points that have come out of that amendment, which we will not support. The first is the wording. A place is not “designated” as a declared place, and we have talked about this already. A place is declared to be a place for the detention of mentally impaired accused by the Governor by an order published in the *Government Gazette* under the Criminal Law (Mentally Impaired Accused) Act with the definition of declared place. Therefore, that first part cannot be inserted. The second part regards planning

approval by the relevant local government. As a declared place is a public works, it does not come under the local planning scheme. Therefore, the amendment as it is written is not relevant.

**Dr A.D. BUTI:** We could quite easily bring in legislation to ensure that a declared place is not a planning control area to ensure that it comes under local government. This is just terminology —

A member interjected.

**Ms A.R. Mitchell:** I think you heard that.

**Dr A.D. BUTI:** Whatever is appropriate or not appropriate, it is appropriate that the local community has a say. I am sure that we have the capacity in this Parliament to change the legislation to ensure that local governments have a role to play in approving something this significant in their community. I am sure that the legislation could be amended to ensure that that is the case. I say to the Minister for Planning that it is not appropriate for the opposition to be kept in the dark. Advice is given to the Western Australian Planning Commission and we are not allowed to see it. If the minister wants to make the argument that the WAPC is the appropriate body, he should make that argument; I am sure he could make a very strong argument because he is a very capable, competent minister. However, he could not make the argument that we should not see that advice. The only reason we are not seeing that advice is that the minister knew that it would not have received the support of the community.

**Mr J.H.D. Day:** The advice of the City of Swan?

**Dr A.D. BUTI:** No, the legal advice that was given to the WAPC about declared places.

**Mr J.H.D. Day:** Legal advice is not normally made public, as you would understand.

**Dr A.D. BUTI:** No, that is not 100 per cent correct. As the member for Butler would also tell the minister —

**Mr J.R. Quigley** interjected.

**Dr A.D. BUTI:** Exactly right: it is entirely up to the client to claim legal privilege. This government has previously released legal advice; all governments do, when it suits them, and it did not suit the government to release that legal advice. The minister can make the argument that the WAPC should be the relevant body, but if it is the relevant body, there should be greater transparency and the local community should know why planning approval has been granted and whether any doubts have been raised at the WAPC about that location.

**Mr J.H.D. Day:** If I remember rightly, the Western Australian Planning Commission gave its reasons and an explanation—in summary form, at least—about why approval was given when it made that decision.

**Dr A.D. BUTI:** It did; my memory is also a bit cloudy here, but I do remember that the legal advice and maybe other advice was not released. I do not remember who it was, but someone said that it was a very unusual situation to not release that advice.

**Mr R.H. COOK:** One of the points made by the member for Armadale in this debate was very pertinent and goes to the key of what we are talking about, and that is the issue of transparency. There has been a total lack of transparency in the way in which this process has been managed to date. The member for Bassendean, on behalf of his community and now through the member for Armadale, has put up a range of amendments that the opposition sees as reasonable because they seek to restore the trust that has been so badly broken. The government has seen fit to oppose the first two of those proposed amendments. Firstly, the government rejects the idea that the Disability Services Commission should have regard for public safety. Secondly, the government rejects the idea that the declared place should not be in close proximity to a school, a kindergarten or a childcare centre. Thirdly, the government rejects the idea that the declared place should be a reasonable distance from neighbouring residential properties. That is what the government has said in rejecting our amendments; it has said, “Those things aren’t important to us.” As a result of that, we continue to seek some relief from the conduct of this government.

Our last amendment is that a place cannot be designated as a declared place unless it has been granted planning approval by the relevant local government under its applicable planning laws. We know what the government is going to say about this amendment because we heard the very strong advice from the Minister for Planning into the shell-like of the parliamentary secretary to the effect of: why should we elevate local government over the authority of state government? Local government should not have primacy over state government. In some respects, that is correct; some of these amendments do not make much sense when they stand alone. However, in this case it makes perfect sense because the community needs to be protected from the state government. The community needs to be protected from what is essentially a decision by this government to ride roughshod over the interests of the community and to ride roughshod over its own criteria. In that sense, the local government authority stands as the final protector against the rank political decision-making of the state government.

This is what is left of our amendments, and through it the opposition is presenting a very stark picture of what we need, which is protection from the decisions of this government. I accept the Minister for Planning’s point

that this is an unusual move in that sense because we are trying to put a lower level of government in the way of a higher level of government in respect of decision-making; but does it not make sense in this particular instance? We have a government that is happy to ignore its own criteria, happy to ignore its own logical and sustainable arguments about where this place should be located, and is simply jamming this place into this community, which runs totally contrary to the community's ideas about where such places should be located. In some respects, perhaps, the local government is the final vestige of protection and the final means of stopping the state government from making decisions in this manner.

**Ms S.F. McGURK:** I am interested in what the member has to say.

**Mr R.H. COOK:** The government has made a mockery of state government decision-making. Maybe we are now at the point at which the community has more confidence in the credibility of the decisions of local government, because the state government's decision-making is in tatters.

