Opening of the Bennett Brook Disability Justice Centre

The Honourable Wayne Martin AC
Chief Justice of Western Australia

Caversham
Tuesday 4 August 2015

Acknowledgements

Premier, the Honourable Colin Barnett

Minister for Disability Services, the Honourable Helen Morton

Chair of the Mentally Impaired Accused Review Board, Judge Robert Cock

Director General of the Disability Services Commission, Dr Ron Chalmers

Noongar Elder, Mr Kim Collard

Mayor of the City of Swan, Cr Charlie Zannino

Mayor of the Town of Bassendean, Cr John Gangell

Other esteemed guests, ladies and gentlemen

It is my very great pleasure to have been invited to speak upon the occasion of this significant milestone in the provision of services to an especially vulnerable section of our community. Those are people who suffer from intellectual or cognitive disability, perhaps caused by an acquired brain injury or a congenital or pre-natal condition like foetal alcohol spectrum disorder - conditions often acquired through no fault of the person concerned, and who have, often by reason of that condition, come into contact with the criminal justice system.

The Traditional Owners

Before going any further, I would like to thank Kim Collard for his generous welcome to country and acknowledge the traditional owners of the land upon which this important facility has been constructed, the Whadjuk people who form part of the great Noongar clan of south-

western Australia, and express my respects for their Elders past and present and my appreciation for their continuing stewardship of these lands.

The Need for a Declared Place

The importance of this milestone in the provision of services to those who suffer from a disability is not diminished by the fact that it has been a long time coming. The need for such a facility was recognised more than 20 years ago in the reviews and reports which preceded the enactment of the *Criminal Law (Mentally Impaired Defendants) Act* in 1996. Those reports, and the Act itself, recognised that people who were found to be mentally unfit to participate in the criminal justice process, or not guilty of an offence with which they had been charged because of mental illness or cognitive disability, could and should be managed in different ways, depending upon the circumstances of the case and the circumstances of the person.

The Act expressly recognises that there are essentially three different ways in which such people can be appropriately managed, namely:

(a) by being kept in secure custody in a prison (or, if a child, a detention centre);

(b) by being treated for mental illness in a hospital; or

(c) by being appropriately managed and cared for in a facility described by the Act as a "declared place".

Under the Act, responsibility for recommending to the Minister the most appropriate disposition in any particular case rests with the

Mentally Impaired Accused Review Board which is chaired by a judge or retired judge and which includes members representing the community and members with particular expertise in the area of mental illness and disability. The difficult decisions made by that Board reflect the need to strike an appropriate balance between the protection and safety of the community while at the same time recognising the human rights, needs and interests of those who may have found themselves within the criminal justice system through no fault of their own.

Detention in a secure facility like a prison or detention centre will be appropriate where the person's behaviour poses a serious risk of harm to the community. Treatment in a hospital will be appropriate in cases in which the person suffers from a mental illness which is susceptible of treatment - at least to the point where the illness can be stabilised to a level at which the person no longer poses any serious risk to the community. There is an important third category of case in which the person neither poses a serious risk of harm to the community, nor suffers from a mental illness susceptible to treatment, but instead suffers from a permanent intellectual or cognitive disability. The 1996 Act recognised that for persons coming within this category, detention in a prison was unnecessary and unjust, and placement in a hospital was pointless because the patient is not susceptible to treatment. So, the Act contemplated that a third category of place, neither a prison nor a hospital, would be created in which such people could be managed appropriately within the community, and given the social support and life skills which would maximise their quality of life and enable them to live in harmony with the surrounding community.

I would respectfully suggest that the public policy, humanity and compassion evident in this management approach cannot be faulted. The problem has been that until now, there has not been a declared place, and the only options available to the Board have been prison or hospital. Because there is no point in putting people in hospital who cannot be treated, the consequence has been that people falling within the category to which I have referred have been imprisoned, even though they have not been convicted of any offence, and sometimes for a longer term than they would have served if convicted. The injustice of that outcome is obvious.

Judges give appropriate respect and deference to the work of the elected representatives of the people, and I am sure there are many reasons why successive governments have been unable to provide the type of facility contemplated by the Act. I expect that those reasons would have included the need to find and allocate the capital and recurrent resources needed to construct and operate such a facility, the difficulty of identifying an appropriate location for such a facility, given the likelihood of opposition from the surrounding community and, perhaps most significantly of all, the need to design and promulgate appropriate management plans and protocols for the operation of such a facility - plans and protocols which strike the necessary balance between the protection and safety of the community and the need to respect the rights of residents within the facility to be treated with dignity, courtesy and compassion, without discrimination or stigma, and with equality of opportunity.

It is also important for members of the judiciary to remain politically impartial. However, on an occasion such as this it would be disingenuous not to give credit where credit is due. The government, and in particular Minister Morton, with the support of the Premier and the Disability Services Commission, are to be congratulated on the resolve and fortitude which was necessary to build the facility.

I would also respectfully commend the Parliament of Western Australia for the passage of the *Declared Places (Mentally Impaired Accused) Act 2015* which sets out, with admirable clarity, the principles and objectives which are to govern the operation of this facility and, most importantly, confers upon residents of this facility a number of very important and specific rights and freedoms, while at the same time obliging those responsible for the operation of the facility to develop individual plans for each resident which will promote that resident's wellbeing and successful integration into the community. In my respectful view, this is a ground-breaking piece of legislation which reflects an enlightened and well-balanced approach to the management of people suffering from intellectual and cognitive disability. At last these people will be housed in a secure but homelike therapeutic environment in which the focus will be upon the provision of social support and life skills training rather than in the harsh and punitive environment of a prison.

I am very pleased to have been given the opportunity to join with those who celebrate this significant advance in the management of some of the most vulnerable members of our community.