Speech by

Shane Knuth

MEMBER FOR CHARTERS TOWERS

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DISABILITY SERVICES BILL

Mr KNUTH (Charters Towers—NPA) (3.28 pm): I rise to speak to this bill. I believe this legislation is a huge improvement on previous legislation. I would also like to acknowledge the dedication and determination of the minister, Warren Pitt, for his work to improve the quality of life for people with disabilities. While I agree with the intent and the purpose of this legislation, I have some concerns about the detail and how some of the objectives of the bill will be achieved. I will outline those concerns. First, I am concerned that this bill breaches the fundamental tenets of the Legislative Standards Act 1992, which was introduced by the Labor government to ensure that all legislation introduced into parliament was within the rule of law.

I believe this bill is in breach of the intents and purposes of section 4(1) of the Legislative Standards Act 1992, the meaning of 'fundamental legislative principles', which was introduced by the then Goss Labor government, which states—

For the purposes of this Act, '**fundamental legislative principles**' are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law.

Section 4(2) requires that any legislation must have sufficient regard to (a), the rights and the liberties of individuals; and (b) the institution of Parliament. The legislation goes on to say—

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation—

(a) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review;

In relation to the Disability Services Bill, the minister and the department heads have those rights. There is no mention of them being subject to appropriate review and it also gives the minister the right to decide who can apply for a review. The Legislative Standards Act 1992 states—

(b) is consistent with principles of natural justice;

Under the Disability Services Bill natural justice principles are something that seem to be lacking in relation to the requirements of criminal history screening and a person's eligibility to conduct themselves, as a person's prior criminal history is dependent on the decision of the chief executive officer. The Legislative Standards Act 1992 states—

(c) allows the delegation of administrative power only in appropriate cases and to appropriate persons;

The Disability Services Bill overextends the delegation of administrative powers as it now applies to the world at large and is not limited to appropriate cases and persons. The Legislative Standards Act 1992 states—

(d) does not reverse the onus of proof in criminal proceedings without adequate justification;

The Disability Services Bill reverses the onus of proof in relation to the fact that it allows the individual's previous criminal history to be considered and there is no mention if the evidence taken by the officers is contained under the existing rule of evidence at common law in relation to the criminal law. For example, if the evidence is tampered with it is still included as part of the proceedings. The Legislative Standards Act 1992 states—

(e) confers power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer.;

The Disability Services Bill confers powers to enter without a warrant or the owner's permission which is in breach of this legislation. The Legislative Standards Act 1992 states—

(f) provides appropriate protection against self-incrimination;

The Disability Services Bill denies the right to silence and the right to protect yourself from incrimination. The Legislative Standards Act 1992 states—

(g) does not adversely affect rights and liberties, or impose obligations, retrospectively;

The Disability Services Bill imposes rights and obligation on individuals and affects their liberties. The Legislative Standards Act 1992 states—

(i) provides for the compulsory acquisition of property only with fair compensation.

The Disability Services Bill makes no allowance for compensation. The individual has to seek compensation via the courts. The Legislative Standards Act 1992 states—

(j) has sufficient regard to Aboriginal tradition and Island custom.

These are the forgotten people in this bill. There is no mention of having any regard to Indigenous people and acknowledging their customs and traditions and the Murri Law Court, which is traditional law.

The bill fails the legislative standards test, but furthermore it fails the community as a whole and the people it is intending to protect; those who are most at risk or harm and the most vulnerable.

The bill contains issues that will have long-term consequences for the disabled and their families and carers. These concerns are as follows. Part 7 of the Disability Services Bill prescribes requirements for funded non-government service providers. Some non-government service providers—NGOs—will find it offensive and intrusive that DSQ will be able to make regulations about how their organisation is run. For example, DSQ will be able to regulate matters such as an organisation's corporate governance, recruitment process, data collection and publication of reports. This part does not really recognise the independence of the NGOs as an incorporated body.

Part 8 and part 9 of the Disability Services Bill requires screening of persons engaged by the department and by the NGOs. Clause 61 effectively exempts the Disability Services Bill from the Criminal Law (Rehabilitation of Offenders) Act 1986. This effectively means that anyone employed by DSQ must disclose minor convictions which happened over 10 years ago.

Clause 61 needs to be read in conjunction with clause 60, as clause 60 nominates the people affected by this legislation and clause 61 states what the bill intends to enact. Clause 61 applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986. When the Criminal Law (Rehabilitation of Offenders) Bill was introduced in 1996, Wayne Goss MP, who was the shadow minister who rose to speak on it, stated as follows—

In rising to speak to the legislation I extend half my compliments to the minister for introducing the legislation. I compliment him on being astute enough to implement what has long been Labor Party policy. I urge him to continue searching through the Labor Party's justice policy because he will find many more similar measures that are worthy of implementation. Those that he has not finished implementing by the time of the next Labor government I will attend to on its election.

Clause 73 of the Disability Services Bill does the same thing for people employed by NGOs in relation to disclosure of the criminal history under the Criminal Law (Rehabilitation of Offenders) Act.

