DECLARED PLACES (MENTALLY IMPAIRED ACCUSED) BILL 2013

Second Reading

Resumed from an earlier stage of the sitting.

MS M.M. QUIRK (Girrawheen) [2.41 pm]: Before the adjournment of debate on the Declared Places (Mentally Impaired Accused) Bill 2013, we were talking about the fact that the process for deciding where declared places should be sited is not a transparent one under this government. People were kept in the dark, given little notice, fed half-truths, and faced what can be seen as politically motivated decisions rather than sound planning and public policy decisions. I said that it is not surprising, given those circumstances, that there is community disquiet.

The SPEAKER: Members, no private meetings please; I do not want the member for Girrawheen interrupted!

Ms M.M. QUIRK: I would like to contrast that process with what occurred when the government, then in opposition, campaigned vehemently against the siting and construction in Bentley of the Boronia Pre-release Centre for Women. In 2005, the member for South Perth campaigned quite strongly, along with other members of the opposition, against putting the centre in that location. Particular concerns were expressed that there were a number of aged-care homes in close proximity. Again, these were legitimate concerns, but the Gallop government early on set up a lengthy process of community consultation involving the neighbours. Over time, this consultation subsequently assuaged the concerns of locals, but that happened as a result of confronting the issues, not obscuring or diminishing them. The process was cutting-edge and subsequently won a number of awards for the fact that the community was included in all the decision-making processes. They were involved in making those decisions, which certainly helped ameliorate the concerns of local residents. I have to say that, to the credit of the member for South Perth, he is generous enough now to say that he got it wrong.

I have personally observed the close involvement of neighbouring community members in the centre, in all sorts of capacities, and the occupants of Boronia attend the aged-care homes and cater for significant events. Their relationship is very good. I am told that the crime rate in that area is one of the lowest in the suburb because the lighting and security around the centre act as deterrents to would-be criminals.

In contrast with that is the process—I use the term advisedly—that occurred in the member for Bassendean's electorate. A prime example of this is the less-than-frank dialogue between the community and the Premier himself. In response to a question from the member for Bassendean on 12 June 2013 about potential residents at the centre, the Premier said in reference to one potential resident —

> This is a case in which a teenager with a head injury was held in Casuarina Prison after he was charged with stealing an ice-cream from a roadhouse in the outback. He could not understand the court procedures. He was never convicted.

In fact, that individual had a serious acquired brain injury through solvent misuse, such that his impulse control was virtually non-existent. He was held for a number of years in the special handling unit of Casuarina Prison which is, as the name suggests, for vulnerable prisoners, prisoners who have some issues or, for example, prisoners who frequently assault prison officers and the like. The Premier talked about stealing an ice-cream, but this is a person who actually assaulted a police officer, which is a serious enough offence under this government for mandatory sentencing to apply. Over the course of his time at Casuarina he has assaulted a number of prison officers. He required intervention from one of the leading Australian forensic psychiatrists, who flew from Melbourne to examine him and worked with the Disability Services Commission and the Department of Corrective Services to come up with a plan for him. This took a considerable time to manage and implement.

We know from documents obtained under freedom of information that the Premier received a briefing on this case, and it is different in material aspects from what he told Parliament.

The ACTING SPEAKER (Mr P. Abetz): Members, can you please quieten your conversations? Thanks.

Ms M.M. QUIRK: The briefing prepared by DSC and Minister Morton's office said, according to my notes —

> An intellectually disabled young man whose behaviour made him a public nuisance in his local community. Eventually after he stole an icecream the police were called and he lashed out at a police officer while being taken into custody and was charged with assault. He was imprisoned for many years as a result; more years than he would have ever served had he been convicted of the offence.

We can see that the Premier made some material omissions or modifications, failing to mention the charge of assault on police, referring to the person as a teenager when he was in fact older, and using the term "head injury", which implies a minor or even physical injury, rather than a permanent and serious impairment. I

mention this because it characterises the crash-or-crash-through methodology employed by the Barnett government in making a decision on where to site these facilities. Local residents and the town council are treated with contempt and a lack of candour. These centres are certainly needed within the justice system, but there is a right way and a wrong way to go about it, and this has certainly been the wrong way.

MS J.M. FREEMAN (Mirrabooka) [2.47 pm]: I, too, rise to speak on the Declared Places (Mentally Impaired Accused) Bill 2013, and I thank my colleagues the member for Armadale and the member for Girrawheen for their contributions to this debate. I particularly thank the member for Armadale for his extremely impassioned contribution; he made it very clear that the Labor Party supports disability justice centres and the processes involved in ensuring that people who are not in a position to understand or participate in the justice system or even to plead in a court of law—things that the rest of us are able to enjoy, if that is the word—are recognised and treated in a humane and compassionate way, according to the principles and quality of our communities. It is also important that they are afforded a place where they can work towards rehabilitation into the community. The member for Armadale outlined very eloquently the Labor Party's commitment towards disability justice centres. Like my colleagues, I want to talk about how that process under this government is lacking and has caused many problems for the community. I also want to talk about the success of that centre. In my contribution I will put on record my opposition to the process undertaken by this government in identifying sites for declared places; I nevertheless support the intent of the legislation to provide suitable and appropriate accommodation for people deemed mentally impaired by the Mentally Impaired Accused Board.

I understand that declared places and the disability justice centres will be secure, regulated and a protective environment to facilitate the provision of training, assistance and support to people whose behaviour presents a risk to themselves or to others. That is a very important process. We talked in this house yesterday about equity. One issue is to ensure that the outcomes of our actions are equitable for people. People who present a risk to themselves and/or others because of their disability deserve to be treated in an equitable manner. I and the Labor Party support the establishment of facilities that control the movement of people who reside in them—in this particular instance it is based on the security of the premises—for the protection of themselves and others while they work towards their capacity to reside in the community. As I said before, it is really important for us to engender hope.

Recently, a woman was incarcerated for a driving offence in the north west. Her name is Roseanne. I did try to find her second name but was unfortunately unable to do so. It is always interesting that when we talk about women in our community, we often just give their first name, whereas for men we give their full name. Also, for people who are less fortunate than ourselves or who are more vulnerable, we tend not to give their full names. Maybe her full name was not disclosed. As we heard through media reports, Roseanne was incarcerated because of a traffic infringement. Had she not been mentally impaired or had she been in a situation in which she could plead, she would probably simply have been fined or subject to having her licence suspended. However, because of her situation, because of her disability, she was incarcerated for a long time. That is clearly wrong. When that finally came to public attention, the public did rally around and forced the government, policymakers and bureaucrats to find other solutions. I understand that Roseanne came from the Northern Territory and that, in the Northern Territory, provision could have been made for her to return to some form of community facility, but that was not made available to her. We all know and we all understand that we do not want to see that happen to people in our community, but how we do that and how we bring the community along with us is what I want to question today.

What we do not support is a government that, by its actions, causes community backlash and prejudice against such facilities by, in the first instance, not consulting with the community and just making a determination in a politically conspired manner that leads people to be cynical. Secondly, because the government is placing these facilities on land in direct contradiction of its own guidelines and principles, the cynicism of the community has deepened and has caused the community to misunderstand the foundational principles of why we, as policymakers, want to have declared places and, instead, has led it to focus on the process. This failed process also enhances, I suppose, unreasonable assumptions about the people who will be resident in these facilities. The issue here, therefore, is the selection of the sites by government, and not the legislation, to provide appropriate facilities. I agree that establishing disability justice centres in the community is important to meet best practice in the successful and effective provision of training to support mentally impaired accused. However, the decision to establish centres in the Bassendean electorate and at sites around Lockridge Primary School has placed those centres and, therefore, the residents in those centres at risk of not being accepted by the community even before they are established. By not talking to the community, the minister and the department have completely undermined the fundamental purpose of their role and organisation. The website for the Disability Services Commission states —

> The Disability Services Commission is the State Government agency responsible for advancing opportunities, community participation and quality of life for people with disability.

The actions of the government have undermined this very important goal, function and responsibility to people with disabilities and, in particular, intellectual disabilities. I am grateful to the Community Development and Justice Standing Committee's inquiry into accommodation and intensive family support funding for people with disabilities, which illustrated to me that in Western Australia, people with intellectual disabilities comprise almost half—46 per cent—of all disability services users. That is a considerable number of people in our community to whom we need to extend care. I also note the 1996 New South Wales Law Reform Commission report, "Report 80 (1996)—People with an intellectual disability and the criminal justice system", which stated that people with an intellectual disability who commit offences are more likely to be charged and imprisoned, are less likely to be bailed, tend to receive longer prison terms and are less likely to be released on parole. This is clearly an indictment of the Australian justice system, which cannot deal with the most vulnerable in our society. As the WA Law Reform Commission stated in its 1991 report —

> It is wrong to treat as criminal those who, by reason of severe mental illness or intellectual disability, are temporarily or permanently deprived of capacity to conform with the requirements of law or distinguish right from wrong.

