

DECLARED PLACES (MENTALLY IMPAIRED ACCUSED) BILL 2013

Second Reading

Resumed from 18 February.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [12.06 pm]: When I began my comments yesterday I made the point that I was not the lead speaker and I had also made the point that this is a very important piece of legislation. I commend the government for taking this step. I outlined the head of power under the Criminal Law (Mentally Impaired Accused) Act 1996, and who this would apply to. I also outlined the circumstances around Marlon Noble, in particular, who really focused the attention of parliamentarians and the community on this issue just a few years ago.

I want to start to go through the bill itself, because in part 5 we really see what it is that makes this bill a progressive bill—what makes this bill groundbreaking, humane and designed to protect the dignity of those who are going to be placed as residents in declared places. Part 5 deals with the protection of residents; it sets out the objectives for programs and services to be provided to the residents of declared places. It is really important that it is built into the legislation. We know that prisons are supposed to run programs and services for prisoners that are frequently not delivered, as they are constantly at the whim of the budget of the government of the day.

Part 4 sets out the objectives for programs and services and residents' rights. The bill refers to individual development plans in part 4; it refers to residents' rights in part 3 and the protection of residents in part 5. These are important components because it really sets out at the beginning in part 2, under the principles and objectives, the functions of the declared places.

I refer to the protection and safety of the community, the protection and safety of the residents and the best interests of those residents who are not adults because, of course, some residents will have turned 16 years but will not have reached 18 years. Under Part 2 of the bill, "Principles and objectives", proposed section 6(1) reads —

Programmes and services for residents are to be designed and administered so as to respect the rights of residents to be treated —

- (a) with dignity, courtesy and compassion; and
- (b) without discrimination or stigma; and
- (c) with equality of opportunity.

Proposed section 6(3) refers to residents being given an explanation of their rights. If they have a guardian or enduring guardian, that person can also be given an explanation of the resident's rights. Further, if the chief executive officer is aware of a close personal relationship between the resident and an adult, the adult will also be given an explanation of the resident's rights. Staff will have to provide that explanation in such a way that they know it is being understood by the resident or to whomever it is being given. The bill sets out residents' rights to communicate with people and organisations outside the declared place. Balanced against that is the fact that, if it is necessary and appropriate—because communication may not be appropriate depending on the level of acuity, shall we say, of a patient's condition—that freedom to communicate can be restricted. Balances are in place to make sure that it is not able to be abused.

Individual development plans are really important because, I suspect, they are not be available in the prison system. The bill refers to each individual having a plan that sets out his or her care, support and protection and individual needs, whether it is through training and other programs, how the care of the person's condition is managed and, if it is appropriate, how that person will be reintegrated into the community. It is envisaged that reintegration into the community will happen, but one imagines that that would be a staged process. The bill sets out how those things can be achieved.

Part 5 of the bill refers to the protection of residents. It sets up accountability measures around what constitutes reportable incidents. It explicitly refers to the ill-treatment of residents not being okay. People might think that, of course, one would assume that the ill-treatment of residents is not okay. However, by setting it out in legislation, people will be held to account, which is an important step forward. The bill refers to how treatment decisions will be made in such a way that a resident's rights will be respected. Sometimes treatment decisions will be made without the resident being able to provide informed consent. The nature of the condition that got the resident into the declared place in the first place is the nature of the condition that means that they are not fit to plead and, logically, that tells us that the person is unable to give informed consent. The bill sets out important checks and balances and how that will be done. All those elements are important and the government is to be commended for the way they have been put together. The bill is good, but is long overdue. We do take issue with

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the government because from the very beginning, communication with the respective communities and the process of choosing sites—and the implementation of those components—has been botched and should have been 1 000 per cent better.

The bill anticipates that security will be an issue as a consequence of the condition of the residents. There is the potential that they will be unable to regulate their own behaviour—which, for many of them, will be what gets them into trouble in the first place—and the capacity for them to cause harm to themselves and others by nature of what they have been accused of and their condition. Proposed section 19 of the bill sets out, in anticipating how security will be managed, that a resident may be unlawfully away from a declared place. It anticipates that alcohol and drugs or any prohibited thing may be in a declared place. By “prohibited thing”, I assume the bill refers to something that could be used as a weapon or something that could be used to cause harm. That is set out in proposed section 21. Residents can be given orders and those orders can be enforced; that is set out in proposed sections 22 and 23. Rooms can be searched and items seized. The bill anticipates that these are some of the issues that may arise. The bill anticipates that behaviour management could be an issue and has provided, at proposed section 26, behaviour management medication, which may be required to protect a resident’s health and the safety of others. The bill anticipates that that behaviour may from time to time result in physical restraint having to be exercised, although there are forms of chemical restraint. Proposed section 28 sets out ways of controlling residents’ behaviour and parameters within restraint that can be exercised; obviously that will not only protect the rights of the resident and prevent abuse, but also put accountability measures in place around the use of restraint and restraining devices. It anticipates that the behaviour might be such that physical restraint is required. The bill also anticipates the need for seclusion, which might be one way of de-escalating a situation or calming someone down. Proposed sections 33 to 36 set out the requirements and provisions relating to seclusion, which is defined as the confinement of a resident in a way that free exit is prevented for the purpose of controlling behaviour, but explicitly states not locking residents’ bedroom doors for security purposes. It has accountability measures around that. Those provisions together form part of what the bill defines as regulated behaviour management, which is balanced by the rights of the residents as set out in proposed sections 37 to 43.

Part 10 of the bill refers to the right of residents to have the assistance of an advocacy service, and the functions of the advocate are set out in proposed sections 53 and 54. Proposed section 55 makes it an offence for a staff member to not answer questions asked by an advocate and to not give assistance to an advocate or to hinder in some way the work of an advocate. The bill explicitly outlines that a person will not be protected if he or she avoids their own incrimination by not giving an answer to a question asked by an advocate. That is a really important set of measures to have in place because we will be holding people against their will. They will not be able to exercise independent decision-making necessarily in a way that is best for them and best for the local community. We need to have measures in place to restrain them; equally, we need to have measures in place to make sure that there is accountability around that so it cannot be abused.

A further accountability measure is the call for an annual report through the minister to Parliament on the activity of all the advocates. That is also important. If the advocates feel that they are being constrained in any way in carrying out their function, they will be able to tell the Parliament through the minister.

The powers under the regulated behaviour management regime set out in the bill are serious powers that potentially jeopardise the human rights of a resident, but they are necessary because, as a consequence of their condition, it is the case that if their behaviour is unregulated, it could cause harm to themselves and to others and already may have in the past, and that may well be what got them into the situation in which they appeared before the courts. They could be capable of causing harm to themselves or to others, including those in the communities around the declared places, and therein lies the rub about the way that the particular places have been chosen.

This is a sensitive issue. I am a former Minister for Child Protection. I know that ordinary folks who are living their lives with their families do not want to live next door to a child protection facility, because the residents could pose a potential or a real risk to their safety or to that of their families or their properties. I know that children in care are in care not because of what they have done but because of what has been done to them or what has not been provided to them. They are in care because they have been the victim of abuse or neglect or literally no other adult is able to provide care for them safely. What scares the community is that, in a very normal response to the horrors that they have been through, some of those children exhibit antisocial behaviour or violent behaviour. They damage property. They set fires. They act out. When the hormones of adolescence are thrown in on top of that, it can be a heady mix. When four or five of them are put together in a house, it is all ramped up just a little more.

A really important part of trying to repair the damage that has been done to those children, not just provide a roof over their head, is caring for them while living in a family-type home in suburbia to show them how it is done, get them into a routine and show them what is normal. Every rational person we talk to will say that they support

Extract from Hansard

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that and feel deep sympathy and deep empathy for what those children have been through, but they do not want to live next door to that facility. I understand what that feels like. For about six or seven years in the 1990s, I lived in Mt Lawley right next door to a Salvation Army men's refuge on Guildford Road. From time to time, police would jump over the fence, looking for one of the guys who had been accused of something. I never saw or heard the guy jump over the fence; the police seemed to do it in a much louder way. The police would knock on the door and say, "We've just seen him jump over your fence; make sure all your doors are locked." From time to time things would get stolen. From time to time our personal security was at risk, as was our property. They were not allowed to drink at the refuge but, conveniently for them, about 200 metres down the road there was a bottle shop and, even more conveniently for them, one step from my front gate there was a bus stop with a bus shelter and a big tree, so they could sit at the bus shelter and drink. They could not be seen from the refuge because of the big tree, but they could be seen from my place. They were always cheerful, I would have to say. Sometimes if they had been sitting there for a long time, they were less cheerful and more argumentative. Nothing bad ever really happened. It was a refuge, so people went in and came out. They did not live there constantly; there were always new people. From time to time it was a bit confronting. Nothing terrible really happened. It was the first property that I bought. If I had done my research, maybe I would not have bought the property next door; maybe I would have figured out why the price was what it was and why I could afford it. Nothing bad ever really happened, but I think that if I had made a rational choice and there were two properties that were the same, I probably would not have chosen to live next door. As an aside, on the upside, the Salvation Army band played every Christmas morning in the garden, so that was always a delight. It was fantastic. I understand people's fear about living next door to a facility where people who are not always stable are living. It is a rational fear for people to have. I have lived that experience myself.

The bottom line, though, is that, whether it is homeless men who drink, children in care who act out or the residents of a disability justice centre, it is right that we find a way to accommodate them in our community for the greater good. That is the right thing to do. However, because it is so sensitive for people and because it goes so intrinsically to what people think about their home and their personal space, how we manage that is really important. I think this government could not have messed up the process of choosing the sites any more if it had set out to deliberately alienate local people. I know that is not what the government set out to achieve, but the upshot of it is that that is how the people who are concerned about the current site of the one disability justice centre that will go ahead feel. They feel deeply alienated by the process that has been gone through.

This process began when I was on holiday in Tasmania. I was the then shadow Minister for Disability Services, and I got a call from my office to tell me that the minister was trying to get in contact with me as she wanted to give me a heads-up about an announcement that was about to be made, so I spoke to her from Hobart. It seems to me that, from the beginning, the first sites were picked without proper consideration being given to the respective planning provisions. The government established a set of criteria—I will talk about those criteria in a moment—by which to choose the sites and then it chose sites that did not meet those criteria. It seems to me that the government did not have a well-thought-out local engagement plan. Those plans are difficult to put together; I know they are because when I was Minister for Child Protection, we had to have some conversations about them. The government did not consider that putting two centres in close proximity to each other would escalate the alienation that that particular community felt; it felt that it was being asked to take all the burden. One of the better decisions that was made was the decision to go ahead with only one of the two sites that had been picked in the seat of Bassendean. However, by that point, the members of that community were feeling pretty alienated and, certainly for the length of time that the two sites were being considered, they could not understand why they were being asked to bear a greater burden than anyone else. They felt that they were shouldering more of the responsibility in the name of what I would describe as the greater good than was fair to expect of one community.

It was never going to be easy. I am not under any illusion that the government would go into a community and say, "This is what we want to build 350 metres down the road from your school. This is what we want to build in your neighbourhood and these are the kinds of people we are going to put in there. Don't worry about it; we're going to have lots of security in place and it's all going to be okay." That was never going to be an easy message to sell, and I completely understand that. However, I think that the very nature of the residents of the disability justice centre means that a lot more additional effort should have been put into managing the site choices so that it was done far more sensitively than it was. Unlike the guys I lived next door to, these are not people without a home. Unlike children in the child protection system, who I had some responsibility for, these are not children who have had horrible things done to them; these are people who, by virtue of their condition, are not able to regulate their behaviour and sometimes their behaviour is a risk to others. That is scary for people. There is no question that they are very vulnerable people. I do not shy away from the fact that we have a 100 per cent obligation to provide these people with the best and safest care possible and that they have a right to live in a community. There is no doubt, however, that if Western Australians were given a choice whether to live next

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door to one of these houses, they would say no. It is great thing that we have these places and they are important, but I do not want to live next door to them. This was never going to be easy. The residents can cause harm and perhaps they have caused harm. Some of them stand accused of crimes and had they been of sound mind and fit to plead they would have been incarcerated in a prison. That is why people use such language as “living next door to a prison”, because the fact is if they were fit to plead, it may well be the case that they would have been found guilty and would have ended up in a prison.