**Mrs G.J. Godfrey** interjected.

**Mr R.H. COOK:** The member for Belmont is amongst us now! I am acknowledging how the basic planning processes of local government make the state government's decision-making, in this case, look like high-end unbalanced judicial decision-making. One would expect a local government authority to say, "Here are our planning guidelines; these are the things, dear ratepayer, that you should pay attention to, and you can expect us to make a decision on the basis of these guidelines, which are published and transparent." That is when local government works properly. People have a reasonable expectation that local governments will make decisions within their guidelines; and, if they do not, there are other processes of appeal that the Minister for Planning could tell us much more about than I could.

However, in this case, it is like a local government authority saying, "We know a whole range of issues around the guidelines to which this decision should be made and we are going to ignore them." I think the member for Belmont, as a former representative of a local government authority, would say that that is bad government; that is really bad government. Bad governments give rise to community anger. The member for Belmont will have heard angry ratepayers say at council meetings, "I did everything the planning guidelines said I should do; my development proposal is completely inside the guidelines, therefore, Madam Mayor, I don't understand why you're not giving me approval", because that person did the right thing. This issue involves a higher level of government failing the very basics of transparency and good government decision-making because it is ignoring its own planning criteria. It would be, member for Belmont, akin to the City of Belmont saying, "We'll now erect this large monument or shopping centre in the middle of this residential area", and those residents would say, "Hang on, your planning guidelines say this is a residential district and now you're trying to put a 7-Eleven store, a Pizza Hut and a Woolworths store smack in the middle of our residential development where you said there should not be one." That is what is happening in this case. The government has gone outside its own guidelines to make a decision and that is what has given rise to the anger.

In a strange way, member for Armadale, we are now appealing to the Parliament by saying that if the government cannot be trusted, perhaps local government can be trusted to make a proper decision because it will at least consider the community before it allows such a development to go ahead. That is the absurdity of the situation. Does the member for Belmont not agree? A local government authority has more integrity and robust criteria for making its own decision than has the state government, and that is absolutely absurd.

**Mr J.H.D. Day:** You are arguing against your own amendment.

**Mr R.H. COOK:** On the contrary; the Minister for Planning is saying we should not elevate the local government authority. In some respects it is an unusual amendment. In this unique situation the City of Swan has behaved in an exemplary way. I understand it sat down with the state government to work through the problems with the choice of sites. I believe the City of Swan even went so far as to say, "Perhaps not here, but here are other locations that meet your criteria that you should give consideration to."

**Dr A.D. BUTI:** The member for Kwinana is in full flight and I think I should hear a bit more from him.

**Mr R.H. COOK:** Thank you, member for Armadale. I assure the member that we will not seek to do this again.

The City of Swan came forward with other ideas and locations that were consistent with the government's guidelines, so it was acting with greater integrity and transparency than is the government. We accept that it is an unusual amendment. It would make more sense if the government had accepted the principles of what we said before—that a declared place should not be in close proximity to schools, kindergartens or childcare centres and it should be a reasonable distance from neighbouring residential properties. We know the government has rejected that but we know that in this case, the local authority will stand up for those principles. In an odd kind of way the motion moved by the member for Armadale makes sense.

*Division*

New clause put and a division taken, the Acting Speaker (Mr N.W. Morton) casting his vote with the noes, with the following result —

Ayes (12)

Ms L.L. Baker  
Dr A.D. Buti  
Mr R.H. Cook

Ms J.M. Freeman  
Mr F.M. Logan  
Mr M. McGowan

Mr P. Papalia  
Mr J.R. Quigley  
Ms M.M. Quirk

Mrs M.H. Roberts  
Mr C.J. Tallentire  
Ms S.F. McGurk (*Teller*)

Noes (26)

Mr P. Abetz  
Mr F.A. Alban  
Mr I.C. Blayney  
Mr I.M. Britza  
Mr G.M. Castrilli  
Ms M.J. Davies  
Mr J.H.D. Day

Ms E. Evangel  
Mrs G.J. Godfrey  
Dr K.D. Hames  
Mr C.D. Hatton  
Mr A.P. Jacob  
Mr S.K. L'Estrange  
Mr R.S. Love

Mr W.R. Marmion  
Mr J.E. McGrath  
Mr P.T. Miles  
Ms A.R. Mitchell  
Mr N.W. Morton  
Dr M.D. Nahan  
Mr D.C. Nalder

Mr J. Norberger  
Mr D.T. Redman  
Mr A.J. Simpson  
Mr M.H. Taylor  
Mr A. Krsticevic (*Teller*)

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Pairs

Mr D.J. Kelly  
Mr P.B. Watson  
Mr B.S. Wyatt  
Ms R. Saffioti  
Mr D.A. Templeman  
Mr W.J. Johnston  
Ms J. Farrer  
Mr M.P. Murray  
Mr P.C. Tinley

Mrs L.M. Harvey  
Mr M.J. Cowper  
Mr B.J. Grylls  
Mr V.A. Catania  
Dr G.G. Jacobs  
Ms W.M. Duncan  
Mr J.M. Francis  
Mr R.F. Johnson  
Mr T.K. Waldron

**New clause thus negatived.**

**The ACTING SPEAKER (Mr N.W. Morton):** Members can we keep discussions to a minimum please; I am struggling to hear the Leader of the House.

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