Three things that are very important to take into account and are the basis of our responsibility are: the fundamental goal of the Disability Services Commission; the fact that a significant proportion of people with a disability in our community are vulnerable; and the fact that our justice system fails to deal with these people in a responsible and compassionate manner and in a manner that reflects and recognises the disability that they have. Given what I have just outlined, I want to clarify that I do not believe, and I do not want it to be assumed from my prior comments, that intellectual disability is a cause of offending behaviour. Certainly, intellectual disability is not the cause of offending behaviour. The most common factors that contribute to offending are illiteracy, homelessness, comorbid psychiatric illness, unemployment and a lack of family and social supports. I recognise that this legislation does try to resolve how we deal with this dilemma in our justice system by delivering disability justice centres to serve as declared places for people who are found to be mentally impaired due to intellectual or cognitive disability. I also acknowledge that the paramount considerations in performing the functions under this legislation are, in order of priority, the protection and safety of the community and the protection and safety of residents, and to act in the best interests of residents who are not adults. The government's actions to dictate, to not consult and to politically manipulate the positioning of these sites, so that cynicism and criticism are the only outcomes, are totally disrespectful of the people it is charged with advocating for and protecting. The proposed establishment of the centres at Lord Street, Lockridge and Altone Road, Kiara contravenes the government's and the department's own principles and guidelines. In saying that, I note that the letter written to the member for Bassendean by Hon Helen Morton, MLC, Minister for Disability Services, on 14 June 2013, outlines the criteria for the sites, which includes land size with a minimum block size of 7 000 square metres; a flat block with capacity for landscaping; reasonable access to public transport; not in close proximity to schools, kindergartens or childcare centres; reasonable distance from neighbours; reasonable proximity to shops and community amenities; not in industrial areas; and a location likely to be acceptable to local councils. Not only was the community not consulted in the first instance, but suddenly, post the election, after the matter had never been raised, the community discovers that a disability justice centre is going to be located in its area. Given the criteria for the sites stated by the minister in that answer, suddenly that community is confronted with the department and the government overriding one of its most important criteria—namely, that it not be in close proximity to schools, kindergartens or childcare centres. I am not saying that it is not important to place disability justice centres in areas where they have the best chance of success so that the people in them can be rehabilitated back into the community, but I am greatly concerned by the government's dictating, not consulting and politically manipulating the location of these facilities. It undermines the respect and justice that should be afforded to individuals who are unable to represent themselves because of their mental impairment. The government stands condemned for turning a good piece of public policy into a political minefield of mistrust. It has not had an open, honest and transparent discussion, and an opportunity has been missed and prejudice has been created.

A community member who lives in the area of the proposed disability justice centre told me recently that she had doorknocked in the area and asked people about their views on the provision—which this person supports—and location of the centres. That community member is not the member for Bassendean but a person in the community with whom I have some dealings. She told me about two encounters that illustrate how the actions of the government and the department have resulted, in her view, in an adverse and prejudicial outcome, which, as I have said, is an indictment on them because they are charged with protecting these people and ensuring that they can participate in the wider society.

One lady she doorknocked told her that she felt that her plans to go into a retirement village would be undermined because the proposed facility would reduce the value of her property. Although she questioned this, she could understand that woman's concern and misunderstanding about what was going on, all of which was created by the government. The community member who was doorknocking was also somewhat bemused because the property did not seem to have an inherent value given its current standard. A few doors down, the community member spoke to a gentleman who, although upset with the government's lack of consultation, was concerned about the welfare of people with mental impairment and the need for the community to care for them and to prevent a repeat of the experience of people like Mr Noble and Roseanne, whom we have spoken about previously. We all know that Mr Noble was held in prison beyond the time that should be allowed before being charged. This man was very concerned about that.

[Member's time extended.]

Ms J.M. FREEMAN: That gentleman talked sympathetically and acknowledged that something needed to be done so that mentally ill people had access to appropriate facilities and that those appropriate facilities needed to be established. However, even though he was sympathetic, he still had a sense of mistrust because the consultation had been so poorly handled. He believed that he had been dictated to and therefore was cynical about the process. That is something we all do when things are unfamiliar and when we do not fully understand an issue. When an arrogant administration imposes a "we know better" attitude on the community, the community reacts. How does that advantage anyone, let alone the people for whom such facilities are supposed to cater? It smacks of a government that is out of touch and it leads us to believe that the Liberal government places itself above the people because public opinion is not listened to and is canvassed only in opinion polls and in the abstract realm of statistics. It makes people in our community mere spectators to democracy, and they have to react to agendas prosecuted by others out of political expediency and not good policymaking. It cannot be good policymaking to place these two facilities in an area that contravenes the department's and the government's guidelines, as outlined previously.

It is clear that the government's processes for choosing these two sites was based not on good policy considerations but on limiting the political pain it would have to endure if it were located at the other two sites. In answer to a question asked in the other place by Hon Amber-Jade Sanderson about the 11 different sites short-listed by the WA Planning Commission, Hon Helen Morton replied —

> 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 Thome Place, South Yangebup. I was presented with options in Caversham–Lockridge, Gosnells, Kiara and Yangebup.

The member for Armadale animatedly and strenuously put the position that lot 9547 Jutland Parade, Dalkeith, should have been considered as an appropriate site for the centre. I do not want to necessarily go into that, and I understand that matter was put before the house previously when the Sunset Reserve Transformation Bill 2013 was debated, but perhaps it could have been transformed to include everyone and not just a few. Nevertheless, I want to talk about lot 13 Hayes Avenue, Dianella, with which I have some understanding and familiarity. Lot 13 Hayes Avenue, Dianella, is located in the former electorate of Nollamara, which I had the honour to represent. Unfortunately, when the boundaries were changed and Nollamara was taken out of my electorate, which was renamed Mirrabooka, so was my house, which is very close to lot 13 Hayes Avenue, Dianella—if I have my directions right. I understand that to be in an area of Dianella that is called the "media zone". It is very close to where the Metro Area Express Mirrabooka light railway is supposed to go, if it is successfully delivered to the community as promised. In terms of public transport it would be very good. It is also surrounded by some very beautiful bushland, so it would be a very tranquil place to have such a facility. People would know that I have a great commitment to meditation. I understand how important it is for people with disabilities or people who are stressed to go back to nature because it lessens their stress. I am making assumptions, but it would be helpful in the rehabilitation of these people if such facilities were placed in tranquil areas surrounded by bushland, yet still surrounded by housing in a suburban area. This lot in Dianella is the closest area to the city that has kangaroos.

From my quick look at this, there were other options. I would not want to impose that option on the community without proper consultation, but the site is not near a school and is in an area that when it finally gets developed will result in a significant amount of money for the government because it is a very prestigious area of Dianella. Just by looking at that list, the member for Armadale has identified one area that is appropriate, at 9547 Jutland Parade, and I have identified another area that does not contravene the government's important criteria that the

site is not in close proximity to schools, kindergartens or childcare centres. I am not suggesting that Mirrabooka Primary School is a reasonable distance from the site, but my understanding from the debate in this house, is that it is further away and would most likely not contravene that particular criterion.

It is clear that the government process in choosing the two sites was not based on good policy considerations, but was on the basis of limiting the political pain it would have to endure. This has simply fuelled conflict and grievance in the community that is difficult to resolve; and hides behind the facade that government is simply a matter of technical administration and there is no place in our democracy for people and their opinions, because they are simply disregarded as being of the type who say "not in my backyard" or nimbys. This is simply not the case. These people have not reacted in this way because they are nimbys; they have reacted in this way because they have been treated poorly. We witness this, and then wonder why people are disenfranchised from government and the system that delivers this. The community's frustration is palpable either through its withdrawal or dissent. This government is doing a disservice to all Western Australians, not just the people in the communities around these two centres. It is doing a disservice not just to the prospective residents of these facilities, but to all people in our Western Australian democracy by feeding their sense of futility and pessimism with the fact that the government will just impose things upon them without following its own guidelines and going through proper consultation. The essence of this is that concerns about the facilities built in our communities and neighbourhoods should not simply be rejected as the "not in my backyard" or the "if they understood better, they would not oppose government" types. These government dictates are not healthy for members of Parliament or our democracy; they breed cynicism and disenchantment. At the heart of this issue is that a declared place that is not a welcome place will always be shrouded in mistrust and mistruths, which this government has fed by its actions and for which it stands accused by the community. The ramifications for those least able to defend themselves and their needs will be judged wrongly, because the government did not follow its own guidelines and imposed its will upon the community.

I appreciate the member for Girrawheen's contribution that the goal of the disability justice centres is to enable residents to return to their communities, and that there will be a prevalence of proposed residents from Aboriginal, remote and regional communities. It is mystifying that the government has not chosen to ensure something like the Northern Territory proposal, in which residents can be placed back into their own communities, as a possibility. Why do we have to have a one-size-fits-all approach, instead of looking at and resolving the problem in a manner that will benefit the people it is trying to serve? The government needs to respond to how these centres will fulfil their objectives for residents in communities unlike their own.