I want to touch on the criteria for declared places set out by the government. I refer to correspondence dated 14 June 2013 from the Minister for Disability Services to the member for Bassendean, Dave Kelly. The letter sets out the planning process for the centre, and reads in part —

The criteria for sites were:

- Land size—minimum block size of 7,000 square metres.
- 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

A number of those criteria contain words that are fairly subjective; “reasonable” is one of them. “Not in close proximity to schools” is another of the criteria. The current site is 350 metres from a school. We could debate whether that constitutes close proximity, but I reckon it does because it takes about three or four minutes to walk the distance. It refers to “Reasonable distance from neighbours”. It is in the middle of a residential area, so neighbours are close. Another of the criteria is “Location likely to be acceptable to local councils”. In this case, the local council does not support it. On the government’s own set of criteria, it would appear that the site that remains the single disability justice centre, on the face of it, does not meet those criteria. We can argue exactly what we mean by “proximity”, and I note that the director general of the Disability Services Commission did try to argue that before a committee of this place. I do not think he did it very successfully. He tried to argue that “Not in close proximity” means it cannot be immediately next door to a neighbour. Do not quote me on that being exactly what he said, but that is the effect of the transcript that I read. I do not think he sold that case particularly well.

The other thing that causes the community some concern is that they understand, and certainly I understand from reading the act, the reference in the criteria to “reasonable proximity to community amenities, shops and public transport” suggests it is the case that residents will be going in and out of the justice centre. That may well be in and out with supervision, but I think the bill says that part of the objective is to try to transition residents back into the community, which cannot be done in some kind of artificial simulation inside the house and would have to be staged and transitioned from there. The community has reason to believe that residents will be out and about. I am sure that the minister will tell us when she responds exactly how she anticipates that will be done, and I imagine protocols and supervision et cetera will be in place. However, we know that from time to time things can go wrong. People can be distracted and before they can turn around, the person they are meant to be looking after has scarpered. That adds to the anxiety for the community who are living pretty close to a centre and for those people who have kids at the school that is 350 metres down the road. The criteria set out in the minister’s letter are all the more reason why the communication plan and the ongoing community engagement plan needed to be a lot better than they are. I am not close enough to it to know whether this happened, but one of the things that should have happened was to set up some kind of local community engagement committee, or whatever it is called. In the child protection system, we would set up an arrangement in the local community—I cannot remember what we called them, but they were like committees—so that people knew the after-hours phone number and the supervision roster so they knew who to ring if they saw a 14-year-old lighting a fire next to their fence, which some of them did! There are ways of managing those issues. I do not know if that has been done in this case, but I am sure the minister can spell that out for us.

The local community feels that the way the decision was made and the way in which the original two sites were changed around the period of the election, choosing two sites in what would be considered a safe Labor seat, meant that they were being asked to shoulder a greater responsibility and there was a political element in what was being done. Whether that is right is irrelevant, because that is how they feel. This could have been done a lot better than it was done. The opposition will support the bill, but I, like my colleagues, have serious reservations

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about the way it was done. I have great sympathy for the people who are frightened about living next door to the centre. I understand why they feel that way. I understand why they feel they have been neglected. I understand why they feel they have been asked to shoulder a greater burden than other communities. That could have been avoided if the government had done this in a more sensitive way. I really hope, because we will need more than one of these centres, that important lessons have been learnt about how to do it in the future and how to pick the right spots and how to engage local community leaders from the outset. That means building in a greater period of time to get the thing up and running. The government will never get 100 per cent support or even 50 per cent support, but it could have got a lot more support if it had engaged local community leaders a lot earlier and been able to stand up and put hand on heart and say, "Here's the criteria; we followed it to the letter of the law. Here's how we've attempted over the last three months to engage with the local community. We've given it our best shot and we remain committed to engaging with you." The government needed to let people work through their anger—that is what people will do—and to build into the process the amount of time needed to do that. I hope the minister is able to tell us in her response the lessons that have been learnt and how she might do it differently next time.

With those comments, I indicate that the opposition will support the bill. This is a progressive piece of legislation and I regret that the implementation of the selection of the sites has not been done as well as it could have been.

HON STEPHEN DAWSON (Mining and Pastoral) [12.40 pm]: From the outset, I declare that I am the opposition's lead speaker on the Declared Places (Mentally Impaired Accused) Bill 2013. I echo the comments of the Leader of the Opposition about how important this legislation is, how progressive it is, and how it is a much-needed piece of legislation that will, I have no doubt, make a difference to a number of people's lives. These are incredibly important centres, and the opposition is very supportive of them because we firmly believe that people with an intellectual disability who have been charged with a crime and have been found by the courts to be incapable of going through the court system should not be put in prison, as is currently the case. Prisons are not the right places for these people. At the moment courts have the option of releasing people into the community—that is, those who the court believes are of no risk to the community—but if the courts believe that some of these people are a risk to the community, the only option is to keep these people in prison.

All members would be aware of the case of Marlon Noble, who spent more than eight years in prison because essentially there was nowhere else for him to go. We are also aware that had Marlon been charged and put on trial for the crimes he was alleged to have committed, he would not have spent eight years in prison. He would have been released a long time ago. I acknowledge the fine work of his advocate, Ida Curtois, who is personally known to many of us for her fine work with children in care. I acknowledge Ida's fine work in bringing Marlon's case to the fore. He was eventually released from prison thanks to her hard work.

These are incredibly important centres, and this is progressive legislation. The opposition will support it, because it will make a difference. However, there is no doubt that there has been some concern, particularly about the process for the establishment of the centres. The Leader of the Opposition went through a number of the benefits of these centres, so I will not re-cover old ground, but I want to make sure that my concerns about the process around the siting of these centres are placed on the record. The siting of these centres was originally announced in 2012. As the Leader of the Opposition mentioned, one centre was planned for Kenwick and the other for Herne Hill. Of course, 2012 was before the last state election, and when these centres were announced, because the government had not undertaken proper consultation with the local community, there was absolute uproar. It may have been the case that local residents did not really know what these centres were, but they were certainly concerned that people who had committed a crime, a violent crime in many cases, would be placed close to them. As the Leader of the Opposition said, it is very hard to get every local resident or neighbour onside to support these centres, but I think the state government failed to properly consult, or at least have a proper conversation with local communities about what these centres were, what they meant for the local communities, and what safeguards would be put in place.

As a result of the announcements, there was uproar in the local communities. Both centres, in Kenwick and in Herne Hill, caused a great deal of concern to local residents and local communities. As such, it took only two weeks for the state government to do a backflip and say that these centres would no longer be located in Herne Hill and Kenwick, and that the government would take them off the table and come back at a future time to advise where the centres might go. It is terribly difficult not to be cynical about that decision by the government at that time, because as we know, Herne Hill was in the seat of Swan Hills, a marginal seat held by Frank Alban, and the Kenwick site was in the very marginal seat of Forrestfield, which at that stage was held by the Labor Party's Andrew Waddell, and was being contested by Nathan Morton, the current member for Forrestfield. In two marginal seats, local residents were up in arms about these centres, and after the concerns raised by those constituents locally, the centres were taken off the table. The government promised more

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consultation next time. However, we know that nothing more was said about the issue until after the next state election.

Let us move forward to June 2013, when the government announced the intended locations of two new facilities. The previous two intended locations for the centres were both in marginal seats, but we now saw that the two centres were being planned for the same general community. Although one is notionally located in Caversham and the other in Kiara, they are essentially in the same locality of Lockridge. As I said, there was absolutely no consultation at all with local residents. I know that, days before the public announcement, a letterbox drop making the announcement was done by the government. There was absolutely no consultation with local residents. It was purely: deal done, this is where it is going. I am aware that there were some sort of discussions with the City of Swan about at least one of the sites, but these discussions were behind closed doors and nothing was brought to the council; nothing was placed on the agenda for the council. There was absolutely no opportunity for councillors to discuss this issue and bring it to the fore, and therefore to talk to their voters about what they might think about the centres.

As a result of that, the Labor member for Bassendean, Dave Kelly, talked to his local residents. He sought to engage with them and get their views. Comments have been made both in Parliament and outside about Dave Kelly to the effect that he is against the centres, he is causing uproar, and he is not progressive. The reality is that he is a progressive politician; he supports these centres. He sees the merit in them but his concern has been about the lack of process and the fact that the government made a decision after promising consultation but without undertaking any consultation whatsoever.

The Leader of the Opposition mentioned the issue of site selection. I am aware that in questions to the minister on this issue, Hon Amber-Jade Sanderson tried to tease out the issue of proposed sites and site selection and how the government reached its decision for siting both these centres in Lockridge. On 20 June 2013 she asked the Minister for Disability Services a number of questions about the proposed centres. One of the questions was —

- (1) What are the locations of the 11 different sites short-listed by the WA Planning Commission referred to by the minister?
- (2) What were the reasons for not choosing each of the rejected sites?

The minister answered as follows —

- (1) The 11 sites considered by the WA Planning Commission and the Disability Services Commission were located at lot 11943 Lord Street, Caversham, bordering on Lockridge; lots 3 and 22 Berrigan Drive, Cockburn Central; lot 346 Curtin Avenue, Cottesloe; lot 9547 Jutland Parade, Dalkeith; lot 13 Hayes Avenue, Dianella; lots 5 and 301 Corfield Street, Gosnells; portion of lot 800 Forrest Road, Haynes; portion of lot 88 Altone Road, Kiara; portion of lot 15 Champion Drive, Seville Grove; portion of lot 1001 Tindal Avenue, Yangebup; and lots 32 and 33 Thorne Place, South Yangebup. I was presented with options in Caversham–Lockridge, Gosnells, Kiara and Yangebup.

The following is the answer to the second question, which was: what were the reasons for not choosing each of the rejected sites?

- (2) The Disability Services Commission identified eight broad criteria for the site requirements of the disability justice centres. The Department of Planning and the WA Planning Commission considered those criteria and other planning matters when short-listing the sites they could make available for this project. The only sites that met all the criteria were the selected sites. The other sites were not selected because they were not as suitable as they did not meet all the criteria. They were either next door to a school or adjacent to a proposed primary school, there were heritage buildings to consider, they were earmarked for other developments, there were limited services available or the block size was not large enough. Examples include: in Cockburn Central, the block is too small and is opposite the high school. The site is also affected by a powerline easement. In Cottesloe, the block was too small and was next door to a school. It also had heritage buildings that need to be retained. In Dalkeith, the buildings are on the Register of Heritage Places and on crown reserve. In Dianella, the block size is too small and within a residential area. There is site constraint due to Water Corporation works crossing the site. In Gosnells, two houses face directly towards the block. The street on which the houses are located would need to be used by all staff and visitors to the centres on an ongoing basis. Creation of a suitable access road to the justice centres would be problematic. In Haynes, it is an undeveloped area without power, water or sewerage. There is no access to public transport. It is not in the community. There is no proximity to shops or community amenities. In Seville Grove, the site is adjacent to a proposed primary school; there is insufficient distance to neighbours; neighbouring properties share a boundary with the site. In South Yangebup,

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there is insufficient distance between neighbours; neighbouring properties share a boundary with the site. A future road would encroach on the block. In Yangebup, the block is too small and there is no opportunity for landscaping required for creating a buffer.

On the basis of an analysis of all sites, the Caversham–Lockridge and Kiara blocks were clearly most suitable.

Obviously, some work was undertaken by the WA Planning Commission and the Disability Services Commission but, again, that work was done behind closed doors and absolutely no conversation was had with local communities about any of those sites. It is difficult not to be cynical because there are sites such as the old Sunset Hospital site on Birdwood Parade, Dalkeith. In fact, my family lives on that street, just up the road from the old Sunset site. My mother was visiting Parliament this morning and asked me what was happening in Parliament today and I explained that we were debating this Declared Places (Mentally Impaired Accused) Bill. She asked me why the government did not use the Sunset Hospital site. I really do not know. The government said it is because there are heritage buildings there, but the reality is this site was used for a like facility for many years and the local community was used to older men who may have had some issues. It is back a bit off the road and has good public transport. Sure, there are heritage buildings onsite, but what are we seeing with that site at the moment? The state government is subdividing the site, and that will see houses built on it. It is a crown reserve at the moment, yet the government will cut some land out and build houses there. If the government can sell crown reserve for houses, why could it not have used that site for the new disability justice centre, where, for a long time, the community had been used to this type of facility? In fact, what are we seeing with those heritage buildings? Private organisations have been able to do up the insides of these buildings and use them for offices. If those buildings can be done up inside for offices, why could they not be refurbished and used for a disability justice centre? Of course, this site is in the Liberal-held seat of Nedlands, so that may well be a reason the site was not considered.