Clause 65 of the Disability Services Bill requires disclosure by potential DSQ employees even if no conviction was recorded by the court. The chief executive of the DSQ is the decision maker in relation to these evasive screening requirements. In practice this function will be delegated down to fairly low levels in the department.

In relation to part 10, clause 121, monitoring and enforcement and powers of authorised officers, the powers in the Disability Services Bill are inconsistent with the Police Powers and Responsibility Act. Authorised officers are not required to have any special training as are police. The chief executive only has to be satisfied that the person is qualified. There is no mention of the ongoing training obligations or requirements these officers will have to meet.

In part 11, appointment of an interim manager, clauses 166 and 167 enable the chief executive of the DSQ to appoint an interim manager to a funded NGO. This is an extraordinary power for chief executives to have over organisations which are incorporated as independent legal entities under their own constitution. Surely such powers, if required at all, should be exercised by the minister and be subject to special reportings to parliament. Most NGOs receive funding from a variety of organisations, not just DSQ. There is no limitation on the interim manager's power in relation to other assets of the organisation such as bequests, donations and accumulated funds. Again the Disability Services Bill does not seem to have much regard to independent organisations; they are treated as agencies of the department.

Clause 220 is tacked on to the end of the Disability Services Bill and goes against the principles of common law founded in Griffiths v Kerkemeyer. Under this clause DSQ can take into account any

compensation payouts received by a disabled person in deciding whether the person should be required to pay for any DSQ service. The Griffiths v Kerkemeyer principle is to the effect that damages will be awarded to a plaintiff to compensate for the cost of services needed to provide for their medical condition and needs, whether those needs are incurred or not, because of their incapacity to perform those activities as a result of their claim. This clause could result in a disabled person incurring significant ongoing costs despite receiving a relatively modest compensation payout, which is now capped by Queensland courts. If one takes into consideration the ongoing cost of medical treatment, medicines, special aid wheelchairs, the cost of bathrooms for disabled persons, the cost of fitting out a vehicle for a disabled person, their legal costs, just to name a few of the major costs that disabled persons face, this is an unfair clause.

I stand before the House today and ask members to consider what impact these costs and ongoing needs have on disabled individuals and their families. It is heartbreaking, and it is a huge economic cost to the community at large.

I would like to raise issues in relation to children with disabilities. We are all aware of the great benefits of early intervention and the profound impact that early support can have in later life. Children are often neglected in the funding maze or lost amongst the desperate bids for resources in the disability sector. Sadly, this means that some children are not able to receive the appropriate treatment and support they desperately need. Currently, funding allocated by the state government to services for children with a disability makes up just 26 per cent of the Disability Services budget. Many service providers receive only marginal funding to assist children and, while they are welcome, many funding grants target adults. It is a heartbreaking situation of turning away children who are in need because they are not funded to provide those services. This is particularly tragic, as we are all aware of what enormous benefits early support can bring to a child's entire life.

I know of a family in Moranbah who has a five-year-old child called Ted who has type 1 juvenile diabetes. So that we can understand how difficult it is for families with a child with disabilities and understand how support is needed, I would like to bring to the attention of the House what this disease consists of. Unlike type 2 diabetes, type 1 diabetes has nothing to do with diet and lifestyle and cannot be prevented. Type 1 diabetes is an autoimmune disease that affects the cells in the pancreas that produce insulin. Our bodies need insulin to convert food into energy.

Juvenile diabetes is a difficult disease. In addition to giving insulin injections two or more times a day and pricking the child's fingers eight to 10 times a day for blood glucose testing, his parents are constantly trying to juggle the boy's activity level, carbohydrate intake and insulin requirements, and treating dangerous high and low blood glucose levels. They must be vigilant on his behalf day and night without fail. Still, they know that he will face a lifetime of this rigorous regime and potentially many serious health complications including heart disease, kidney failure, impotence, blindness, amputation and a shortened life expectancy.

Unfortunately, insulin is not a cure for this diabetes. It keeps people with type 1 diabetes alive but does not cure the disease or give them a normal life. It does not prevent the many health problems that occur after having diabetes for a long time. Any help or assistance in the research for a cure for this diabetes would be greatly appreciated.

I would like to bring to the attention of the House an issue relating to people with minor mental health problems. About 10 to 15 years ago the Charters Towers Rehabilitation Centre, which was once called Mossman Hall, had quite a number of patients with mental health problems. A lot of them have been put out onto the street. They have been looked after by Home and Community Care and Blue Care, and they do a wonderful job. However, a lot of them do not have friends who will pick them up to take them to the movies or go to the football. Most of the time that they had to get together was when they were in that institution. While we understand that it is not right to keep people institutionalised, these people would like to be back there on the grounds that this was the place where they met, played cards and got together with their friends. I believe that is very important and is something that we need to address further down the track. I would also like to mention that a 24-hour respite centre in Charters Towers would be of great benefit to our region.