I am very concerned that there is capacity in the bill to contract out the declared places, or in my view privatise them. I understand that the government said that it will not do that. But given that the current processes with these declared places have been shrouded in secrecy, non-transparency and untruths, how can we believe what the government says? Will this not just add more cynicism to the process? It is also quite unbelievable, because the Disability Services Commission is privatising all other accommodation services. Why would it have these two centres as its only in-house employment areas? It just does not seem administratively possible. Why would the commission keep a human resources department and all the mechanisms that go with that, in conjunction with a contracting-out department? These are two different things. Having been involved in the privatisation of contract cleaners in government agencies and the Department of Education all those years ago when I worked for United Voice, I am very aware that one no longer deals with people directly employed and all of the structures around them; one deals with the contracting-out areas of the Department of Education. It is an anathema that the government is saying on the one hand that it is not going to do that, but with the other hand it is. Yet again this government is trying to deceive people. This is not good for the community or the people the government is trying to serve, and does not fit the goals and intentions of the Disability Services Commission. I think that despite the opposition's support for declared places, this has been a terrible demonstration of taking something valuable and making it into something that is mistrusted by the community. For that, the government really does stand condemned.

MR C.J. TALLENTIRE (Gosnells) [3.17 pm]: I make a brief contribution to the debate on the Declared Places (Mentally Impaired Accused) Bill 2013. The focus of my discussion will be on the residents' rights. I am concerned about the provisions in the legislation that ensure the rights and needs of the people who will be held within these declared places will be met, and that at the same time the communities' needs will be met as well.

By way of background, I want to reflect on the government's position in its last term of government on the proposed sites for these centres in Herne Hill and Kenwick. I am not sure of the level of community outcry that surrounded the proposed site for the Herne Hill declared place, but I am certainly aware of very strong community feeling about the property that was proposed for the Kenwick site. I recall my colleague and friend the then member for Forrestfield being absolutely swamped with his constituents' concerns about the Kenwick proposal. He brought to public knowledge the extent of those concerns and pointed out the deficiencies in the

site selection process. I note that, as we entered the 2013 election campaign, a decision was made to abandon the Kenwick and Herne Hill sites. It is fairly reasonable to conclude that those decisions had political considerations, because we know that the Liberal Party was absolutely determined to win the seat of Forrestfield and the proposal for a declared place in Kenwick was seen as extremely damaging to its chances.

We need a strong public education campaign about what these centres involve so that people's fears can be allayed. We also need to ensure that there is strong community awareness about the situations of the people who will be typically held in these places. I am certainly aware that things such as foetal alcohol spectrum disorder are a common background to people who are held in these places. They have been found mentally unable to stand trial for a crime they may have committed. Their backgrounds are many and varied, but we find strong commonalities in the origins of their mental illness and why they are not in a position to stand trial.

It is interesting to look at what we consider the conditions or the manner in which people will be detained in these places. I am concerned about the extent to which chemical control goes on. Although chemical control may make it easier for those who are tasked with managing these declared places, I am concerned that it is often used as an easy means of detaining people without achieving what should be our aim—that is, helping them reintegrate into society, regain their mental capacities and then move on and achieve fulfilling lives. If we are simply going for chemical control measures, we are not at all serious about how we can deliver the objective that we are supposed to have in mind. This issue of the residents' rights was very well demonstrated on ABC Radio National's *Background Briefing* program quite recently, on Sunday 20 April. The program was titled "The man without a name" and gave an example of a man who was held in one of these facilities in New South Wales and who had been the victim of extensive chemical control that made him no longer able to even present or argue his case. I am concerned about other privacy provisions in the New South Wales legislation being replicated in our Western Australian system. Naturally, we imagine that someone in this situation would be entitled to a degree of privacy. Why should someone who happens to live one kilometre away necessarily know who is in the detained place? In this case, the gentleman wanted his name to be out there publicly. He had initially been charged with manslaughter and he then was found to be mentally unable to stand trial, so he was put into the centre. He is still to this day the man without a name. He would love his name to be known but because of the mental illness, which has probably been exacerbated by the chemical control to which he has been subjected over the years, he is fighting this legal battle to have his case known. I believe there could be ways for him to escape the controls of the system by eventually declaring himself guilty; there could be different ways of doing things. He would do anything to get out of there on principle. He is very well able to articulate his case, but the system has locked him in this Kafkaesque way so that he is stuck. Appeals to the New South Wales Mental Health Review Tribunal have not made any progress.

I am concerned that we will see similar situations here. When I look at the provisions of the bill surrounding residents' rights, I can see that there are some good intentions there, but I am concerned that they may also lead to difficulties. Perhaps what should give me some confidence are the measures that surround a detained person's access to the communication of information to guardians and to lawyers. However, that was also the situation in New South Wales and it was not effective. I note the provisions in place in part 3 of the bill and I look forward to testing at the consideration in detail stage whether they would ensure that someone will not be detained indefinitely with their case unheard of by the broader community and with all sorts of difficulties with them revealing their identity and not being able to communicate properly.

Other sections of the bill refer to the protection of residents. I think this section acknowledges how we have done things wrong in the past in a really deficient way. We have made some terrible mistakes. The case of the gentleman who was detained for many years, Mr Marlon Noble, is an example of that. He was detained in a prison and then subjected to all kinds of things that he should not have been subjected to because he was in the prison system. Clearly, we need places that provide for people to be detained, but not alongside convicted criminals where they would be subjected to all sorts of other restraint regimes. Indeed, people with some form of mental impairment would be more likely to be abused in some form or other because they would not be in a position to look out for themselves and to stand up for themselves or to even issue a complaint to a prison guard. They would be really lost in the system, which is completely unfair and unreasonable.

I note that the aim of the bill is, of course, to ensure that these declared places are for those whom the court finds unfit to plead or of unsound mind; it is established that they are called "mentally impaired accused". The Mentally Impaired Accused Review Board would consider their situation and make the necessary rulings. However, I return to the issue of what can be described as the behaviour management of people in declared places and the means by which people are controlled. I especially have this fear that people will be subjected to chemical control. In the case of the unnamed man in New South Wales, this chemical control led to all sorts of health problems for him. It led to him suffering even more and it exacerbated his overall mental health condition. He also suffered physically, as he became obese. He was unable to function as a normal human being. He was

simply tranquillised, chemically sedated and lost all human dignity that we would expect a fellow human being to be able to enjoy. The solution to this is perhaps presented in the bill, because it refers to records about restraint. I am pleased to see that, but again I hope that we will have the necessary transparency around this, because as it stands, clause 32 refers to the CEO ensuring that there is a file for each resident, and the type of restraint is well documented.

I am concerned that people who can act as advocates for an individual might not have full access to the information. Someone could be held in a declared place, subject to some form of chemical restraint, and no-one in the real world would be aware of their case or be able to advocate for them or ask questions about the extent of their control and whether it was really in their best interests. That is a particular concern of mine. It is a terrifying prospect to think that someone could go through that. I think it could happen to any one of us; in fact, anyone could find themselves in this situation in which they are deemed to have committed a crime, but it is then determined that their mental health is such that they are not ready to stand trial, so they are detained in a declared place and subject to these various restraint mechanisms that make them incapable of arguing their case or being heard. That situation was very well presented in the background briefing report.

I have a number of concerns with the legislation and I worry about the site selection as well. Other members with real experience have spoken at length about this, such as my friend and colleague the member for Bassendean, whose real, lived experience when it comes to site selection shows that there seems to be a political aspect to it. We know that site selection for all kinds of things can be difficult, but if certain parameters are set about proximity to schools or shopping centres, they have to be adhered to. Having the sites of two declared places in such close proximity to one another and to schools seems particularly odd. Members of the local community living near the proposed declared places have every right to be outraged and to have the sense that they are being made something of an easy option and that they are not being properly listened to. I think that is most unfair and I understand well from the discussion around the initial choice of the Kenwick site that there is much community angst about it. A lack of explanation, discussion and engagement with the community in that site selection process will only get a government into trouble and that is what has really happened here. I think that is what got the government into trouble when Kenwick and Herne Hill were proposed, and the proposal for the Lockridge site is getting the government into trouble again. I hope the government will learn from the mistakes it has made in the site selection processes that it has already undertaken, that it will seek to remedy them and that we will see a much better site selection process in the future so that we can look after people who need to be detained in these declared places. At the same time, I hope that community safety is not endangered, that it is preserved and that the broader community is protected and not caused anguish by the haphazard approach to site selection. I conclude my remarks, but I have reservations about aspects of this legislation. A lot of the concern I have is really about the implementation of the legislation and the policies that surround it. It will really be incumbent on the government of the day to ensure transparency when it comes to the application of policy.