One of the other sites is at the Cable Station in Cottesloe, the site of a former boys' home. This too was rejected for heritage reasons. One of the reasons given for this site not being suitable is that it was too close to the Montessori school, yet that school chose that site when there was a boys' home on it and troubled youth lived there. The community was used to it and the Montessori school chose the site with the knowledge of what it was used for, yet this site was ruled out for a declared justice facility. Of course, Madam Deputy President, you will be aware that this site is in the seat of Cottesloe, the Premier's seat. It is hard for me not to be cynical about why it was not placed in the Liberal-held Premier's seat of Cottesloe. There is no doubt in my mind that there would have been local concern about the siting of a declared justice facility there. However, that site is not near residents; it is far away and there is a busy road out front. I think local residents would care more about the traffic rumbling by at all hours than this proposed centre. Regardless of that, there should have been consultation on the siting of these centres. If the Cottesloe site had been chosen, consultation would and should have happened with the local communities. Although I said "would have happened", I am not so sure it would have happened because I think the government should have planned this better from the start. It should have undertaken a series of consultations with local communities about what they thought about a proposed centre. As I have said, lots of work should have been done to tell communities about the purpose of these communities—the types of people who will be housed in them and the environment inside them, and that trained staff will be located onsite to make sure the eventual residents are secure and assisted to live their lives. As part of that consultation, the government should have made every effort to tell those local communities that there would not be risks, because safeguards are included in this bill. I will not go into those safeguards before lunch because the Leader of the Opposition has done that, but I might touch on some of them afterwards.

Sitting suspended from 1.00 to 2.00 pm

Hon STEPHEN DAWSON: Before lunch I outlined that the Labor opposition is not fully supportive of this bill. We think that it is progressive legislation and I congratulate the minister on her stewardship of the bill and the government for bringing it forward, but there is a great deal of concern about the siting of these centres, particularly in the Lockridge community. There is concern about what the centre will be and how it ended up in Lockridge. I will not go over the things that I have already said, but I will make a few more points.

We know that only a person who has been deemed unfit to plead following an independent assessment will be considered for housing in these centres, and, of those people, only those who are considered to be appropriate by the Mentally Impaired Accused Review Board will be placed there. We also know that the board has made it clear that only those people who are not considered a risk to community safety will be housed at the centres. There is definitely a lack of understanding in the general community about intellectual and cognitive disabilities. We have to work together to educate the community; to let them know that they should not be concerned and that there will be safeguards in place about who will be housed in these centres. Minister, I give a guarantee that I will certainly help in that respect, but I also understand the level of concern and anxiety from local people.

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There is no doubt that placing people with intellectual or cognitive disability in prison puts them at risk. They are already incredibly vulnerable people, and putting them in an unsafe situation, such as a prison, really does not help anybody. So this is absolutely the right thing to do, and it is about time this issue came forward.

Back to the siting of the disability justice centre currently on the table. There have been a great number of concerns raised by the local residents and the City of Swan, which feels that it has not been properly consulted on this issue. It is now the case that local government approval is not needed for these centres. The Western Australian Planning Commission is the only agency that needs to approve a centre. I hope that the government has learned its lesson about the need to consult with local communities about any future centres; of course not only consultation, but that the government actually goes out and tells people what the centres are about and reassures them.

There is some great stuff in this bill and in these centres, which can be seen in the explanatory memorandum for the bill, and it will make a big difference in the lives of the people who will be residents in the centres. Clause 13 sets out what must be included in an individual development plan. At the moment, some of these people, it is fair to say, have been left to rot in prison without proper support. This bill will ensure that residents have individual development plans that will promote their development and quality of life, and provide for proper management, care, support and protection. These plans will also reduce residents' behaviour that might place their, or others', health and safety at risk. The centres will also support residents' reintegration into the community at some stage in the future.

I have a couple of other issues I want to raise about the bill. We know that the legislation limits who can be detained in a declared place—that is, only people over 16 years can be held in a new disability justice centre. I am keen to hear from the minister how we can provide an extra level of protection for people who are between the ages of 16 and 18 years. We may well see cases in which 16-year-olds—children; teenagers but certainly not adults—are in the same place as adults. There is no upper age limit, so it could be anybody of any age. We hear allegations and stories all the time about people in mental health facilities, in institutions or in care who are being mentally or physically abused. I want to know what extra safeguards will be in place for these people, because I think there should be special plans in place for them. Initially there was a view that one of these centres would be for men and one would be for women. Perhaps I am wrong, but that is certainly something that I have heard. It might not be fact, but it is something that I have heard. I think, originally, there were quite a few people—in 2011, we heard that there were probably 29 people who may be eligible and for whom it may be beneficial to reside in such a centre. I think that number has dropped, partly because of the prison in-reach program. I would be keen to hear from the minister whether if there were two or more centres, it is the government's plan to have male-only or female-only facilities. If not, I want to hear how mixing male and female residents will be handled. I believe that appropriate safeguards have to be put in place. We have previously spoken about mental health mixed wards in this place, and I know the minister said that she is moving away from female-only wards because they are not needed in the mental health space, but I think there is an issue about mixing men and women in some of these facilities. I want to hear the minister's plans on how that will be dealt with.

The other concern I have with the Declared Places (Mentally Impaired Accused) Bill 2013 relates to the potential outsourcing of the service. As the bill currently stands, it contains clauses that will allow the government to outsource the service. From talking to people, I understand that appointments may have been made of public sector workers to manage the new facility already, and I think people might have started work. From what I have heard, I think the centre, at least initially, will be run by the sector, but I want to hear why provision has been made in the bill to allow for the potential future outsourcing of the service. Members on this side of the house have said before that we do not believe these types of services should be privatised; we do not believe people should be making profits from running these types of services. Perhaps the minister could enlighten me, during her reply to the second reading debate, on why these provisions are in the bill and whether it is the government's intention to outsource these centres at some stage.

There are a great number of other issues I could raise in relation to this bill, but I am aware that a number of members on this side want to make a contribution. As I have said previously, I think the Leader of the Opposition made a valuable contribution on the bill and I do not want to go over the same points. But I again say that we are fully supportive of the bill, we believe it should pass without delay and look forward to these centres coming into operation. But, please, minister, heed this advice: if and when a second centre is needed, built and opened, I hope the government has learnt its lesson from the concern in the community about the centre and its siting. I hope the government undertakes proper consultation with whichever community might likely house a new centre. With those comments, I conclude my remarks.

HON AMBER-JADE SANDERSON (East Metropolitan) [2.12 pm]: I, too, rise to make a contribution on the Declared Places (Mentally Impaired Accused) Bill 2013. According to the explanatory memorandum —

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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 1996*. That Act established a procedural framework for the courts dealing with those found unfit to plead or of unsound mind, the Mentally Impaired Accused Review Board and provided for mentally impaired accused to be held in any one of four places of custody—prison, an authorised hospital, detention centres and declared places determined by the Board.

This legislation obviously relates to the fourth option—declared places. It is a good piece of legislation, and Labor has always supported the policy around this legislation. Unlike a lot of the legislation that this government introduces to this and the other place, we support the policy of this bill.

The previous speakers outlined in some detail the purposes of the bill, so I will not go into too much detail on that. Labor and the sector view this bill and policy as incredibly important. No-one wants to see people who are unfit to proceed through the corrective services and justice system languish in prison indefinitely without the supports they require. Indeed, in the case of Marlon Noble he spent significantly longer in prison than he would have if he had been convicted of a crime. It is wrong for that to happen in any civilised society, so this is an incredibly important piece of legislation and policy. That is why it is so deeply disappointing that its implementation has been so ham-fisted and has ensured that, essentially, the community is immediately offside. That has been the disappointing part about it. The community is supportive of the bill and supports declared places, but it is deeply distressed and disturbed at the way it has been treated and the government's handling of this bill. There is a range of reasons for that.

It seems, after joining the dots, that the timing and placement of the sites was politically motivated. The government failed to meet the eight established criteria outlined by the minister. More suitable sites that meet more of the eight criteria than these two sites were available. The sites are very close together, and that community, although understanding that these centres need to go somewhere, felt that it was being asked to share a disproportionate amount of the burden by the placement of the centres next to the local high school and primary schools.

It is concerning that the legislation contains special provisions for the privatisation of the centres; they certainly did not appear in the original planning documents that went to the Western Australian Planning Commission. Some misinformation has been provided from the other side around the kinds of people who will be in those centres, in particular from the Premier. He used the example of a person who had stolen an ice-cream as being the kind of resident who would be at the sites. That will clearly not be the case, given the kind of detailed instructions and accommodation in the legislation for staff dealing with behavioural management, chemical restraints and advocacy. We are not talking about the kind of people who just steal an ice-cream, and that these residents are simply nimbys.

Let us go back through the chronology of this policy. After procuring advice over a number of months, the government announced there would be two centres—one in Herne Hill and one in Kenwick. That announcement was made in 2012 after virtually no consultation that I am aware of with those communities. Unsurprisingly, members of those communities were unhappy at not having any consultation, as were the two local members—one Liberal and one Labor—who were both in marginal seats; those seats were very important to the Liberal Party for the next election. Within two weeks the government had withdrawn the proposal to establish the sites in those locations, and I remember that it was stated at the time “we got it wrong”; planning problems were cited, and the government stated that it would ensure better consultation and communication next time round. The planning issue identified was the requirement for a planning control order for the sites, which could easily have been applied for through the WAPC. That is not credible as a genuine reason for those two sites being withdrawn.

The decision to choose other sites came after the election in which the seat of Forrestfield was won by the Liberal candidate, Nathan Morton, and Swan Hills was retained by Frank Alban. Frank Alban ran a fairly vocal community campaign around these sites. With absolutely no consultation with the local community—contrary to what was said after the previous sites were withdrawn—on Monday afternoon a leaflet drop was organised to residents around the site. It was unaddressed mail that stated that the decision had been made to locate one centre 350 metres from Lockridge Primary School, and the other on land currently used by the Lockridge Senior High School agricultural program. This decision in and of itself created a whole range of anxiety. So it was unaddressed mail—a letter drop to say this is happening; there was no process and the concerns were not to be discussed and taken on. The government was simply telling people what was going to happen and that there would be information sessions—not consultation sessions, but information sessions.

The Leader of the Opposition was being generous when she said there did not seem to be any real communication or consultation plan with local residents around these sites. I have seen the communication plan,

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which was extracted via freedom of information, and there was a plan for these sites. It was a very tightly managed communication plan. Part of that communication plan was that the local MP, the member for Bassendean, would receive an email at five o'clock on a Friday afternoon—the Friday afternoon before the local residents got their letter drop on the Monday. Obviously, it was a weekend. The government thought the member would not have time to do anything; that he could not go to the local media before the residents found out and that he would not be able to make a big fuss. That is cynical. That is not the kind of process that a government genuinely wanting to engage with the community to make these centres a success engages in. It was a deeply cynical move to do that. It essentially let down the residents, the sector and the community by doing it that way. It is disingenuous to say, “No-one is ever going to be happy.” There was no attempt. Hon Stephen Dawson and Hon Sue Ellery are right that we can never make everyone happy, but we can certainly make people feel involved in the decision. We can make them understand the decision and at least come to some resolution with the decision so that those people feel they were listened to.

It is deeply insulting that people have accused the group who campaigned against the centre of being “anti-disability”. It is wrong, it is insulting and it is absolutely not true. A number of those people care for people with a disability—indeed, with an intellectual and behavioural disability—at home full time. The issue is the way the community has been treated with such a sensitive and important issue.

There are some questions around the timing. The reason I feel suspicious about the timing of not only the communication plan, but also the announcement is that in estimates questioning, the Minister for Disability Services stated that nothing was sent to the WA Planning Commission until cabinet had made a decision on 4 June. That is not true. On 4 June cabinet made a decision about the sites, and the announcement was made on 11 June. However, in order for cabinet to arrive at that decision, it had to have in place the planning control from the WA Planning Commission. I will work back from 4 June. Let us say the WA Planning Commission gave approval for planning control in May some time. The WAPC requires at least one month for items to be placed on its agenda for consideration. That is just the initial step. Working back from May, we come into April, and I would say it would take more than a month for the WA Planning Commission to make that decision and to provide those orders, given the detail in the government's own application to the WA Planning Commission. It would definitely require more than a month. We are looking at April, and now we are getting back to March. We are starting to get into the March–April period of the state election when the government was in caretaker mode. I put on record that this decision was made before the last election, that the planning control was approved before the last election, but the decision to announce it was delayed until after the Liberal Party had won those seats and retained government. That is why I think this has been handled politically and cynically. It is a deep shame because it is such an important policy.

