Speech by

Andrew Cripps

MEMBER FOR HINCHINBROOK

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JUSTICE AND OTHER LEGISLATION AMENDMENT BILL

Mr CRIPPS (Hinchinbrook—LNP) (3.03 pm): I rise to contribute to the debate on the Justice and Other Legislation Amendment Bill. The bill proposes amendments to a number of acts administered by the Attorney-General and Minister for Justice. It also proposes a number of amendments to acts administered by other ministers including the Disability Services Act, an act administered by the Minister for Disability Services and Multicultural Affairs. I intend to address issues concerning this amendment.

The bill proposes amendments to the Disability Services Act and the Guardianship and Administration Act to allow short-term approvals to be made for restrictive practices to be used where there is a guardian for restrictive practice matters appointed but where the guardian has not yet made a decision. These amendments are intended to clarify that the chief executive and/or the Adult Guardian may consider a short-term approval for certain restrictive practices even where a guardian for restrictive practice matters has been appointed but where no such decision has been made by that guardian. The bill also proposes to clarify that one circumstance when such a short-term approval would end is when a guardian for the adult concerned has made a decision.

The bill also proposes to extend the transition period for a further six months, until 31 March 2011. This proposal applies the extension of the transitional period retrospectively, as the previous extension to the transition period expired on 30 September 2010. The liberties of some adults with an intellectual or cognitive disability receiving a funded or provided disability service will be affected as a result of the further extension to the transition period for use of restrictive practices.

The proposed amendments also seek to clarify a situation and correct an unintended legislative consequence around short-term approvals where service providers may have been exposed to a legal liability. However, the relevant service provider will enjoy the benefit of the retrospective immunity provisions only if they have complied with the requirements of the Disability Services Act, which requires the service provider to have acted honestly and without negligence, to have demonstrated the restrictive practice was necessary to prevent the adult's behaviour causing harm to themselves or someone else and is the least restrictive way of ensuring their safety, and to have assessed the adult to identify the nature and causes of their behaviour and develop strategies to manage the adult's behaviour as well as strategies to meet the adult's needs.

The explanatory notes state that the amendments are aimed at providing appropriate safeguards for the individual who may be subject to the restrictive practice and provides legal certainty to individuals or relevant service providers. The LNP opposition will not be opposing the amendments to the Disability Services Act and the Guardianship and Administration Act in this bill. However, I will be expressing some concerns about this issue in general.

Since I became the shadow minister for disability services for the LNP opposition after the last state election in March 2009, I have been consistently pursuing the issue of the implementation of the recommendations made by Justice Carter in what has come to be known as the Carter report, which was released in May 2007, entitled *Challenging behaviour and disability: a targeted response*. My pursuit of this issue is clearly on the record in this place.

I asked questions about the Wacol accommodation during the hearings of Estimates Committee D on 17 July 2009. I addressed the issue again during the debate on the report of Estimates Committee D on 5 August 2009. The first extension to the transition period for the use of restrictive practices came to this parliament in the form of an amendment contained in the State Penalties Enforcement and Other Legislation Amendment Bill, which was debated in this House on 11 November 2009. On that occasion, I canvassed in detail the concerns of and challenges faced by non-government disability service providers who are really struggling to comply with the requirements contained in the recommendations that were part of the Carter report, not only in terms of the capital costs but also in terms of securing and retaining suitably qualified staff. Non-government disability service providers support wholeheartedly in principle the recommendations of the Carter report. It is recognised by all concerned that the lives of people with disabilities who require care that involves the use of restrictive practices will be significantly improved by the implementation of the Carter report recommendations.

On 23 February 2010 this House debated the Criminal History Screening Legislation Amendment Bill. That bill also proposed amendments to the Disability Services Act and the Guardianship and Administration Act to extend the maximum period for short-term approvals of restrictive practices and to clarify a further circumstance when the transitional period for the use of restrictive practices stopped applying. Again on that occasion I canvassed in some detail the concerns and the challenges faced by those non-government service providers who were being required to comply with the recommendations of the Carter report regarding the use of restrictive practices. I raised these matters on their behalf once again because, unfortunately, the issues that had concerned them and impacted on their operational capacity and financial circumstances had not changed and had not been understood by the Bligh government or, if they had been understood, were regrettably being ignored.

I pursued this issue again in my budget speech on 10 June 2010. On 16 July 2010 during the hearing of Estimates Committee D, I once again pursued the issue of the funding of the specialist accommodation infrastructure at Wacol and the implementation of the Positive Futures program. Again, on 3 August 2010 during the debate on the report of Estimates Committee D, I further canvassed the issue of the implementation of the recommendations of the Carter report because I continued to receive feedback from non-government organisations that they were under real financial and organisational pressure in respect of the need to comply with new restrictive practice regulations.

On a number of occasions over the last 18 months the Minister for Disability Services has suggested that I was misguided, suggested that I did not know what I was talking about and suggested that what I was saying about the difficulties being faced by non-government disability service providers and the problems with the Wacol accommodation and the Positive Futures program was wrong.