MR W.J. JOHNSTON (Cannington) [3.35 pm]: I rise to make a short contribution to the debate on the Declared Places (Mentally Impaired Accused) Bill 2013. Like the member for Gosnells, I am generally supportive of the legislation, but there are things that need to be clarified. I seek clarification about one of the comments in the second reading speech. I will read out the provision and I hope that at the appropriate time we could have it clarified. It states —

> Freedom of lawful communication is one of these rights. However, where a resident's communication is not in their best interests or it is necessary to protect other residents or members of the community, such communication may be restricted. When the commission makes a restriction order, it must send a copy to the advocacy service, which is empowered to challenge any inappropriate or overuse of restriction orders.

The parliamentary secretary is out of the chamber, but I would be pleased to know why the government chose to give the Disability Services Commission the right to make the decision when the commission is the authority running the facility. Why is it that the organisation running the facility can issue the order? Why does it not have to get approval from some other body? It would be interesting to know why that is. It is one thing in the prison system where there are convicted felons who have been through the courts and had a decision made based on their criminal behaviour that led to them ending up in prison; that is understood by all and there is a long history of procedures to deal with people in prisons and how and why prisons are managed in the way that they are. Therefore, it is natural that the prison service manages its own affairs and if there is a problem they can be reviewed and referred to outside procedures. However, here we are talking about people who have not been convicted of a crime. They are incarcerated—I suppose that is still an appropriate word to use—in the disability justice centre without being guilty of a crime, yet we are giving the commission this power to restrict their ability to communicate. The second reading speech explains that the advocacy service is notified and then the advocacy service, at some unknown expense, can challenge that order. It would seem appropriate for it to be the

commission that needs to explain itself first and not the reverse. It is really effectively a reverse onus of proof on the incarcerated person and, given that they are not guilty of an offence, it seems an unusual way of arranging that matter.

Is the Minister for Planning carrying the show?

Mr J.H.D. Day: I am.

Mr W.J. JOHNSTON: I look forward to the minister, perhaps by interjection, explaining what the answer to the question is.

Mr J.H.D. Day: The parliamentary secretary will be back soon; she's away at the moment.

Mr W.J. JOHNSTON: Excellent; I am sure the government is very committed to the passage of this legislation and will not leave any stone unturned in explaining the important issues that are contained in this bill, so I look forward to that explanation.

I also want to have explained to me a serious question. I want to read from *Hansard*. I do not know why, but the printer chopped off the top of the transcript, so I do not have the page number. For some reason, our chamber printer is chopping off the top and bottom of *Hansard* when we print it, which is inconvenient. The transcript is from 12 June 2013 and it is of a question without notice from the member for Bassendean to the Premier. In part of his answer the Premier said —

> They are people who have an intellectual disability. They have committed an offence, but they have been deemed not competent to go to trial and not competent to plead. The people chosen are, by all accounts, safe and will be under constant supervision, with the security around these two centres. I will give one example. This is perhaps an extreme case, but I think we have to show a bit of compassion here. This is a case in which a teenager with a head injury was held in Casuarina Prison after he was charged with stealing an ice-cream from a roadhouse in the outback. He could not understand the court procedures. He was never convicted.

On the next page of *Hansard* the Premier said —

> A teenager stole an ice-cream. He had suffered a head injury and lacked the intellectual capacity to stand trial, if there was ever going to be a trial for stealing an ice-cream.

There were some interjections, and then the Premier went on —

> This teenager spent several years in Casuarina because there was nowhere else for him. That is not acceptable. Any sense of social justice would say that that is totally unacceptable.

There was then another interruption, and then the Premier continued —

> There are some kids in Cottesloe, for the member's information, at Cable Station. These young people, typically, should not be in our prison system. They are not a threat to the community, but they need constant supervision, 24/7. They need to be kept within the facility. This costs significant amounts of money. This government is going to build two new facilities; it will rebuild one and build a new one. The minister, having announced those sites, will talk to the community, and I think she will satisfy the community that these offenders are not dangerous. They do not deserve to be in our prison system; they deserve to be treated with some respect and given all the support and care that we as a community can give. I do not apologise for that. The minister will talk to the community, and we will treat the community with respect.

Clearly, as Mr Acting Speaker (Mr P. Abetz) would agree I am sure, that leads to a very interesting question: if a teenager with or without a head injury steals an ice-cream, why would they ever end up in Casuarina Prison? That is bizarre. The Premier said in his answer that they should not be in the prison system; of course they should not be. If someone steals an ice-cream, they should not be in the prison system. Let us think about that: let us say they steal a Magnum ice-cream worth $3. Keeping them in prison for a day will cost thousands of dollars. It is ridiculous that anybody who steals an ice-cream would end up in jail. If, as the Premier explained, they have a head injury, why were they ever charged? What happened? What was the procedure used by the executive government of Western Australia that led to a person who stole an ice-cream and had a head injury so severe that they did not understand the court procedures becoming involved in the justice system and spending, as the Premier said, years in jail? That is bizarre. Clearly, the creation of these disability justice centres will not address the clear and underlying wrong that is demonstrated by the answer of the Premier. I do not understand. I would have thought that the Premier, in giving that answer, would have actually come up with a proper solution. Putting a teenager like that—with a head injury and who stole an ice-cream—in a disability justice centre and putting various restrictions on their rights is also not just. That cannot be the appropriate answer to that situation.

Surely there is somewhere else to send a person in that situation—a teenager with a serious head injury, and so severely disabled that they cannot understand the justice system—such as a hospital.

Mr D.J. Kelly: Member, you might be interested to know that the head of the Mentally Impaired Accused Review Board, Robert Cock, QC, said there will be no-one in these disability justice centres for minor theft because they shouldn't be there either; they should be released into the community.

Mr W.J. JOHNSTON: Yes, clearly.

Mr D.J. Kelly: People will not be in there for stealing an ice-cream—they should never be.

Mr W.J. JOHNSTON: That is the thing. I agree with Mr Cock, who is an eminent lawyer in Western Australia—another one—and a person well known to the community. But I am surprised that the government, through the Premier, explained that Western Australia had detained a person in those circumstances for years in Casuarina Prison. If that is the case, we have a deep, deep problem that will not be solved by the passage of this legislation. I wonder whether we could have a proper explanation for the situation the Premier outlined being in front of us. It would be interesting to have the parliamentary secretary explain that. Do not leave me, Minister for Planning; we might move a couple of resolutions if the minister goes too far away.

Mr J. Norberger: I am here!

Mr W.J. JOHNSTON: I know, but there are more of us than there are of the member for Joondalup!

Mr J. Norberger: Be gentle.

Mr W.J. JOHNSTON: It is all right; the member for Joondalup has not told any dishonesties in the chamber yet, so I have not gone after him.

A serious question needs to be answered there, but next is the question of site selection, because it is quite important. I know that other members have referred to it, but I note the answer given to a question about this proposed site to Hon Amber-Jade Sanderson by Hon Helen Morton on 20 June 2013 in the other chamber. I will not read the *Hansard* again, but, in part, the question was —

> (2) What were the reasons for not choosing each of the rejected sites?

To which the minister replied —

> 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.

I highlight the words "they were earmarked for other developments". The block that has been chosen in Lockridge has been earmarked for another development, as I understand it; it is being used as a farm school. It is interesting that the government overrode that use, but is not prepared to override these other uses. It would be, I think, very important for us to be told, in regard to the other nine sites that were not selected, what the developments earmarked for those sites were. It would be interesting to know, for example, whether any were proposed for future development unspecified, because, effectively, that would make them vacant land with no plans. We can see that the government is simply then clearly open to the correct observation of the politics involved in site selection. If they have a proper purpose, the government can explain itself for the other nine—not just that there was another purpose but what the other purpose was—because I think that is absolutely essential. If there is no other genuine purpose, it is just a political process.

Welcome back, parliamentary secretary. Did the parliamentary secretary have the fruit or the cake?

Ms A.R. Mitchell: Nothing.

Mr W.J. JOHNSTON: I know that with the parliamentary secretary's athletic background, she keeps herself under control, which is very good. I must say, I often cannot resist when I go for afternoon tea. I hope the parliamentary secretary will note the two questions I have asked.

Ms A.R. Mitchell: They are noted.

Mr W.J. JOHNSTON: I am sure they are, and I look forward to reading the parliamentary secretary's second reading response and seeing the answers to the questions I have been asking.

An article by a journalist called Stephen Miles appeared in the *Eastern Reporter* on 11 December 2013 under the heading "Justice centre backlash: Facility for alleged offenders an unpopular plan", and reads —

> Local residents vigorously campaigned against the centre, which is directly across the road from houses and less than 300m from Lockridge Primary School.

> The City of Swan supported the locals when it vetoed the plan at a council meeting last month, however the government over-ruled the decision, allowing the centre to be built.

I make the observation that I am aware that the residents of Kenwick—which is just over the border from my electorate, as Mr Acting Speaker (Mr P. Abetz) knows—opposed the original site of the disability justice centre. I am interested to know why, in the process of site selection, the residents' views in Kenwick were considered so serious that the centre could not proceed in that location, but the issues for the people in Lockridge were not considered as serious, particularly because it is so close to houses and schools. The Minister for Planning might like to answer this question: why did the WA Planning Commission keep its decision on the location secret?