Another point that I question is the application to the WAPC. The Disability Services Commission's application was very detailed. It is a good application. Part of it states —

Who may live in the centre?

Individuals aged 16 and above, with an intellectual or cognitive disability, found not fit to plead and stand trial under *Criminal Law (Mentally Impaired Accused) Act 1996*; and held under a custody order.

The majority of the persons are young, male and Aboriginal and have a combination of complex needs including past substance misuse and related mental health and other complex needs. The centre will be able to manage the relatively small number of females who may need to be accommodated.

These persons are characterised by low level of communication skills in English, which is often their second language.

This is in the Disability Services Commission's application for the planning order. It is contrary to the information given to the community or dragged out of the government and given to the community. If these people are young, male and Aboriginal, and have limited communication skills, with English as a second language, I make the assumption, if I join the dots—I may be wrong—that the people in these centres will be from regional communities. That is what I would extract out of that. How is putting these people in someone else's community a genuine form of rehabilitation? How will that assist their rehabilitation into their communities? It is completely contradictory to the information provided by the Minister for Disability Services and the Disability Services Commission.

Looking at the criteria for the sites, the first criterion is land size; second, it should be a flat block; third, it should have reasonable access to public transport; fourth, its location should not be in close proximity to schools, kindergartens or childcare centres; fifth, its location should be a reasonable distance from neighbours, with a buffer zone; sixth, its location should be in reasonable proximity to shops and community amenities; seventh, its location should not be in industrial areas; and eighth, its location should be acceptable to the local council.

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It has failed three of the eight criteria. The City of Swan does not support it. As Hon Stephen Dawson mentioned, when some justification was made that local government supported these sites, the conversation happened in the minister's electorate office with the mayor and the chief executive officer. That is not the council. They are senior representatives of the council but that is not the council. That is not the support of the local government. When it was taken to the full council, it did not support that both those centres would go there. It failed that one.

The fifth criterion is that it should be within a reasonable distance from neighbours. I have been to the centre that is going ahead, and it is smack bang in a residential area and right across the street is a row of houses. It is in a residential area. The fourth criterion is that it should not be in close proximity to schools. It is 350 metres from a school. I have walked from the school to the centre. The Lockridge community will be the first to admit that it faces a number of challenges. It is a proud community and it has worked hard to build the reputation of both schools—Lockridge Primary School and Lockridge Senior High School. Both schools' parents and citizens associations will tell members that. I am not saying anything that none of them would not say. Lockridge Primary School is a brand-new facility, which had \$13 million spent on it. They are very proud of that school; they love it. They are deeply offended that the government wants to put this centre 300 metres away from it. Similarly, Lockridge Senior High School has a fantastic agricultural program that it is also very proud of. The government threatened to put a centre smack bang in the middle of land that it was using for its agricultural program. That caused a lot of anxiety. The high school was extremely pleased when the government made the decision not to go ahead with that centre. It was a good decision not to go ahead with that centre. It still leaves the people who live around the primary school, the P&C association and the school in total limbo as to how the school will operate so close to the centre.

Going back to the criteria, if the government had been able to, hand on heart, say that it had met all of these criteria, there would not be so much anguish from the community, but it has not. When other sites in other areas clearly meet the criteria, it is even harder to swallow. The government has written off that political corridor—it is a safe Labor seat; the government does not need to do anything about it. It thought, "It might affect the upper house votes, so let's just leave it until after the March election and not go there."

The other concerning aspect about this bill, and it is contrary to the application made by the Western Australian Planning Commission, is the capacity for the centre, or parts of it, to be privatised. I would like to hear from the minister in her reply why that provision is in the bill; for what purposes the government sees that being used; and which parts of the centres could be privatised. Is it for transport? If so, let us hear that. If it is for catering, let us hear that. If it is for the running of the centres, then let us hear that too. Will organisations such as Serco be able to run the centre? Let us hear that. Let us be totally up-front about this for the first time. That aspect of the bill is concerning and it is also contrary to the application put into the Western Australian Planning Commission, which clearly states that a disability justice centre will be built to accommodate people with intellectual or cognitive disability. It further states that the centre will be operated by the Disability Services Commission. However, this legislation gives the commission the opportunity to contract it out. I would therefore like to hear the minister say whether that will happen.

I support the bill, Labor supports the bill and the community supports the policy of the bill. The community does not appreciate the way it has been treated. It has been treated with disdain and contempt in this cynical attempt to politicise such an important issue and to deflect any potential criticism at all from this government. It is an appalling way to treat any community.

I want to see these centres succeed. I want to see people unable to stand trial moved out of prison. However, when another centre is required, I want to see this government read from this handbook on how not to do things and I want to see it not do it in this way again.

HON LYNN MacLAREN (South Metropolitan) [2.31 pm]: I rise to contribute to the second reading debate on the Declared Places (Mentally Impaired Accused) Bill 2013 and to express the Greens support for this bill.

The second reading speech states that the bill's purpose is to enable the Disability Services Commission to operate WA's first declared place that will provide accommodation and support services for people with intellectual or cognitive disability who have been accused but not convicted of a crime. It will provide an alternative to custody in prison or a detention centre, where they have been placed to date. This is a bill on which the government has consulted with its stakeholders. Indeed, I believe consultation with my office goes back at least 18 months to two years. In that time it was clear that many organisations that are experts in this area have been consulted by the government. Stakeholders consider it to be a significant step forward, and it is their support for the bill that, of course, informs the Greens support. In fact, the bill is supported by the Western Australian Association for Mental Health and the Mental Health Law Centre (WA). Other stakeholders who

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commented on the bill and also give their support are the Commissioner for Children and Young People, People with Disabilities (WA) and the Social Justice Unit of the Uniting Church in Australia, WA.

People with a mental illness, if it is treatable, are supposed to be detained in an authorised hospital. They are not covered by this bill. There appears to be a gap in respect of people with a mental illness that authorised hospitals will not take; that is, because their illness is not treatable. Under clause 66, children under 16 years old also will not be able to be detained in a declared place. There are to be two secure declared places built, each one taking up to 10 residents; although in the briefing I received, it would appear that at this stage only five people are affected by this bill. It is really quite a small number of people we are talking about today. I suppose that number might grow in the future, but it is important to keep in perspective that we are talking about a small number of people who fit into this category.

The Western Australian Planning Commission has approved one declared place in Caversham, with building to commence in 2014 and the centre to be open in 2015. I recall, as a member of the Standing Committee on Environment and Public Affairs, several petitions regarding these places, and as a committee we became well aware of the issues that have been canvassed by members who spoke previously. This is not a simple thing to achieve, and any government setting out to achieve it is to be commended because it is important that this work be done. I do not have a solution for how it could be done better and I deeply respect other members speaking up for their constituents in their own struggle in how this has been implemented. However, some things are just difficult and they have to be done. It is envisaged that in the future the facilities may be operated under contract. Members have also mentioned that, and I intend to mention a bit more about that in the summary of my comments, as that raises concerns for the Greens, as it does for the rest of the opposition.

I want to canvass a few of the issues raised by the Mental Health Law Centre that do not appear to be addressed in the bill, as it may be appropriate to include these issues in a review of the bill in three years. I had a very informative and enlightening briefing from the officer with whom I raised these issues, and I raise them now in the second reading debate so that the minister has an opportunity to put on the record the government's response to those issues. Some of them may be issues that the government needs to take up in the future and some may be issues that have already been addressed. However, it is very important that they be explicitly addressed in the reply to the second reading debate because, although the Mental Health Law Centre supports the bill, it does have some concerns. One of those concerns is the lack of review mechanisms and the lack of remedies for a breach of the bill's provisions. Under the bill, the chief executive officer and others have considerable powers over residents, and ways in which the bill addresses this include requiring certain things to be done, for example mandatory notification of certain people or bodies and mandatory keeping of certain records. It also includes imposing limitations on when certain powers can be exercised against residents, for example, restrictions on their freedom of communication and physical restraint. I note that the officer provided me with specific examples of the time frames in which decisions such as restraint or restrictions on communication would be reviewed, and the procedures in which they decided to be implemented.

The Mental Health Law Centre is concerned that some clauses provide insufficient clarity about what can be done if actions that are mandated by the bill are not complied with. Examples are: notification not given as required; records of restraint of residents not kept as required; limitations imposed by the bill not complied with, for example, a person restrained or secluded in circumstances not permitted by the bill; and finally a decision made in accordance with all of the bill's provisions but the resident would like to appeal that decision or have it reviewed, for example, a decision to restrict the resident's freedom of communication.

Some provisions do specify penalties, for example, clause 16, which is ill-treatment of a resident; and clause 15, which is failure to report suspected ill-treatment, wilful neglect, unlawful sexual contact or unreasonable use of force on a resident. However other provisions appear silent on the consequences. An example of the apparently silent provisions is clause 10, which states that the CEO is allowed to restrict a resident's right of communication with other people, but only in certain circumstances and not in relation to the resident's advocate, enduring guardian, guardian or lawyer. This clause also requires records to be kept of such decisions, and various people must be notified. It is not clear to the Mental Health Law Centre what the resident can do if communication is restricted in circumstances not permitted by the bill, or if the required record keeping or notification does not happen, or simply if the resident disagrees with the CEO's decision and would like to appeal it.

Another area of concern is part 8 of the bill, which provides for residents to be restrained or secluded. The bill provides that this may happen only in certain circumstances, and there are additional requirements with regard to record keeping, residents' welfare, and review. However, the Mental Health Law Centre is concerned that the bill is not clear about what will happen if a person is restrained or secluded in circumstances not permitted by the bill, or if any of the other requirements of the bill are not complied with.

Another area of concern for the Mental Health Law Centre is the lack of controls over delegation. In the view of the Mental Health Law Centre, the delegation power at clause 20 of the bill is not sufficiently controlled. For

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example, the bill does not require a person to whom the chief executive officer delegates power to exercise those powers consistent with any practices or procedures published by the CEO. The Mental Health Law Centre stated in its submission on an earlier version of the bill that it believes the uncontrolled delegation power in the Mental Health Act to be the primary contributor to the variable standards of care and poor governance identified by Professor Stokes in his July 2012 report into mental health services.

Another area of concern for the Mental Health Law Centre is residents' safety. The Mental Health Law Centre made a strong submission that the bill should mandate that closed circuit television surveillance be installed throughout declared places, with sound, but without screens or monitors displaying that surveillance live, with the records to be stored. It also advocates that there be key card access to bedrooms at night, with access and egress to be recorded. I raised these issues with the officers during the briefing, and I believe the minister has a response for this. The Mental Health Law Centre argues that it is justified to protect patients against criminal neglect, and physical and sexual abuse, pointing out that a recent Victorian report indicates that over 45 per cent of residents of Victorian psychiatric hospitals have been sexually assaulted.

I canvassed this issue during the briefing, as I have said, and I would like to have a response on the parliamentary record, because that may go some way towards describing the stark difference between what is being set up through this bill—that is, a declared place—and a psychiatric hospital. I understand that CCTV will be installed in declared places as a security measure, basically to protect access to the property. But these properties, as they have been described to me, will be nothing like a psychiatric hospital. They will be homes for people with a disability. I would therefore like the minister to clarify in her response the difference between a declared place and a psychiatric hospital. During the debate on the Mental Health Bill, I argued strongly for CCTV. However, we need to address what kind of monitoring is appropriate for declared places, giving due consideration to the privacy of the people who will be living in those places. Therefore, that is definitely a matter that we will be following up in the review in years to come.

The final issue I want to raise is sterilisation and long-term contraception. Clause 17 of the bill deals with who may make decisions on behalf of residents about medical treatment. The bill authorises the CEO to make such decisions if the resident needs treatment but cannot make reasonable judgements about it and there is no-one else who is legally permitted to make the decision and is willing and available to do so. The minister would be well aware that the Mental Health Law Centre is concerned that this could include sterilisation or long-term contraception, and that the bill does not require the CEO to take such decisions to the State Administrative Tribunal. This is also an issue that I believe should be addressed in the minister's reply to the second reading.