Now we come to 6 October 2010, and the House is considering the provisions of the Justice and Other Legislation Amendment Bill. For the third time now squirrelled away in a bill being carried through the parliament by a minister not responsible for the administration of the Disability Services Act comes a bill asking members to approve of a further extension of time for the use of restrictive practices by disability service providers caring for people with an intellectual disability exhibiting challenging behaviours. It goes to show that all the while that I was asking questions about this issue, time and again drawing the attention of the parliament to the difficulties concerning the implementation of the Carter report recommendations and asking where the money was going, I was actually raising legitimate points of concern; that I did understand what I was talking about; and that I was actually correct.

Indeed, the question may well be asked how much did the disability services minister actually know about how the non-government service providers were going as far as the implementation of the Carter report recommendations are concerned. I asked the minister several questions during the hearing of Estimates Committee D on 16 July this year about funding issues associated with the Wacol accommodation project and about the implementation of the Positive Futures program. I also asked the minister directly whether the expenditure being provided to the non-government service providers would be enough to support them for the purposes of implementing the recommendations of the Carter report. The minister said, yes, the non-government disability service providers have the support they need to implement the Carter report recommendations by the end of the transition period, which was 30 September 2010.

I asked specifically whether there would be any further extensions to the transition period and the minister said clearly and unequivocally ‘no’. That answer—that statement—is in black and white in the Hansard record of this parliament from the Estimates Committee D hearing on 16 July this year. So what are we doing here today? We are doing something that the Minister for Disability Services specifically said we would not be doing, that being extending the transition period for the implementation of Carter report recommendations relating to the use of restrictive practices by disability service providers. Why are we doing today something that we have been told we would not need to do? The answer is simply because Disability Services Queensland has not been listening to the non-government disability service providers in this state who care for people with intellectual disabilities who exhibit challenging behaviour.

I have gone so far as to put on the record in this place an example of the non-government disability support sector crying out to be heard by the Minister for Disability Services in respect of this issue. In my budget speech on 10 June this year, I said that at the budget breakfast here at Parliament House the previous day jointly hosted by National Disability Services Queensland and the Queensland Alliance that the non-government service providers had belled the cat during the question time about funding issues.

A representative of the Endeavour Foundation—the single largest provider of disability support services to people with intellectual disabilities who exhibit challenging behaviours—asked a direct question of the minister about funding as it related to the serious problems facing non-government service providers in terms of meeting the costs of implementing recommendations in the Carter report. I am sure the direct representations to Disability Services Queensland and to the Minister for Disability Services from those non-government disability support service providers about these challenges and difficulties have been forthright, regular and persistent over the last two years. It is abundantly clear that not only has the minister not been listening to me on the numerous occasions that I have raised these issues over the last two years but, more importantly, she has not been listening to the non-government disability service providers who support clients who exhibit challenging behaviours and in doing so utilise restrictive practices, and that is of great concern.

Notwithstanding this concerning state of affairs, I have recommended to the LNP opposition that this proposed amendment not be opposed, because to do so would be to place non-government disability service providers at risk of being exposed to a legal liability that is not of their making. Non-government disability support service providers need to be protected and supported. They shoulder an enormous burden in this area of the disability support sector. It is a burden that I suggest would not be able to be shouldered by Disability Services Queensland should non-government services be forced out due to an inability to comply with overly restrictive regulation or due to it not being adequately financially supported to continue to deliver these support services. I would encourage the Minister for Disability Services to reflect seriously on that scenario.

The recommendations in the Carter report proposed a fundamental process of reform, renewal and regeneration of the way in which Disability Services Queensland and the disability sector responded to the demand for services delivered in an area with the aim of providing an efficient, cost-effective and financially sustainable outcome for the proper care and support of persons with an intellectual disability and challenging behaviour across Queensland. Notwithstanding how necessary and overdue these changes are, it leaves many community sector providers of disability support sectors wide open to implementation costs at a time when they can least afford it.

Of most concern has been the real lack of financial assistance for community sector organisations to help meet the real costs of implementing the changes. This lack of financial assistance has contributed to the delays being experienced throughout the sector in implementing the Carter report recommendations in terms of both the capital costs of the changes and retaining and retraining staff, and it lends warrant to the implication that the state government, facilitating the extension of the transition period to accommodate those organisations, is more directly related to the lack of financial support provided to those non-government disability service providers than the inability of those service providers to meet the regulations themselves.

I have real concerns about the community sector, which delivers vital, on-the-ground services helping people with disabilities and their families in the community. The community based disability support sector is doing it rather tough. It faces ever-increasing costs to deliver services and operate the facilities. The existence of a community based disability support sector undoubtedly saves the state government an enormous cost from having to deliver the services to many more Queenslanders in the community in many more communities around the state. The sector deserves the support of the state government to at least meet the costs of implementing the changes relating to the Carter report, and I am not confident that at this point in time that is occurring.