Mr D.J. Kelly: It had nothing to do with the election, member!

Mr W.J. JOHNSTON: I am sure it did not.

I again refer to the *Eastern Reporter*; this time dated 18 February 2014. The journalist's name is Joel Kelly and the article is headed "City angered by confidential decision: Disappointment over lack of transparency". I quote —

> According to the WAPC, the site selection report for the DJC contains legal advice and it was therefore confidential.

[Member's time extended.]

The ACTING SPEAKER (Mr P. Abetz): I can only grant you an extension; not a brief one.

Mr W.J. JOHNSTON: I am sure you are granting me a brief one. I am sure it is only 10 minutes. I look in envy on the other house, where members get so much longer to speak.

Mr P.B. Watson: We don't!

Mr W.J. JOHNSTON: We do not, but they do.

I make the point that the legal advice is not in the decision. This is a badly understood comment. This is the journalist's interpretation—this is not within quotes. I am quoting from the article but the journalist is not directly quoting any person. He is making his report. If this report is accurate, then the commentary of the WAPC is wrong in law. It is not legal advice in the decision of the Planning Commission. It may have been legal advice when it was given to the Planning Commission, but the moment it was included in the WAPC's decision it was then a term of its decision. It cannot be legal advice if it is in the decision. That is a matter of fact.

If members are unsure about what I am getting at, by definition, legal advice comes from a lawyer. Legal professional privilege applies to the communication to and from a lawyer. Let us say a person who has legal advice is involved in a court case and wants to explain their case to the judge and tabled their legal advice. If the judge who received that legal advice thought there were excellent ideas in that legal advice and included quotes from it in their decision, that is the decision of the judge. This is exactly the same, as I read those words. The WA Planning Commission was given legal advice, and in making its decision—which it recorded in writing, I presume—included the information that had been provided to it by its legal advisers. Once it was included in its decision, that was the decision. It was no longer legal advice; it was the decision of the Planning Commission.

As a matter of fact, it is not accurate to say that the report is confidential. I am sad that the Leader of the House has taken a comfort break from the chamber because he is the relevant minister who could have responded to that. These are the journalist's words; I am not saying it is the Planning Commission's words. The article in the *Eastern Reporter* continues —

> Mr Day said it was usual practice for a report to be treated as confidential but assured residents the correct procedure was followed.
>
> "The WAPC Statutory Planning Committee makes decisions based on the merits of an application and whether it generally complies with the relevant planning framework," he said.
>
> "In this situation, there is a statutory Planning Control Area over the site identifying it for use as a Disability Justice Centre and the established use for the site was for disability services."

That does not mean we know that the Planning Commission adhered to the original intentions. Because we do not know what the Planning Commission said, it is hard for us to judge the validity of the minister's comments. In the absence of the decision, all we know is what the minister said. The Minister for Planning is an honest man, I am sure. He is certainly not somebody whose word I have challenged. Nonetheless, we still do not know what the decision said. There is no proper reason for keeping the decision secret, and it should not be. As they say, sunshine is the best disinfectant. There will be much less opportunity for criticism if the decision is made public. I urge the Minister for Planning to do just that because that would be of assistance to everybody involved.

It is interesting to look at the involvement of representatives from the local area. I am interested to know what the members from the Legislative Council who represent Lockridge have to say. It is not clear to me that all MLCs for East Metropolitan Region have spoken publicly on this issue, but as a question of accountability is involved, I am sure their community would like to know where they stand on this issue.

I note that the member for Bassendean made a number of freedom of information applications. I note that the Minister for Mental Health rejected his original applications. After a lengthy process, a number of documents have come to light. I am not saying that the original site in Kenwick is a good site—I have not made any particular study of that site—but there was no technical reason to prevent the government proceeding on that site; for example, there was no planning reason. I am not saying it was a good site; I am just saying that it is not as though the Planning Commission did not have the capacity to select the Kenwick site. I understand that the reason it did not proceed is not that it was not suitable but, rather, that it was not the site that the government wanted. The government can choose not to proceed in one place. If it does not proceed in one place but proceeds in another, then it should explain itself to the community.

I ask: what types of alleged crimes could a person placed in one of these disability justice centres have been accused of? This goes to the words of the Premier, who said, "They are not a threat to the community." These words appear at page 1372 of the *Hansard* of 12 June 2013 in answer to the member for Bassendean's question during question time. My reading of his words is, "They are not a threat to the community, but they need constant supervision, 24/7." My understanding is that those words refer to people in the disability justice centre. Is it the case that people accused of rape or murder will not be housed in these centres? A person who has a mental incapacity but has committed a serious crime would be looked upon in one way, whereas someone such as the person referred to by the Premier who had stolen an ice-cream from a roadhouse would be looked at in a different way. What assurances can be given to the community that none of these mentally impaired persons who have been placed in a disability justice centre—they quite rightly have not been placed in a prison, because they have never been convicted of anything—will be people who are alleged to have committed rape, murder or a similar very serious crime? I would appreciate it if the parliamentary secretary could provide some advice on that matter. I look forward to hearing the rest of the debate and seeing how we can progress this legislation.

MR P.B. WATSON (Albany) [4.01 pm]: I would like to contribute to the second reading debate on the Declared Places (Mentally Impaired Accused) Bill 2013. This issue is something that could affect all of us in our electorates. The Labor Party supports the bill, but we are concerned about the way in which it is being done and the way that the sites have been chosen by the government. I think this sets a very bad precedent for any future government because according to all the information I have been provided with, two sites were initially chosen, but the government then realised that the sites were in marginal seats, and all of a sudden the sites were changed. Maybe I am being cynical, but the government clearly thought, "Oh, well—Lockridge is in a safe Labor Party seat. We'll whack it up there and no-one will say anything", but thanks to the member for Bassendean, Dave Kelly, the local community has come out and put its protest forward. The more we look at this, the more we can see that the decision was a political decision rather than a decision based on what was best for both the community and the people to be housed in these centres.

The residents understandably feel that the community has been asked to accept both facilities without any consultation and without the sites having met the site criteria. In reply to a question from Hon Amber-Jade Sanderson in the other place, the Attorney General gave reasons for the rejection of sites that had been previously considered, including Cockburn Central, where the block was too small and opposite a high school, and Cottesloe, where the block was also too small and also next door to a school. However, the site that has been chosen is a block that is right next to a school. Therefore, if proximity to a school has been identified as a criterion, why has this not been taken into account at the site that was chosen? This is what the people in Lockridge are concerned about. If the government had done this properly and come in and said, "This is what's going to happen and these are the criteria, and we'll go from there", I am sure the residents would have been happy to have had this facility in their area, but not on the block that has been chosen. If there had been proper consultation, this would not have happened.

Before the last state election, the sites originally proposed were in Kenwick and Herne Hill. The government then backed down after only two weeks; it is not backing down now, but funnily enough it backed down just before the last election to save Frank Alban in Swan Hills and Nathan Morton in Forrestfield. This begs the question: have these sites been chosen for the right reasons?

There was no consultation at all, apart from unaddressed letters sent to residents the day before the minister announced the sites on 12 June 2013. There was no discussion—it was a done deal. It appears that some meetings were held with the City of Swan for one of the sites, but they were not public meetings and nothing went to council. The local member, Dave Kelly, sent direct-mail letters to people in his electorate and got 600

responses. I do not know whether things are a bit different in metropolitan electorates, but it would be unusual to get 600 people interested in such an issue in a regional area. Most people would probably not even think about it: "They're going to build something. Well, it's not right next door to me, so I won't worry about it." The member for Bassendean managed to get 600 people, who probably live further away from the site, concerned about their community. This community just has not been thought about; as I said, it was a political decision and that is very disappointing.

The first site is on Lord Street, less than 500 metres from Lockridge Primary School. I ask whether any members in this house would like to have one of these facilities 500 metres from a primary school in their electorate. I bet every one of them would be up and marching down to Parliament to say, "We don't want it near our school", and that is perfectly understandable. The government cannot tell people, without any consultation, that they will have such a facility within 500 metres of one of their schools.

The second site is on land currently used by Lockridge Senior High School as part of its farm school. It is 1 500 metres from the first site, and Lockridge Primary School is halfway between the two sites. I ask whether any members opposite would not do the same as the member for Bassendean has done, which is to fight for his community.

Ms L.L. Baker: I don't think there is anyone, because they wouldn't put them in a government electorate.

Mr P.B. WATSON: That is the thing. Cynical as I am, with an election coming up, the government said, "Oh yeah—safe Labor seat; they won't worry about it." The government forgot about the community, and the community has stood up as one and said, "We don't want it." The community feels a genuine sense of betrayal. It will get not just one but two disability justice centres in its area, and the sites were clearly chosen for reasons of political expediency. The criteria have been ignored. If the criteria were not important, why did we have them in the first place? Why have the criterion of the sites not being placed near schools if the government is going to just go against it? The local community does not want it, and the City of Swan does not want it, so why was it dumped there? I am sure that if the government had gone to the City of Swan and to the people in the community and said, "Let's find a place away from schools", they would have been right behind it, but there was no consultation, and the planning was done in secrecy. Residents have set up a community group that has met fortnightly since 2013, with attendances ranging from 200 to 400. They have organised a petition with 7 000 signatures, and a range of other events. A second public meeting was held on 22 March and attended by more than 100 people. This group has said that it is at pains to support the idea of disability justice centres, but not near schools or homes, as per the government's own criteria.