There is another concern that I want to place on the parliamentary record today. The Uniting Church social justice unit commented in its submission on the lack of detail in the bill about the way in which the government may contract out declared place services and pointed to a recent report about the experience in the United Kingdom. That report, which I will forward to the minister, can be found on www.opendemocracy.net/ourkingdom and is titled "Parliamentary watchdog: too often private sector contractors' ethical standards found wanting".

It is of serious concern that the management and operation of declared places may be contracted out. The very real experience in the United Kingdom and the United States is that it has not worked out. Private sector contracting has been used in our own country by the federal government to remove scrutiny of detention centres for asylum seekers, because it all comes under commercial-in-confidence and therefore no-one gets the opportunity to examine it. As all of us who have been carefully watching this trend towards contracting out would know, this is very concerning. That is putting it extremely lightly. I guess in a perfect world, there would not be a clause in the bill that provides the ability to contract out these services. I believe government is accountable and it is the appropriate body that should be running these organisations. The bill provides that the CEO may enter into a contract for declared place services. However, the bill does not explicitly state what responsibilities that contracting organisation would be required to adhere to. In other words, the CEO could contract out certain things, such as accountability and transparency. That is a real concern that members on this side have raised. I do not understand why the ability for the CEO to contract out is even included in the bill, if the government has no intention at this stage of doing so. However, that is something that could be added down the track if a government had the will to do it. Therefore, I will be very interested to hear the minister's reply, and I may even potentially oppose that clause for contracting out, because I believe it does not provide adequate safeguards to ensure that all the responsibilities contained in the bill will be passed onto a contracting authority. I appreciate that the Uniting Church has brought that matter to my attention.

In my final comments, I would urge the government to undertake to include in the review the following issues as raised with me by the Mental Health Law Centre. If we have a review in three years and I or other people are around to ask these questions, we need to hear about the robustness of procedures and consequences for failure

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to comply with the requirements of the act; we need to track the safety of residents and any need for further measures to protect residents, such as CCTV; we need to know whether delegated authority is being exercised appropriately; and we need to know whether there has been adequate review of any medical decisions that involve sterilisation or long-term contraception.

Minister, as I have made clear from the outset and throughout my speech, the Greens support this bill. We see it as a significant step forward and we look forward to its implementation in due course. I do not think there is a person in Western Australia who did not feel for Marlon Noble and his terrible circumstances and the terrible injustice that our system created for a person who was already vulnerable. This bill has been a long time coming, and we should see it enacted soon so that people like Marlon Noble will not need to suffer any longer.

HON SAMANTHA ROWE (East Metropolitan) [2.50 pm]: I, too, rise this afternoon to make a contribution to the Declared Places (Mentally Impaired Accused) Bill 2013, which seeks to empower the Disability Services Commission to operate declared places. There is absolutely no doubt that people who are mentally impaired and who are going through the criminal justice system need a better alternative than going to prison. We need an alternative for people who are not fit to stand trial and who could be put at risk if placed in incarceration with mainstream criminals. This alternative should allow them to build their skills and be rehabilitated in a safe and secure environment.

Like the rest of my colleagues who have already contributed to the debate, I want to make it clear that we support this bill. This is a progressive piece of legislation that is most welcome by stakeholders and clearly needed, so there is absolutely no question that the opposition supports it. However, I would like to note some of my concerns, and they are to do with not the intent of the bill but the process by which it has come about. Most noteworthy is the lack of community consultation undertaken by the government when choosing the sites for declared places. In my opinion, the process of deciding the location of declared places has been deeply flawed and it certainly seems as though the timing of announcements and the selection of locations were driven by political motivations rather than the result of genuine community engagement and consultation. If that is in fact the case, it would be deeply concerning. The government has also failed to follow its own criteria when selecting the sites for declared places and their locations, and has not provided enough or adequate explanations why it has failed to meet the criteria it put in place. I would also like to briefly touch on privatisation, as did my colleague Hon Amber-Jade Sanderson. There does not appear to be a safeguard in the bill for privatisation, and maybe the Minister for Disability Services will be able to expand on this in her reply. I look forward to that. I am not sure if the bill provides an opportunity down the track for the privatisation of services, and I look forward to hearing the minister's response on that matter.

In terms of the history and the sites that were originally selected, which was before the last state election, the sites selected were Herne Hill and Kenwick, in the electorates of Swan Hill and Forrestfield. Understandably, there was an outcry from the community about the locations that were selected. Community groups and leaders were very dissatisfied with the lack of consultation that had taken place and, shortly after, the minister announced that would not go ahead, that those sites would not be used as declared places and that in future there would be more consultation with the community. But that did not happen. Shortly after the state election, it was announced in June that the new location for the centre was going to be Lockridge. The communities there were given no opportunity to engage in the decision-making process. It is a really big mistake for the government to go down that path. When it is going to announce something that is so incredibly important to a community, something that will have a real impact on them, the government could at least have the courtesy to engage in genuine consultation. Yes, a letter was sent advising of information sessions, but the decision had already been made, and the community knew that. That is why there has been such outrage over this entire process. As my colleagues have stated, the problem is not with the policy. They are not upset about this bill. Everybody agrees that there should be declared places for mentally impaired people—that is something we all agree on and is something that we need—but when there is no consultation or engagement the public feel as though there has been a real lack of transparency in the government decision to locate the places in the seat of Bassendean. Maybe it was to protect the marginal seats of Swan Hills and Forrestfield—I do not know. It looks that way, but I am not sure if that was the reason the location was changed to Bassendean. It is 2015 and communities want to be involved and have a say in what is happening in their communities. It is a serious flaw for a government to ignore the people and not engage in genuine consultation. Not engaging with communities is seriously becoming a bit of a hallmark of this government. I am not sure what they are afraid of or why they refuse to talk to communities.

Hon Alanna Clohesy: Perhaps they do not know how.

Hon SAMANTHA ROWE: It may be that they do not know how, but it is a real indictment on the government that they do not go down the path of consultation, and if it does not, it could have an effect at the next election. Having said that, the opposition supports this bill. It is a progressive piece of legislation. I look forward to the minister's response on how the government goes about selecting its criteria and why some of the criteria were

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not met, and whether the government is looking at going down the path of privatisation at some time in the future. Some clarification on that would be welcome.

HON ALANNA CLOHESY (East Metropolitan) [2.57 pm]: I also rise to make a brief contribution on the Declared Places (Mentally Impaired Accused) Bill 2013, because I think that it is a critically important piece of legislation and I am pleased that it is before us now. My brief contribution is to try to ensure its quick passage. As I said, this is an important piece of legislation because it is about providing accommodation and support for people in this state who would otherwise have been incarcerated unfairly, inappropriately and contrary to their human rights. That is the reason the bill is urgent. We know that when people with a cognitive impairment come before the courts, currently the Mentally Impaired Accused Review Board has three options if those individuals are found because of their cognitive inabilities to be unable to participate in their trial or make a plea. One is to send them to prison. The second is to send them to a declared place. The third is it can send them home. Up until now we have not had a declared place or a legislative framework in which to provide the declared place for those people to go, and that is why this bill is important. The story is also bigger than that. There is an important part of this story that needs to be put on the record, and that is the way in which the current disability justice centre proposed for Lockridge came about—and it came about almost separately from this bill. While this bill provides the legislative framework for the proposed disability justice centre in Lockridge to operate, for a couple of years it was almost as though there was no framework for the proposed disability justice centre. It seemed as though ad hoc decision-making was occurring. The consequence of that, as all my colleagues have pointed out, is that the community has felt left out of, and angry at, this process, and understandably so. The consequence of that community anger is that people with cognitive impairment have been let down as well. They have been demonised throughout this process, and the process has slowed down because of that, so we are still without a declared place. I will not go over the history of the process of the decision-making around where the first disability justice centre will be; that has been adequately covered here by my colleagues. When the residents finally found out about this, all they knew was that some sort of prison with people who could possibly be violent was going into their backyard. That is unfair. It is unfair on people with cognitive impairment who may reside in this facility and it is unfair on the community.

Across the world, there are many really fine examples of the way in which consultation with local communities can be held regarding contentious issues, not only about specific facilities or other community facilities, but particularly about these types of facilities. Some of the difficulties were, of course, that there was not any clear information coming from the government about how big such a disability justice centre would be; how many people would be included; what type of impairment a person may have, which may impact on the safety of the local residents; and, more importantly, what types of crimes the people may have been accused of. In fact, there was no information about whether the people who would reside in the disability justice centre had been only accused of committing a crime or charged with and found guilty of committing a crime. Here is the local community with no information at all, operating in the dark, and imagining situations that would likely occur next door to them. What would you do, Mr Acting President (Hon Brian Ellis), if you thought that your family and your kids were at risk and probably under threat, and that you had no rights to challenge a decision that had been made by this government? Of course you would act in any way to prevent the development of such a centre; of course you would protest; and of course you would stand up for your community and for your family. I know that that is what the residents of Lockridge have done; they have stood up for their community. The consequence of that is not only the fear that has been created in that community, but also the fear that has been created around people with cognitive impairment, and that is a crying shame.

Some of those answers have been provided to the local residents and in the framework that this bill provides about who will reside in the disability justice centre, but some of the answers still have not been provided. My colleague Hon Stephen Dawson raised some important points about how residents will be matched in disability justice centres, and questions around age and whether consideration will be given to matching residents with age, as well as the level and type of cognitive impairment. I think the government has a long way to go in informing the community about the functional components of the disability justice centres generally, and this one specifically. We have been told that what was a proposed second disability justice centre is no longer needed, but I would suggest that there needs to be a deeper and stronger look at that by the government, because I think the extent of the need is still fairly well unknown. The way in which the board will refer residents to the disability justice centres needs to be looked at fairly closely as well. Because this whole process has stirred up suspicion and cynicism, it makes me wonder whether budgetary implications are associated with the decision not to continue with the second centre, or whether this process has been so painful that perhaps the government does not want to continue with that. I do not have information about that, but the process has created all sorts of ideas and thoughts, and that is one that I would like to hear from the minister about—that is, the decision not to progress with the second centre.

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The legislation will authorise the Disability Services Commission to own and operate the disability justice centre. It is of concern, given the Disability Services Commission's experience with people with disability in particular, as it so claims, that there would be any options, either now or in the future, to consider outsourcing or privatising such a facility, particularly given the contentious nature in which it came into being, but also given how new and how important a disability justice centre is. These types of services need to stay in government.

In closing, I would like to talk about ongoing consultation with the community, because I understand that a local consultative group has been meeting monthly, and I suspect it met until November. I would like the minister to be able to address members in her reply about what ongoing consultation there will be with the community, both local residents and the sector, and how that ongoing consultation can be locked in—that is, guaranteed by the government that it will continue. We have heard from the Leader of the Opposition about some positive ways in which ongoing relationships with communities in other service delivery types have happened, and I think there is huge scope for local and broader sector ongoing community consultation to continue once it has started. With those few words, I would like to support the bill and welcome the minister's contribution in her reply regarding the issues that I have raised.

HON DARREN WEST (Agricultural) [3.09 pm]: Like my colleagues, I wish to make a brief contribution to the Declared Places (Mentally Impaired Accused) Bill 2013, which is a very important and very progressive piece of legislation. It is a nice surprise to have a piece of progressive legislation that we can support, given that it is such an important area of need in the community for those who do not fit the justice system and are unable to face trial, and need a facility that houses their needs. I think it is a very good move forward and it is certainly supported by those of us on the progressive side of politics.

As my colleagues have indicated, the process to where we have got today has been something to behold. It is yet another breathtaking round of incompetence from a government that seems to be unable to put politics to one side and deal with what is in the best interests of our citizens. As pointed out earlier, two proposed centres were moved in front of the last election. The civic in me would say that they were chosen for purely political reasons and that they were both to be moved into an electorate and situated very close together so that one section of the city could shoulder the burden of everybody else. I never saw that as fair and I am pleased that at least in the interim there is perhaps a stay for one of those centres. I understand that perhaps there is not enough demand for two centres at present, so I hope that the process will change and there can be some serious and meaningful dialogue with the community.