The first two sites in Kenwick and Herne Hill were abandoned because in the eight days between their announcement and their cancellation, the government received advice that, as the sites were zoned residential, the disability justice centres would not get local government approval. The government denied that the decision was in response to community concern and a desire not to harm Liberal Party chances in the marginal seats of Forrestfield and Swan Hills. The government then chose the two new sites, based on their being sites that met all criteria set by the Disability Services Commission, from a list of 11 sites provided by the Western Australian Planning Commission. The problem is that they do not meet all the criteria, and the community has railed against that decision, as has the local member.

The criteria for the sites included: minimum land size of 7 000 square metres; flat blocks with capacity for landscaping; reasonable access to public transport; not in close proximity to schools, kindergartens or childcare centres; reasonable distance from neighbours; reasonable proximity to shops and community amenities; not in an industrial area; and for the location to be likely to be acceptable to local councils. I do not think the City of Swan is very happy about that.

Mr D.J. Kelly: It passed two motions opposing them.

Mr P.B. WATSON: This is democracy from the other side of the house. According to the guidelines, these centres should not be in close proximity to schools—wrong—and the location should be one that is likely to be accepted by local councils, which is also wrong. What sort of democracy is this? This is a government that does not care and does not listen. Members came into the chamber and presented petitions signed by 7 000 people, but did the government listen? No. That is the typical arrogance of this government, and it all starts at the top. As we all know, the Premier is very arrogant. That is now starting to feed down to his ministers. What I am saying today is that the people of Bassendean and Lockridge are not against these centres. The Labor Party is not against the concept of these people being housed in a facility. However, the government needs to abide by its own criteria and listen to what people in those areas are saying before making a decision, because this will set a precedent for future governments to follow. They will say, "They did that in Bassendean to put it in a Labor seat; when we get in, we'll put one in one of their electorates." That is not what this is about. We are seeking to

provide a facility to keep people out of jail and to keep them slightly in the community so that they can readjust. I think the government has got it wrong on this issue.

MS L.L. BAKER (Maylands) [4.11 pm]: I was not quite ready for the member to finish his contribution on the Declared Places (Mentally Impaired Accused) Bill!

Mr P.B. Watson: I ran out of puff.

Ms L.L. BAKER: No problem. I almost threw all my notes on the floor!

Mr P.B. Watson: Do you want mine?

Ms L.L. BAKER: No, it is fine.

I am very pleased to support the notion of disability justice centres, which are an incredibly important part of the pathway in dealing with individuals who find themselves in or on the edge of the criminal justice system. I am very aware of the support that the non-government sector offers for these centres as well. I also know that the agencies that are directly involved in this, such as Developmental Disability WA and the Western Australian Association for Mental Health, are watching this legislation with interest. These agencies are very supportive of the government's move to establish these centres, as is the Labor Party. I have not heard anybody say that this is not a necessary step. The government certainly will not hear that from anybody whom I have been speaking to in my community. These centres are a very necessary part of the chain and have been missing for too long in our state. We do not have to go far to find eminent people in the community who are calling for these centres. Chief Justice Wayne Martin commented on this back in October last year. In an article on the website of the Western Australian Association for Mental Health, Chief Justice Martin was reported as saying that —

> … people in society with a mental illness who should be diverted to treatment were instead being committed to prisons, *The West Australian* reported.
>
> Speaking at the WA Rural and Remote Health Conference in Northam last month, Martin said "some people were detained indefinitely because their mental illness or disability made them incapable of the behaviour a structured, disciplined society demanded," … "There are real limits on what the criminal justice system can and should do in relation to people who are mentally unwell or intellectually disabled."

The Chief Justice is a well-known spokesperson on social justice issues and is very well respected in the community. He is supportive of these centres.

The real problem with what has been proposed is that it is absolutely clear that the change in the location of these centres was driven by nothing but political expediency. That is why speeches of this kind are being made on this reform this afternoon. It is not the need for the centres that we are worried about. I agree, personally, with the need for these centres. It has nothing to do with that. It is not the function of the centres that is a problem. According to my colleague the member for Bassendean, 600 residents of his electorate recently came to a rally to comment on how they felt about it. Those people were not saying that they do not want people with a mental impairment or a disability in their area; that is not the issue. It is pretty clear that no-one, except members of the government, seems to think that any objections that are raised are anything but of a political nature. Everyone knows that these centres are needed. Everyone that I know supports them. However, what the government has done is unforgivable. It made the decision before the election to change where it was going to put these centres. Those places had been worked out by the WA Planning Commission in conjunction with the Disability Services Commission, I assume, and others. They were to be located in very sensible places that had been decided upon by following a set of standard criteria that, I assume, the agencies worked out because they know their business. But that was not good enough, because those two sites were hot political potatoes for the government before the election. Those locations in Forrestfield and Kenwick became untenable. Not only that, but when reports were made about their suitability and the public started to want information on what the centres were going to do, remembering that these locations matched the selection criteria very nicely, those communities said that they did not want them there. There was a big kick back, not on the basis that the sites did not meet the selection criteria set by the agencies, but on the basis that the communities did not want them there, so the government changed where it would put them. That would be fine if the government could justify the changes in any way, shape or form by matching them to the selection criteria that the agencies have established, but there is no way that that is possible. We have heard many times today that it is a casual stroll between the two proposed centres. Right in the middle of them is Lockridge Primary School, and the sites are in close proximity to another school as well. That is not good enough. The government's own criteria state that that is not good enough, so how can the government come in here and try to get legislation through to put these centres in places that clearly go against its own guidelines? I think the people of Kiara are justified in raising their concerns. As I have said before, they are raising concerns not because of the type of centre but because they do not understand the scope of it. When

they do understand the scope, it is the process that they are most concerned about. That is what we are objecting to as well.

I would like to talk a little about why disability justice centres are used. I have some information from some slides that Developmental Disability WA used in its presentation to the City of Swan. The definition it gives of a "mentally impaired accused" is someone who is —

- unable to understand the nature of the charge;
- unable to understand the requirement to plead to the charge or the effect of a plea;
- unable to understand the purpose of a trial;
- unable to understand or exercise the right to challenge jurors;
- unable to follow the course of the trial;
- unable to understand the substantial effect of evidence presented by the prosecution in the trial; or
- unable to properly defend the charge

That is the definition of "mentally impaired accused" that I have been able to source.

When we talk about a pathway through the system, it is about risk management and finding the right place for people who, perhaps through no fault of their own, find themselves falling foul of the law. As I understand it, under the Criminal Law (Mentally Impaired Accused) Act 1996, authorisations through the Mentally Impaired Accused Review Board to determine the conditions of an individual's release include four options. One of these four options is for a person to be placed in a declared place, on which we are finally seeing legislation come through. The second option is unconditional release, when someone has done something very minor. I think we heard the Premier talking about an ice-cream incident, which was an ideal example. Somebody swiped an ice-cream and fell foul of the justice system because of it, and, given that he or she has a mental impairment, they are likely—I cannot say without pre-empting it, but I think history will show—to be given an unconditional release. This option is not for serious crimes. The third option is that the person is sick and is detained in a hospital. Again, this is an appropriate response and a necessary part of the referral chain. The last option is that the offence is so severe or major that it requires the person to be detained in prison. The missing part is what we are discussing here—that is, detention in a declared place.

The disability justice centres are, in effect, a missing link in the treatment pathway for people with intellectual and cognitive disabilities. They should provide an option between prison and non-conditional release. I will refer to a couple of things here. I am confused, because when I look at some of the information I have been able to gather about this, I find that the president of the WA Association for Mental Health put out a media release in November last year supporting the centres, as indeed we do. But she states —

> This is a human and civil rights issue and we encourage the state government as a matter of urgency to also introduce Declared Places for people with mental illness who are on custody orders. This also underlies our position for the mental health 10 year strategy.

She also says —

> Importantly, to be eligible to reside in a Disability Justice Centre, —

This is the important point —

> a person must also have been assessed as not being a risk to the community.

That is what the president of the WAAMH said back in November last year. Then I looked at the Mentally Impaired Accused Review Board's annual report from last year, 2012–13, under subheading "3.3 Custody Options", at page 9. Let me read a paragraph to make it clear why I am confused. I do not know about the residents in the electorate of Bassendean, but I am certainly confused about this matter. The board itself states, under "Custody Options" —

> For these accused, the only effective custodial option is prison. However, a prison is often an inappropriate secure placement for an accused whose condition makes him or her extremely vulnerable and who, because of the risk he or she poses to the safety of the community, may spend longer in the prison environment than a prisoner sentenced for similar offences.