Of course, as indicated earlier, most residents would not want a facility such as this in their midst. Perhaps that was the catalyst for the criteria set out in the selection of sites including that the site needed to be 7 000 square metres and relatively flat, and have relatively good access to public transport with no schools close by, which is interesting. The site also needed to be away from neighbouring houses, preferably not in an industrial area, close to shops and services, and have council approval. When the sites were short-listed for the Western Australian Planning Commission and the Disability Services Commission, several were located at Lord Street Caversham, bordering on Lockridge, and Berrigan Drive in Cockburn Central. One lot was in Curtin Avenue, Cottesloe, and there was even one in Jutland Parade, Dalkeith. Lots were also found in Hayes Avenue in Dianella, Corfield Street in Gosnells, Forrest Road in Haynes, Altone Road in Kiara, Champion Drive in Seville Grove, Tindal Avenue in Yangebup and Thorne Place in South Yangebup. It was from those sites that two were selected. Interestingly enough, the initial sites chosen were not on that list, so I do not quite know what happened to them. At some point it was stated that they were in contravention of local government planning approvals, but that did not seem to matter when the sites in Lockridge were chosen. As far as I understand, these sites have not met three of these criteria. I guess that raises many questions as to why it was done the way it was done. I could say it was a sneaky, underhanded attempt by the government to sneak something into an electorate where perhaps there were not the political implications in front of an election—I think that was indeed the case. I can see why the residents of Lockridge were dismayed. Their trust in their government has certainly been tested. It was very unfortunate for those residents who had mounted a very strong campaign against what was an unjust decision for their community. I am also pleased that there may be a reprieve for Lockridge Senior High School Farm. As some members might know, for a very short time I attended the high school at Lockridge. Speaking as a farmer, it is very important that these facilities are available to city children to help them understand farming as the link between the city residents and the farming community is diminished. I am very pleased that there is somewhat of a reprieve for the farm, which was not taken into account originally when the decision was made to put the site on the Lockridge farm.

I will also make a couple of comments about some other parts of the process in which the residents were informed—as Hon Amber-Jade Sanderson pointed out—very shortly before the announcement. They were informed but they were not consulted. It seemed to the residents that the deal was already done and that they had no say or input into the matter, which on such an important issue is unfortunate. I do not think we have a class system in Western Australia but the people in Lockridge may have felt that to be the case. It appeared that some

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meetings involved the City of Swan but nothing went public and nothing went to the council, and it seemed that the local government process had been circumvented. The site on Lord Street is less than 500 metres from Lockridge Primary School, which was built in 2010 at a cost of \$13 million, and it is across the road from houses. The second site was to be at Lockridge Senior High School—we understand it is not going ahead at present and I hope that that idea is scrapped for good—on land currently used as part of the school farm and 600 metres from the Good Shepherd Catholic School. The two sites are only 1.5 kilometres apart, which appears odd. In 2012, the Herne Hill and Kenwick sites were abandoned and the government was given a list of 11 sites, to which I have referred, from which to choose a site according to the criteria. I also have some questions for the government and I hope that the minister can address these in her response. It was always said that the decision to locate the two centres was made by cabinet on 4 June 2000. However, it has been found under the Freedom of Information Act that a draft application from the WAPC to have the area laid over the top of these sites was made on 26 April 2013, clearly before the cabinet decision was made. I can understand that that would be part of the process, but clearly the government was not letting on that it was intending to do that in front of the last election and certainly before 26 April 2013. We then heard in budget estimates in the middle of last year that the Altone Road centre was not required. In what is somewhat of a slap in the face of this Parliament, I understand that if the Declared Places (Mentally Impaired Accused) Bill 2013 had not been passed by the time the development was complete, then the centre would be run by the Department of Corrective Services in the interim. It seems as though the government was going to plough ahead with this development without having the decency of running this bill through the Parliament in the first place. The government has set this up so it does not need local government approval, only the approval of the WAPC. However, it is odd that the reasons given for abandoning the sites in Kenwick and Herne Hill were that they would contravene local government regulations. I look forward to the minister's explanation for that. The City of Swan has passed motions opposing the Lord Street centre. When the city was asked for an opinion on the site, it opposed it on the grounds that it did not meet the metropolitan region town planning scheme. As I pointed out, it did not even meet the government's criteria on where the site should be located. I understand that the City of Swan received well over 300 submissions opposed to the centre. These centres are too close to the schools. Intellectually impaired people who are deemed too dangerous to be in society should be housed further than 350 metres away from schools. Dumas House is in close proximity to Parliament House—I think everyone would accept that—but Dumas House is further away from Parliament House than this centre is to be from the Lockridge Primary School. It is very difficult to say that this site is not in proximity to the school. The community feels betrayed and the process has been botched. It has not been an act of good governance. It has been done by what I consider to be a fairly poor government. Mr Ben Wyatt might be right when he says that the Barnett–Redman government is currently the best fringe show in town.

We support the implementation of these centres because they are very important. This is a progressive piece of legislation that we will support and I want that put clearly on the record. However, the government needs to do better in many areas, particularly in its consultation with the community. Although we accept that these difficult decisions have to be made and that sometimes tough decisions make it difficult to bring the people with us, to be open and transparent and honest, and to respect the people that the government is dealing with would be a very good start.

HON KEN TRAVERS (North Metropolitan) [3.19 pm]: I believe the Leader of the House is keen for some of us to speak this afternoon on these matters, and I am more than happy to oblige!

My colleagues who have already spoken have clearly outlined why the Labor side of politics can actually see why declared places are an important part of the government fabric in Western Australia. There are two things I want to talk about this afternoon. Firstly, I want to talk about how we arrive at a decision about where we locate these facilities and about how a good government operates, rather than how a poor, arrogant and patronising government treats people in the community. The second question we need to ask is: who should run these facilities? They are important to our community, so we should be asking who ought to be taking ultimate responsibility for running them.

I want to tell members a little story this afternoon that I hope will give a fairly strong indication of the values that were instilled in me by my parents and on which I approach issues like this. I do not know why I still remember this story, but I actually remember as a very young boy, probably about 10 or 11, being at home when we got a knock at the front door. My father answered it and it was somebody doorknocking to get a petition up to oppose the sale of a very large house at the end of our street to what was then known as the Authority for the Intellectually Handicapped. That was not the greatest terminology; it has now moved on to become the Disability Services Commission. It was a very large house, and coincidentally it is now owned by someone who I went to school with. The authority was looking to purchase that house to provide accommodation for people with disabilities and the neighbours had drafted a petition to oppose the purchase of that house by the authority. These were not the sorts of people we are talking about going into declared places; they were merely people with

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disabilities. The argument put to my father was that the neighbourhood should be opposed to the sale because it would bring down property values in the street and we did not want these sorts of people living in our street. I was always amazed and proud of my father because he told them where they could go. He said that he was more than happy to have that facility in his street, that these people deserved to be able to live in the street the same as us and that there was no reason for us to oppose the sale of the house. Those people had the right to live there and they deserved to be treated with dignity and respect. He said that he did not care even if it did devalue our property, because it was too important for that. Those were the values that were instilled in me by my father, and I still remember that to this day, and it is still a value that I hold dear.

I actually learnt two things from that experience: firstly, the importance of treating people with respect and affording them dignity; and secondly, the importance of standing up for what one believes in. It was amazing to see the pressure applied to my father over that issue; it was almost as if we were letting down the community by not signing the petition. Many years later, on the day I moved into a new house, I was asked to sign a petition to try to remove an Aboriginal family from two doors up. I remembered the lesson my father taught me and I said, "I'm not signing a petition until I have a reason to sign it. I will never sign that just because someone is Aboriginal. If someone is an unruly neighbour then I will treat them in those terms, but it will not be just because they're Aboriginal and it will not be just because someone else tells me to".

That is the position from which I approach this issue. I accept and understand that sometimes one has to go out there and stand up to defend what is right. People need to have the opportunity to live with dignity; that is really, really important in our community. That is what we are trying to do here: to establish places in our community for these people. What we are dealing with in this legislation is a bit more complex, and the sorts of people who will be placed in these homes have the capacity to create fear amongst their potential neighbours, and I understand that. It is incumbent upon all of us as members of Parliament to provide strength and confidence to the local community in that regard.

Another story that needs to be told relates to when the current government sought to find group homes for children in the care of the Department for Child Protection and Family Support. A number of them were being established in my electorate in Wanneroo, and Hon Sue Ellery—who was the then spokesperson for child protection—and I went out and met with a number of local resident groups. They had put a strong case to us about why these group homes should not be located next to their properties. One of their concerns was the potential for fire in a rural area and sadly that situation eventually came to pass; there was a fire at one of these properties. Nonetheless, I remember Hon Sue Ellery sitting there with the residents and saying to them, "I know what you want to hear from me—that this is not an appropriate place for this facility, but in my view, it is an appropriate location. The issue is how we manage the implementation and how we deal with your rightful concerns as a community."

It was interesting; at the end of that process, whilst the people still would have preferred not to have had those houses located near their properties, I remember one of them saying to me that they wished Hon Sue Ellery were the minister because of the way in which she was prepared to listen to their concerns, to work with them to address their concerns and to actually overcome their fears. In fairness, the residents had very legitimate concerns about these issues, but their experience with Hon Sue Ellery was in complete contrast to the way in which their legitimate concerns had been dismissed by the then government. It was not so much the minister but the minister's chief of staff who arrogantly dismissed the concerns of the residents. We did not just go there and tell them what they wanted to hear; we worked with them to try to address the issue, and that is the role of a constructive opposition.

Fast forward to the situation that we have today, which can only be described as one in which the current government, after having tried before the election to railroad the community about the location of these declared places, eventually located them both in marginal seats without any proper process. It tried to guilt-trip the opposition into accepting a very poor process and in this we see the arrogant and patronising nature that is at the heart of the Liberal-National government in these policy areas nowadays.

One could potentially forgive the then responsible minister as having been perhaps a bit naive at the time and perhaps not really understanding what they were doing. They got it wrong the first time, so they called it off before the election and cleared the air. In that situation, one would hope that after the election its response would have been to have said, "Okay, how can we do this in a proper way?" Hon Sally Talbot was at the time the responsible shadow minister, but I will tell members what I would have done as minister. This is not done often enough—I guess for people who think they know the world very well, no-one else can be as smart as they are, so they probably would not do this, but I always accept that there are a lot of people in this world smarter than me—but I would have got on the phone to the opposition spokesperson and said, "I know that Labor is as committed as I am to seeing declared places built; there isn't going to be an easy pathway to achieve that. We need to provide comfort and confidence to the community that the process we use to select these sites is a good

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and fair process that is done on merit rather than any other criteria.” As minister, I would ring up my opposite number and say, “Can we have a chat? Come in and let’s have a chat about this, because it is a controversial area.” I am confident that the Labor spokesperson in those circumstances would have said, “Of course I’ll come in and have a conversation with you”. If the minister offered to work with the shadow spokesperson to bring this together—to involve them in a proper process in which things are done fairly with absolute transparency and clarity to show that there is nothing untoward going on—I am absolutely confident the people we have had in that position would do that. I would be horrified if our shadow spokesperson did not. They would sit with the minister and say, “We accept that it is difficult to find a location for the centres, but we want to be part of that process. Minister, we will work with you to achieve that.” Did that happen? No, it did not happen. I suspect that it did not happen because the minister thought that she knew better than the rest of the community—the government would try the same process that it had used prior to the election, a very pathetic guilt trip of those people at the end of the process, and then the government would decide the best location for the centre. Of course, we know that the government established a set of eight criteria, but it was never explained to us—other than what can be described only as “manufactured arguments”. They are “manufactured” because they were not part of the original criteria used. The government suddenly decided that sites that may not have great outcomes for senior Liberal Party members would be excluded even though arguably they met the criteria to a greater degree than the sites that were finally selected. I think it was a very sad day for politics in Western Australia when the government went down to that level. The government was not prepared to show leadership or proper bipartisanship on an issue as important as this. The government did not demonstrate bipartisanship and it does not understand what being bipartisan means. It thinks it can try to run a guilt trip on people. As I said at the beginning of my contribution, I understand that we have to find locations for these centres and I am happy to have the debate and to argue with the community if it tells me a location is not good, so long as I have absolute confidence that there has been a clear, open and transparent process to identify those sites. That is the problem with this debate; Labor members have never been able to do that despite our desire to do so.