So, on the one hand, a very knowledgeable person from the sector is saying that the only people who will go to these detention centres are those who are no risk to the community, but, on the other hand, the review board itself is saying that what we actually need for these extremely vulnerable people, who are at risk, is the custodial option, given that they do pose a risk to the community. I really need the parliamentary secretary to clear up this issue because the Mentally Impaired Accused Review Board, I would hope, knew what it was talking about

when publishing the annual report. It clearly talks about the safety of the community, and only if a person is a risk to the safety of a community would he or she be considered to go to a detention centre. On the other hand, I can well understand why the Bassendean residents who live nearby and the schools involved would be showing some concerns. It is simply not clear at the moment. I think it is really important that that issue be addressed.

[Member's time extended.]

Ms L.L. BAKER: The issue of risk is extremely important, so I ask the parliamentary secretary to please clarify that matter for the residents of the member for Bassendean's electorate, apart from me.

Mr D.J. Kelly: A very good question.

Ms L.L. BAKER: Thank you. The other issue I want to come back to is that both Developmental Disability WA and the WA Association for Mental Health also think that disability justice centres provide an option in between prison and non-conditional release to provide services and support that address individual factors contributing to offending in a safe environment and the opportunity for supported transitions that reduce future offending and lead to better outcomes. That is the other point I want to pick up on. The problem I have with that is the assumption that, although these individuals are sent to a disability justice centre, it is very clear that they cannot just be sitting in their bedrooms for the time they are there. Programs must be offered and there must be well-managed services, particularly for people with cognitive disabilities, because cognitive skills training is essential for people in this environment. It may, in fact, be an individual person's first time in this environment when we can give them this kind of support. It is extremely important that we see the appropriate level of support services provided in the disability justice centres.

That was a very longwinded way of getting to my point—namely, privatisation. I am yet to see anything that makes me feel comfortable that a for-profit agency or any kind of business, whether it be a big or small business, will deliver the same level of services with the same level of commitment. They might do it cheaper than an NGO or the government itself would, but I am very concerned. For instance, what happens if one of the sweethearts of the government gets the contract to deliver this service? I am talking about Serco. There are others, of course, but one of the government's favourite contractors is Serco. We have dealt with Serco as well. I worked with it on competitive tendering many years ago, in fact, for the supply chain management of the state. If a big for-profit business is put in charge of these detention—I mean disability justice centres; I keep saying "detention centres", but I am a bit preoccupied I think at times with the federal government's position on detainees—or if Serco or a similar organisation is given the responsibility of managing these centres, I am extremely concerned about the government's ability to guarantee the level of service and support needed by those people in those centres.

That is a justified concern. It is an ideological position, and one I have had for most of my life. I do not believe that this kind of facility should be privatised at all. Many agencies could deliver elements of it—outsourcing is a different notion from privatisation, of course—but it is not appropriate to privatise these centres or the work that they do, and I am not at all confident that I can trust the government to not privatise these services.

Given that it is a second reading debate, I want to talk with a bit of latitude about the process issue in relation to a specific incident that I have talked about previously. It is important that the government deals with civil society effectively and allows civil society to participate in decision-making. This is where this government has failed because there are severe holes in the process. The community is no longer stupid or ignorant about these things. Maybe when the world was simpler, government could get away with circumventing some of the consultative processes and participation in and involvement of the community, but that cannot be done now. People know about and want to participate in decision-making. If they are given the parameters and are told that three, four or 10 of such-and-such will be built and that these are the criteria to be stuck to and if the community is involved effectively, there will probably be few problems. People may still say that they do not like something, but we will get to the end point more intact than if we use the process the government has entered into so far, which is clearly a political one.

I want to spend the last few minutes talking about a particular issue facing my electorate, and I do so with great trepidation. It does not concern a disability justice centre, but an emergency accommodation facility for people with a disability. It is fundamentally a different facility but is on the same level—that is, nobody objects to the need for them and everybody knows we need them. I want to talk about this because it relates to good process or the lack thereof. I will run through how we got to where we are in Bedford. On 27 February 2009, the Bedford youth hostel burnt down. The fire caused $1 million damage and the building was abandoned for five years, with resulting vandalism and all sorts of things happening all the time. The neighbours, of course, were pretty cranky about the neglect and that it had changed not only their social amenity, but also the culture of the area. Shortly after the fire, a letter came from the then Minister for Child Protection, Hon Robyn McSweeney, confirming that the Bedford youth hostel, which was operating programs under the then Department of Justice, had been

identified for closure before the fire and that there were no plans to rebuild it. That was the decision, and that is fine. When it burnt down, the neighbours were worried about what was going to happen to the site. They were not necessarily sad to see it burn down, because a lot of incidences of crime directly related to the hostel occurred in the area, and the police were very aware of them, but that is a different issue. Nevertheless, there were some very unsociable issues associated with the hostel and the community was not necessarily upset to see it burn down.

In 2010, the facility was handed from the then Department for Child Protection—not the then Department of Justice—to the Disability Services Commission. In April 2012, the Disability Services Commission's then acting manager of community access and information sent an email stating that final plans would be available by June 2012. I jump forward nearly a year to 9 May 2013 when the parliamentary secretary informed me when I raised this matter in Parliament that construction would commence in the fourth quarter of 2013 and that the practical completion was expected in May 2014. On 16 May 2013, a development application was submitted to the City of Bayswater stating that the department was planning to build a six-bedroom facility for short-term accommodation for young people with a disability, and that application was approved in early 2014. In March this year, the Minister for Disability Services, Hon Helen Morton, wrote to me saying that demolition was underway and that the estimated practical completion date for construction was August 2014 and that the house was likely to be occupied in September 2014. On 2 April, the Disability Services Commission finally went out to meet with the residents. For five years I have been fielding calls from residents about this matter, which has met with constant delays. Although there has been some written communication to residents, there has in no way been enough communication. As a local member, I tried to make sure that everything I was being told was sent to residents so that they knew what I knew as soon as I knew it.

In April, when the commission met with residents on neighbouring streets, the commission said that the estimated completion date of the facility was August 2014 and that it was expected that it would be occupied in October 2014. I will tell members what this centre is about, because it will be fantastic when it is available. The process has not been good but the centre is necessary. The facility will accommodate young people from the ages of 13 to 25 for periods of between two weeks and two years—although preferably not that long. The commission confirmed that it is last-resort accommodation for people in real crisis and who have nowhere else to go. Residents in the facility will be able to come and go from the premises under their own steam. They may have an intellectual disability and behavioural issues that cause them to be difficult to work and live with. That is a given. It is very sad, and I know from experience that it becomes very stressful for carers and families when they live with someone in that situation, not to mention for the individual who has the disability who probably gets very frustrated and angry and sometimes wants to lash out because they feel so frustrated. Sometimes families just need a break.

The department could not confirm to the residents that it has put in place any measures to make sure that the problems that existed with the youth hostel would not be repeated, but I do not think that we will find a huge amount of criminal behaviour related to this group of people. They will probably be more tired, frustrated and angry than anything else, but they will have a range of challenging behaviours and my community does not necessarily know what that means or how that will impact on it. What they need is information, and they needed it three to five years ago when the commission knew what it intended to do with the facility. It should have been consulting with my community a long time ago about the need for this centre and educating members of the community about what they could anticipate the centre would be used for and how it would impact on their lives. It may not impact on them at all.

The Disability Services Commission's executive director of accommodation services told the group of residents with whom she met that there has never in the past been the sort of demand for emergency accommodation facilities that there is now. Although there was no explanation of that growth in demand, it is very clear that there are now more people with disabilities in the community and developmental disabilities are increasing at a very rapid rate.

The issue for me is that this is an example of a very long and drawn-out process. I know the wheels of government move slowly. A lot of that concerned transferring ownership from the Department for Child Protection and Family Support to the commission, but that does not change the fact that people need information and authenticity and a correct process. In the instance of the disability justice centres, people needed the government to stick to the selection criteria it put up originally and for it not to make decisions on a political basis. Of course, the community will be angry and the government deserves that anger and will have to wear it. The member for Bassendean is doing a fantastic job of getting his constituents' voices heard. I hope that after hearing from all of us today, the government understands the level of community dissatisfaction in Bassendean and Kiara about what has happened in the development of these centres and recognises people's scepticism and lack of trust in the government to make these decisions.

MR P.C. TINLEY (Willagee) [4.43 pm]: I rise to make a contribution of some description on the bill if I can elbow my own space for one moment! It is a pleasure to rise as, I suspect, the last member of the day to speak on the Declared Places (Mentally Impaired Accused) Bill 2013.