I understand that local members will come under immense pressure over this and that we must stand up and be counted on these issues, but that starts at the top. It has to start at the very top with the minister embracing that process. I think that is why we have got to the point in this debate at which the process has run so far off the rails. There is no transparency, clarity —

Hon Nick Goiran: Or is it only a one-way street?

Hon KEN TRAVERS: Was the member here for the rest of my speech?

Hon Michael Mischin: Was there anything worth listening to?

Hon KEN TRAVERS: Mate, no-one has hung up on me so far today! In fact, I think a couple of extra members have come into the chamber to listen to me —

The ACTING PRESIDENT (Hon Liz Behjat): Order! Let us bring it back to the topic at hand, shall we.

Hon Michael Mischin interjected.

THE ACTING PRESIDENT: One person at a time!

Hon KEN TRAVERS: Minister, what part of what I have said today is not true?

Hon Michael Mischin: You said a lot of things that you claim are the truth, but you have not provided any evidence to support them, such as the government’s motives on, particularly, the sites. Where did the Labor Party want these centres?

The ACTING PRESIDENT: Members, order! Question time is at 4.30 this afternoon and it is just 3.30 pm; we are an hour away from that. If there is to be questioning across the chamber, let us do it at the appropriate time. We are dealing with order of the day 8, which is the Declared Places (Mentally Impaired Accused) Bill 2013. Let us stay on topic.

Hon KEN TRAVERS: As Madam Acting President would recall, I started my comments on this bill by talking about government members having a degree of arrogance and thinking that they know best and that they will decide and the rest of us have to just follow and trust them. They do not think that they have to show transparency or have a proper process for working with members of this house to get good outcomes. Yet again, the Attorney General has demonstrated that there is a plethora of ministers with that view in the current cabinet.

Hon Michael Mischin: How do you figure that?

Hon KEN TRAVERS: There has clearly been no transparency on this issue.

Hon Michael Mischin: How can we work with someone who hates us as much as you do? Remember the Workforce Reform Bill? You said, “I hate you people.”

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Hon Kate Doust interjected.

The ACTING PRESIDENT: Order! I know that we have been away from this place for quite some time, but can I remind members of the standing orders of this Council. When the person who occupies this chair says “Order”, the house will come to order.

Hon KEN TRAVERS: I do not have any qualms about admitting that I hate a lot of the values that the Liberal Party and the Liberal Party members who sit in this chamber stand for.

Hon Nick Goiran: Freedom of speech, property rights —

Hon KEN TRAVERS: You do not believe in that. You do not believe in any of those things. You might claim that you believe in them, but you do not exercise them. Are you going to compensate taxidriviers’ property rights, or are you just going to rely on the industry to deregulate itself?

The ACTING PRESIDENT: Order. Hon Ken Travers, “you” is not a word that we use in the chamber and we do not point across to the other side of the chamber. We direct our comments through the Chair and we do not invite interjections from the other side of the chamber. I remind members not to make those interjections.

Hon KEN TRAVERS: I will ensure that I use my right hand as my talking hand so I cannot be accused of pointing at anyone. If I am pointing at anyone, it is Hon Darren West, and it is with an open palm.

There is a range of words to describe the values of government members that I find quite objectionable, whether it is hate or objectionable, but having said that, it does not stop the opposition trying to work with government members in a constructive way for the good of the state. I will not go into the conversations I have had behind the Chair, but, ironically, just before I came back into this chamber I had one of those conversations with a government member about how we might progress a matter for the good of the state.

Hon Nick Goiran: I thought you were not going into what was said behind the Chair.

Hon KEN TRAVERS: I am not going to say who it was or the topic we were discussing. I am making the point that immediately before I came into this chamber I had exactly that sort of conversation with a minister of the Crown of this state who I think has capacity; who does not behave in an arrogant I-know-best way; who is prepared to engage and embrace a range of views; and who will try to work around the chamber on issues to get good outcomes for people in Western Australia. That minister many want to tell the member about it or the member might want to check with the minister to see whether I had that conversation. But it is for the minister to tell the member about it; I will not go into detail about it. Nonetheless, it does and can happen, and ironically it happened just before I came into this place.

Despite the unruly interjections, I think I have made the point that a good minister could have undertaken this process and got a very different outcome in terms of finding locations. Sadly, we will never know whether we would have ended up with the same locations or a different set of locations, because there was no transparency at the beginning of the process. I note that there was going to be two centres, but now there will be only one. I hope that out of all of this we will have a better process for locating the next centre.

Finally, as important as these facilities are, in my view, they should be run by direct employees of the state of Western Australia. That is the only way to get proper accountability. There is a litany of examples of accountability being lost when services are privatised or contracted out.

It is a completely different area, but only yesterday I got answers back from a minister on the way in which things happen within bus contracts in Western Australia, and maintenance and different issues around buses. The response was, “I can’t tell you that because that’s managed by the privatised contractors”, who are still doing it, supposedly, on behalf of the state and should still be accountable to this chamber. But we are told, no, the information cannot be provided. Yet we are going to put people into a declared place where their liberty has been deprived under the care of the state, and we are going to contract out that responsibility and we will lose that accountability back to this place. My view is that when people are put into those sorts of homes, the management, running and operation at every level should be accountable back to this place. The Declared Places (Mentally Impaired Accused) Bill 2013 does not provide for that. Although that is probably a good reason to oppose this bill, on balance it is important so we need to support it. But some elements of this bill are very poor, and some of the administration side is very poor. That is why I think we will hear more and more of the people in our community who keep telling me that this is the most incompetent government they have seen for a long time in Western Australia.

HON SIMON O’BRIEN (South Metropolitan) [3.41 pm]: I support the Declared Places (Mentally Impaired Accused) Bill 2013. In so doing I am prompted to reflect on some comments that have already been offered to the house in the course of the second reading debate. I do so on the basis that I have had an involvement with

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disability in a political sense since about the early 2000s as an opposition spokesperson. I liaised extensively with the non-government sector. In particular, in the lead-up to the 2005 election I created a comprehensive policy that was taken to that election and widely supported by the sector. In late 2008, following another election, I became Minister for Disability Services and served in that capacity for a couple of years. I have also been a member in this place for precisely the same length of time as Hon Ken Travers, and I listened with great interest to some of the observations he made and contrasted them with my own experiences not only in the disability sector, but also across government generally. I did so in light of a recent debate pursuant to a motion brought forward by another opposition member that condemned the government for a lack of leadership and what have you in the disabilities area. I think there was some reference to politicising the matter. I did not participate in that debate, but it struck me as particularly ironic that that was precisely what the mover of the motion, by the wording of the motion, was doing; they were trying to politicise the debate. In all my experience, it has generally been of benefit to the sector when it is not subject to partisan politics. The fact of the matter is that different governments and oppositions of the day, particularly when they go to the people at an election and present their credentials in respect of, in this case, the disability sector, will obviously try to present themselves as the better option: “We have a better plan. We’re prepared to commit certain resources”, and so on. That is not politicising something.

Hon Ken Travers: No.

Hon SIMON O'BRIEN: As Hon Ken Travers knows, that is not politicising the argument; that is the normal process. The thing that strikes me and has always struck me as very sad in all this is that it does not attract the attention of the media and, thereby, the general public in Western Australia. They are not interested in good stories about disabilities, about positive aspects of disabilities or about doing the hard yards. They will turn up with their —

Hon Ken Travers: Or if the minister and the shadow agree with each other on it.

Hon SIMON O'BRIEN: Indeed. That is why they will turn up with their cameras if there is someone in care and it is all just too hard for the carers—perhaps the parent or it may be a single parent—and they are at the end of their tether and they cannot handle it anymore, so they are going to deliver their charge, in their wheelchair, to the steps of the Disability Services Commission and say, “There; you look after her or him.” The cameras turn out for that. Generally, though, in my experience oppositions—I have been in opposition in this portfolio—do not take advantage and come along and attempt to join in and celebrate the government’s discomfort on that occasion. The reason is that there is no Disability Services Commission officer, minister or, for that matter, opposition spokesperson who can give any sort of guarantee that people with disability, particularly challenging disability, are not going to be in that position. They simply cannot do it. There are always going to be people living with disability who do so in extremely trying circumstances. Yes, and we try to get the resources we can to do more things for more people to make it a bit more liveable for them. I have previously said that one of my proudest achievements is not about building roads or bridges or putting through commercial —

Hon Ken Travers: That’s because you didn’t do any! Sorry, I couldn’t resist it.

Hon SIMON O'BRIEN: That is a bit too flippant because the fact is that it is not true, and I think it is very uncharitable.

Hon Ken Travers interjected.

Hon SIMON O'BRIEN: If Hon Ken Travers compares the record of what can be done in a couple of years versus seven and a half years, I think it stacks up pretty well. But that is not what we are talking about in this —

Hon Ken Travers: Sorry; it was too inviting, though.

Hon SIMON O'BRIEN: I know it was, and realising Hon Ken Travers would have fallen for the trap, I would have made it a trap if I had some hindsight—but, anyway!

In addressing this bill I am trying to explore that part of the debate that challenges the house and the members to consider what bipartisanship is. That is how I relate my remarks just now to this bill, and I appreciate the courtesy I am being shown by members and I hope I can give them something useful.

The thing I am proudest of is not commercial tenancy laws or anything. People are surprised if they get the answer to the question they ask, and I say —

Hon Ken Travers: We are sitting on the edge of our seats, waiting for it!

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Hon SIMON O'BRIEN: I was proudest of our initiative in 2009 to make sure that all school leavers with serious disability would have a greater access to alternatives-to-employment funding. There are some very good reasons for that. I think in 2009 terms it was 23 or 26 families that might have been affected because there are a few dozen cases a year. But from there on, when we have the situation of people with disability who require care at a high care level who cannot participate in employment because of the serious nature of their disability, the families who have been enjoying what is, in effect, a built-in respite support of full-time education until their child is 18 years old, now still have some options to be able to have the same sort of support they need. Even in times before compulsory education to year 12, all children with very serious disabilities went through year 12. It is for that reason, amongst others. Apart from trying to provide some socialisation, it provided built-in respite. A family suddenly confronted with, "Here's your 18-year-old, 16-stone child with very challenging behaviours, difficult-to-meet needs, all yours for the next 50 to 60 years," I think about the impacts that has on a family if it receives about two hours of access a week to some respite services. Who is going to look after that child? Is someone going to leave their job? Is a marriage going to break up? What impacts does it have? Everyone tries; everyone loves their children. I think the model we went for in 2009 provided about four days a week of alternatives to employment. That made a difference to people's lives. It stopped some of those families going into a situation of urgent and critical need. It thereby freed up growth dollars that were available to provide assistance to other families who already were in critical and urgent need. I am proud of that because that made a difference. It is not that sexy. You know what, the media do not give a rat's about it, but that is the proudest thing I have achieved or been a part of in the whole time that I have been in government.

Hon Ken Travers: You should be proud of it.

Hon SIMON O'BRIEN: Thank you.

Hon Ken Travers: As a bit of history: a decade before that there was a thing called post-school options. Funding for it was stripped by the commonwealth and that created the circumstances that Hon Simon O'Brien fixed.

Hon SIMON O'BRIEN: Yes. I compliment Hon Ken Travers for the generosity of his interjection but also for the gift of reminding us all that when it all boils down —

Hon Ken Travers: The commonwealth is to blame!

Hon SIMON O'BRIEN: We all hate the commonwealth!

Hon Ken Travers: They rip money out and put the pressure back onto the state system.

Hon SIMON O'BRIEN: Yes, and that is a theme we can apply to many debates in this place.

Unless things are going badly in Disabilities, there does not tend to be a great deal of media interest. It is a very cheap shot indeed for an opposition to try to make political capital out of someone's discomfort. When someone is doing it particularly tough—perhaps a family member has extraordinarily difficult-to-meet needs—it is a cheap shot to come along and say to this Parliament or at some media occasion, "Isn't it disgraceful that the government is allowing this to happen and these people are living in desperate circumstances? This heartless government will not do anything about it." By and large, over the decade and a half that I have been closely associated with it, there has been a bipartisan approach in this state that we do not do that sort of thing. The fact is that when the opposition becomes the government, the shoe is on the other foot because the reality is it is not able as a new government to create a situation in which nobody is in desperate straits.

Hon Ken Travers: When you were the shadow Minister for Disability Services, Barry MacKinnon was the chair of the Disability Services Commission. We kept him on from the previous government. I was glad that we did that as a government. I thought it was the appropriate thing to do.