I think it is really important to start with a story from my electorate. We often come to this chamber and debate bills in esoteric or abstract terms; we talk about the potential for the bill to do this or that or about the relationship between the bill and government policy. We draw these conclusions when the bill might be silent and the policy may also be dormant and we wonder which one will complement the other. It is really important for all of us to bring an understanding from our electorates. My electorate is probably no different from any other in the types of people who flow into our justice system. I want to talk particularly about someone I have been dealing with probably since I became a member four years ago. It is a story about Dave, a young Aboriginal man who was fostered and then adopted by a very strong community leader in Willagee. It was at the time when the adoption of Aboriginal people into white families was allowed. It was going quite well. Dave is of particular interest because he suffers from foetal alcohol syndrome, as we discovered later. For several years I had been tracking this; Dave had real problems from about the age of 13 years. He was in a special education program, but he was fairly high-functioning. However, he fell out of the education system, even though we made our best effort to get him into some sort of training system. He was not a bad kid and he is still not a bad person. He had a particular range of challenges both physically and mentally that presented in some behavioural things that could be termed, at worst, "annoyingly antisocial".

Unfortunately, as Dave grew older and he turned 17, he no longer wanted to stay in the family home. Like every other young man, he wanted to make his own way in the world and attempt to make his own mark. That was quite appropriate because Dave was able to hold down a job; he had two part-time jobs that we were keen to help him with and he was going well. However, one thing led to another, in part through his own behaviour, and we completely understand the origins of and the motivations behind that behaviour. He had a different outlook on the world. He had a different perspective from the rest of us. Before he was even 17, a range of petty crimes brought him in contact with police, but again it was nothing more than a juvenile expression in things such as mild vandalism—which I do not condone, of course—and shoplifting, acquiring alcohol. Those sorts of things brought him to the attention of police, but it was managed. Dave left home at 17 and he had a couple of jobs. For various reasons Dave could not hold down his jobs; he fell out with employers and started to drift away. He would not go back home. He was still in contact with his adoptive family, but he did not want to go back home. Then some of his antisocial behaviours became more acute; he became more aggressive on the bus or on the train—in places where there was a high level of confusion and activity around him and lots of things going on. We found this out later. Unfortunately, one thing led to another and drugs presented themselves; cannabis was freely available where he lived. He was still in our electorate, so we still tried our best from time to time to intervene and do what we could. Dave lost his accommodation as he could not afford to keep it. He still did not want to go home, so he ended up homeless in the back of his car. The car was obviously unregistered, uninsured, and then unroadworthy and then unable to move. We knew exactly where he had parked it and that is where he slept. This went on for some time. Then he couch surfed here and there. Then he was arrested for a fairly serious crime. It was aggravated burglary to get money for drugs. There is nothing necessarily unique about this story or stark in its differences from stories to which many in the chamber have been exposed over time, but he has a disability and he has slowly, but surely, fallen out of the system for a range of different reasons.

Those with a self-responsibility sort of approach to these things would be a bit naive to think that the contribution of Dave's illnesses or the cards that he was dealt at the start of his life would somehow allow him to have just and equal opportunities; that is fallacious. He was clearly where the system should have prevented him going. We did welfare checks. The police had gone to see him; they had to find him for a start and then see him. Using police powers, he was referred to the Alma Street Centre and was then the subject of a community treatment order. A range of things happened. Eventually, he fell out of the system. He became invisible, if you like, to the system of services that we provide in the community in Western Australia, and he then reappeared in the justice system. He spent a significant amount of time in remand and in a justice system that was not suited to his ailment and his particular set of circumstances. As we know, if we look at any of the statistics, prison is not the place for people with a disability, particularly a developmental disability. Our standard justice system is not the place for these people. Recidivism is a key issue that occurs as a result of people's mental illness.

People with cognitive and intellectual disabilities are clearly over-represented in the criminal justice system, and their disability is not the cause of their offending, as I have highlighted with my particular example. It is issues of literacy. Dave did not finish school. It is issues of homelessness. It happened to Dave, even though he had a strong family. There is a motivation that compels these young people to want to leave home, and, for various reasons—maybe pride or other reasons—they do not seek help seek, but instead choose homelessness. They

have these multi-layered illnesses. In the end, Dave became, I would not say a drug addict, but certainly a drug user and a substance abuser. I am sure that did not contribute well to his levels of anxiety or the other psychiatric issues that he experienced. He was unemployed, and despite having a strong family available to him, he did not turn to them. The social supports did not work for Dave, and he ended up in the criminal justice and prison systems, which in my opinion only exacerbated his problems. Dave is now out on the street, but we know that he is just as likely to re-enter the justice system, which we are all trying to prevent.

Recidivism is something the Declared Places (Mentally Impaired Accused) Bill 2013 deals with; it attempts to provide the missing link between what the formal criminal system provides and what the delivery of effective programs can do if properly constructed in a safe place. Recidivism of itself is a compelling argument to ensure that we cover all bases and that we find and service gaps in the system. Various studies have identified that recidivism in the type of person who goes into this system can be reduced from as much as 73 per cent to 51 per cent. More broadly, overseas recidivism amongst offenders with developmental disabilities participating in case management programs has been reduced from 45 per cent to 25 per cent. It is one thing to be in a facility; it is another thing to actually participate in strong programs. I will circle back on that point in a minute.

The issue is to understand what causes the mental impairment. Once the mentally impaired accused has been identified, it is important that we understand that they are unable to do a series of things, and this makes them completely unsuitable to present and defend in the normal justice system. They are unable to understand the nature of the charge. Various examples of the types of charges that such people come up on have been presented in this chamber. Mentally impaired accused are unable to understand the requirement to plead to the charge or the effect of a plea. They are unable to understand the purpose of the trial or exercise the right to jurors; follow the course of the trial; or understand the substantial effect of evidence and its impact on their case. As a result, they are unable to properly defend the charge. It is important that the Criminal Law (Mentally Impaired Accused) Act 1996—where these criteria come from—is applied appropriately. But once that has been done and such a person has been identified, this presents an opportunity to redress the situation.

The Law Reform Commission of Western Australia report "The Criminal Process and Persons Suffering from Mental Disorder" of August 1991 states —

> It is wrong to treat as criminal those who, by reason of severe mental illness or intellectual disability, are temporarily or permanently deprived of capacity to conform with the requirements of law or distinguish right from wrong.

That last bit is absolutely essential. How many people in the criminal justice system actually have a fundamental inability to discern between right and wrong for a range of systemic reasons that delivered them to the system in the first place? The United Kingdom Department of Health and Home Office found in the "Review of Health and Social Services for Mentally Disordered Offenders and Others Requiring Similar Services" of 1992 that all offenders with learning disabilities needing care and treatment from the health and personal social services—this was rather than in custodial care—and quality services care should have assessments completed in the community using methods promoting reintegration into independent community living. It is not enough to talk about bricks and mortar and argue about the political convenience of which particular electorate these centres are sited in or moved from or moved to. That argument unto itself has its own merits. However, what we need to understand in this bill is beyond bricks and mortar, which are seemingly going to be foisted on an unwilling community. It is about what goes on inside those centres, how those services are delivered and the circumstances of the oversight provided in that system to allow people contained within the facilities to gain the best and most rapid opportunity to be a part of the reduced recidivism statistics.

When we reach the consideration in detail stage of this bill, I am keen to hear from the government how it intends to operate this system and who will operate this system. I note from the planning point of view it is identified and cleared as a correctional facility. I hope that the Minister for Corrective Services is a long way away from this facility. He has very good form for losing prisoners and presiding over some of the worst circumstances, and I can only imagine what he might do if he were in charge of delivering very sensitive, nuanced and complex arrangements and services to ensure that those with a mental disability are properly cared for. Will the facility be run by a not-for-profit organisation or a for-profit organisation such as Serco? Will the facility and services and programs inside be offered by a not-for-profit organisation, and which departments will have oversight? By what methods will it be audited? By what methods and circumstances will the community engagement on this bill and this area, which was lauded by this government, be maintained? My advice is that the local community liaison group has already formed in this case to share information and project updates with the community and to receive feedback. It is a key opportunity for local stakeholders to get involved in the development. That is completely laudable because we are talking about integration and the requirement for this

centre to be not in an isolated location but in the community; therefore, we need to absolutely engage the community.

In consideration in detail, I want to know in detail the circumstances around the ingress and egress of prisoners or detainees—whichever way one wants to describe them. Clients might be a better way to describe them, as it is more sensitive to the nature of their disability. How and under what circumstances will they be allowed to leave the facility? What will be the controls? The bill has an order of priority, with the protection and safety of the community coming first, and then the protection and safety of residents and the best interests of residents who are not adults.

I am very interested to unpack what those things mean, and the operational expression of those things when this facility is built and fully occupied. I am also very interested to hear about the processes by which the Mentally Impaired Accused Review Board will sit and the circumstances around how it will go about its business. I look forward to the opportunity to attend one of those review board hearings—not now, not even in two years' time, but in three, four, five or 10 years' time after this thing has been built—to ensure that the intention and objectives of this legislation meet the policy direction of the government. I make that distinction between legislation and policy. Governments bowl up legislation all the time, but the policy of the government of the day can substantially change the interpretation and operation of an act. With those concluding remarks, I look forward to the next stage of debate on this bill.

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