Hon SIMON O'BRIEN: It was a very good idea, and an outstanding chap he is too. I hope he has forgiven me for once appointing him chair of the Taxi Industry Board, but that is another story.

Hon Kate Doust: Which I am sure you will share with us soon!

Hon Ken Travers: Whatever did happen to the Taxi Industry Board?

Hon SIMON O'BRIEN: That is another story.

I sometimes get a little nervous when I hear the remarks of Hon Ken Travers. I listened quite closely to his address. I appreciated the delicate way he skated through the same themes that I am now exploring. I think he did it with some insight and skill. I want to talk first of all about the things that he said that were right and reserve some other time for other comments. Hon Ken Travers is right when he says that sometimes it is good away from the political hurly-burly, if governments want to get things done, to just talk to oppositions and say, "Here's what we're trying to do for very good reasons, perhaps we can work together to do it." I can recall at

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least one occasion when I made such a phone call to Hon Ken Travers about a matter that we do not need to go on about now but it was the sort of thing that —

Hon Ken Travers: We had a couple of conversations like that.

Hon SIMON O'BRIEN: Indeed.

Hon Ken Travers: I always hoped it was not the cause of your demise!

Hon SIMON O'BRIEN: We are sometimes judged by the company we keep, but of course in this place we are all friends first and foremost.

Hon Kate Doust: You could always come back to the fold. You could always step over the breach and join us.

Hon SIMON O'BRIEN: I am trying to make a serious contribution here.

Hon Ken Travers: Simon, we'll pick you up under the father-son rule if you like!

Hon SIMON O'BRIEN: Hon Ken Travers and I have had some experience of sorting things out behind the Chair or through an informal phone call. It is not about great issues of the day. It is not about matters of political moment. Governments and oppositions take opposing views. Oppositions have to reserve their prerogative and their responsibility to make sure that the government is scrutinised. But for some things, particularly if they are the sorts of things that may affect citizens' sensitivities, it is appropriate to gain an understanding and make sure that we work through things. Hon Ken Travers spoke about what he perceived as a lack of ability by some ministers in this government to do that. I do not know if that is the case or not. I think different people—it does not matter what side of politics they are on—exhibit a greater capacity to engage with others; some inevitably will come across as more stand-offish. Sometimes of course it is simply a case of people not feeling confident about speaking with opposite numbers rather than a reticence or a lack of goodwill. Human relationships are a complex thing and never more so than in the hothouse environment of public affairs, so I do not offer any comment about that.

It is wrong if members opposite, encouraged by Hon Ken Travers, were to gain a view from this debate that there is some sort of monopoly on those skills, or lack of skills, on either side of the house. That is a nonsense. I go back to when Hon Ken Travers and I started in this place in the last millennium during the Court government and some of its shrinking violet, retiring members like Hon Peter Foss, Hon Norman Moore and Hon Doug Shave, who would be subject to accusations of arrogance from Dr Geoff Gallop. I remember some of my senior colleagues, who had been here 20 years then, saying, "You haven't seen arrogance until you've seen the Labor Party in government!"

Hon Ljiljana Ravlich: Who said that?

Hon SIMON O'BRIEN: Hon Bill Stretch certainly said it, and he would know. I do not know that I 100 per cent —

Hon Ken Travers: I am not going to let you attack Norman like this!

Hon SIMON O'BRIEN: I am not saying for a minute —

Hon Ken Travers: That Norman was not arrogant!

Hon SIMON O'BRIEN: I am not saying for a minute that the Labor Party has a monopoly on arrogance in government.

Far be it from me to even suggest such a thing! Perish the thought! It does show, though, that perceptions vary according to which side of the house members are on—whether they are in government or in opposition. With justification, or unjustifiably from time to time, the same charge of being arrogant or agreeable can be fairly and squarely levelled at each side by the other; we all know that. However, when it comes to disabilities, I like to think that we do not improperly exploit the emotiveness of the issue or try to politicise it in a way that is inappropriate. There are ways for politics to be argued and there are ways for oppositions to hold ministers and governments to account. Yes, that is right and proper, but there is also a point that should not be crossed.

I was not on the ground both before and after the election in some areas that Hon Ken Travers referred to as sites for certain facilities. However, I have to say that I believe I saw on the news reports some people associated with the opposition who were getting well and truly stuck into and exploiting the fears of local residents about locations and trying to make it a political debate in a way that —

Hon Alanna Clohesy: That's very unfair!

Hon SIMON O'BRIEN: That is what I observed. It is what I observed —

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Hon Ken Travers: My point, though, was that the community trust had already been broken by that point. That's the point.

Hon SIMON O'BRIEN: That is an interesting perspective that Hon Ken Travers might have. However, have no doubt about it: several state Labor members were going over this matter boots-and-all in a political way, rather than trying to find a solution to it. I am sure members can find justification for anything, but I preferred —

Hon Alanna Clohesy interjected.

Hon SIMON O'BRIEN: Look, if the member over the back there cannot grow up, she should listen to the member sitting in front of her and to me, and she might learn something useful.

Hon Sue Ellery interjected.

The ACTING PRESIDENT (Hon Liz Behjat): Hold on! Through the Chair.

Hon SIMON O'BRIEN: I preferred to listen to the story that Hon Ken Travers told us about the household being interrupted to receive someone with a petition based on hate and ignorance —

Hon Ken Travers: Fear and ignorance.

Hon SIMON O'BRIEN: — fear and ignorance being declined by his father on one occasion; and then on a separate occasion many years later another petition based on fear and ignorance and possibly bigotry being declined in turn by him. I preferred to hear that story. That is why I would like to see reason brought to this debate. A thin line can be crossed when people involved in a political debate then engage in hypocrisy, by decrying and tut-tutting at the politicisation of people with disability and those associated with them, if they are then going to openly use those sorts of debates as a political platform. That is what appears to have been the danger in this matter. I do not know what the minister will say in reply. I suspect that the attempts by government to engage, particularly the Disability Services Commission and perhaps the minister herself, were to some extent frustrated by elements in the community that were not interested in engaging.

Hon Ken Travers: My point was that that engagement needed to occur earlier. You can't say you are engaging after the decision has been made and announced. That was the problem.

Hon SIMON O'BRIEN: I will leave it to the honourable minister to respond to that, as it is not my place to do so and I do not know the whole history of it. My experience, however, with DSC is that it has a long experience going back through several name changes in dealing with just this sort of issue. The DSC knows the sorts of sensitivities that existed in the old days around putting a hostel in a residential street. It knows about that. It has been through all the issues associated with Tresillian and other institutions around the place. And, yes, DSC officers would have had no misconceptions about the problems they would have to work through with the community in getting declared places established. I hope that the best of Hon Ken Travers's sentiments are reflected by all parties in pursuing resolution of these issues. It is too easy to politicise matters about people who are severely impacted by disability; it is inevitably a cheap shot and does nothing to encourage the dignity of our community. I hope therefore that people pay heed to some part of this debate that has been bipartisan in a way that is not often experienced before Parliament.

The bill itself seeks in large part to correct a deficiency that has existed for a long time. We do not want mentally impaired people shut away in prisons with the rest of the prison population simply because they need secure accommodation and there is nowhere else to put them. That is the issue confronting us. There is no-one in our community who does not understand that that is what has to happen: we need to have designated places to put people. What used to happen in the old days? Governments just winged it. That is basically what happened.

Hon Darren West: Was that the last millennium?

Hon SIMON O'BRIEN: And beyond, Hon Darren West.

Let us give some support to people involved in the disability sector and make sure that this bill receives the support of the house that it so clearly needs. There will be other matters to work through on this bill, and I will be interested to see how the matter progresses. However, I will tell members this, just to finish on a positive note, and if members do not appreciate the positive note, at least they will appreciate the fact that I am finishing —

Hon Ken Travers: I thought your whole speech was positive!

Hon SIMON O'BRIEN: Thank you.

If asked to assist in finding a resolution in working through the issues that no doubt will flow when we try to resolve these matters, I commit that I will participate with members on this side or on the other side of the

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chamber to work through the issues with the community, so that members opposite do not have to be scared that they will be attacked if they do the right thing and support an establishment in their electorate if it is the right location to be in; and that the Liberal Party or a future Liberal candidate will not use it to attack them. There will be plenty of other things they can attack Labor people over in due course.

Hon Ken Travers: I reckon if the minister appointed you to head a bipartisan committee, most people would trust that outcome.

Hon SIMON O'BRIEN: I do not know, but whatever happens, it behoves us in so many ways as local members to acknowledge that they are the matters on which we must come together, away from the hurly-burly of political life, to work them through and to achieve the outcome. That is probably enough said, and I commend the bill to the house.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [4.10 pm]: I, like my other colleagues who have spoken in this debate, also rise to make some comments about the Declared Places (Mentally Impaired Accused) Bill 2013. As has been indicated, the Labor Party supports this bill, but we have some concerns about it. I also want to say that I thank Hon Simon O'Brien for his comments this afternoon, because on the whole they were quite balanced. Hon Simon O'Brien is correct. No-one wants to see any person kept in a prison environment indefinitely simply because they have a mental health issue or a disability. Cases have been cited from around the world, often in the media, of people who, simply because they have a mental health issue or a physical disability, have been lost and forgotten and not looked after appropriately in those environments.

When I first came into this place, I visited the women's prison, Bandyup. I met a range of people at that prison on that day. I remember speaking to a young woman who was probably in her thirties, and we had a discussion about why she was there. She said to me that she had a history of having been in and out of the prison system, usually for quite minor offences such as shoplifting, or whatever it was that would enable her to get back into the prison system. I cannot recall whether she had a mental health issue or a disability, but she was a very young individual for who she was. I understand that she had essentially spent the whole of her life in and out of different sorts of institutions, and that whenever she got out of prison, the first thing she would do is commit some offence to break the law so that she would be put back in jail again, because that is what she knew and where she felt comfortable. I remember thinking what a horrible place that was for this young person, who was obviously capable of doing other things, and who had deliberately broken the law at the lowest level, if we like, simply so that she could get back into that environment. I thought surely there must be other places to which she could go, and I remember taking up that matter with the Minister for Corrective Services at the time, because I was surprised that a person like that could be lost in the system here in Western Australia at that point in our history.

This legislation is certainly welcomed by the organisations that represent people who have disabilities or are mentally impaired. I know from having picked up on bits of the conversation around the chamber today that members regard this as quite a progressive piece of legislation, and I am sure that it is. However, there are some parts of the bill that I would like to canvass with the minister, and I will also be seeking some clarification about how things will be managed in certain circumstances.

I will not go into extensive debate and repeat all the comments that have been made about how this legislation could have been handled better in terms of the approach taken. The approach could perhaps be referred to as a bit of nimbyism on the part of some Liberal members of Parliament who did not want this type of facility established in their own backyard in areas such as Cottesloe, Nedlands and Forrestfield. I must say on a personal level that I have always thought that the Sunset Hospital site in Dalkeith would have been a fantastic location for this facility, not just because of the environment, but because it would provide a peaceful location and a better lifestyle arrangement. The people who will be placed in this facility have committed an offence and been charged, and are obviously unfit to plea. But we are not setting up under this legislation a new style of prison. We are setting up a place in which these people can reside and hopefully be afforded training and other opportunities. We therefore need to ensure that facilities such as this are placed in an appropriate environment. I have always thought that the Sunset site, which we know has been sitting there for a long time, might have been an appropriate venue for a declared place. I am sure there are also other sites that would be calm and peaceful and, dare I say it, spiritual in some ways, that could help assist these people.

The issues that have been canvassed particularly by my colleagues from East Metropolitan Region have focused on the government's decision to locate the initial two centres, but now the only declared place facility, in Lockridge. Hon Simon O'Brien made some comments about the way the local members managed this issue for the community. However, I think that because of the way this issue was handled by the government, obviously the community got its back up; and who could blame it? I am sure this would happen in almost any electorate if there was not an appropriate consultation process and a period of time to enable people to absorb the change and embrace it.

Extract from *Hansard*

[COUNCIL — Thursday, 19 February 2015]

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The ACTING PRESIDENT (Hon Liz Behjat): Just a reminder before I leave the chair that before we return, people may want to straighten their ties and fix their lipstick. I will leave the chair until the ringing of the bells.

Debate interrupted, pursuant to standing orders.

[Continued on page 410.]

Sitting suspended from 4.15 to 4.30 pm