Speech by

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MEMBER FOR HINCHINBROOK

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CRIMINAL HISTORY SCREENING LEGISLATION AMENDMENT BILL; DISABILITY SERVICES (CRIMINAL HISTORY) AMENDMENT BILL

Mr CRIPPS (Hinchinbrook—LNP) (8.20 pm): I rise to make a contribution to the debate on the Criminal History Screening Legislation Amendment Bill. This bill, introduced by the government, was introduced during the last parliamentary sitting week, which was two weeks ago today. It is being debated in cognate with the LNP opposition's Disability Services (Criminal History) Amendment Bill, which I introduced into this House on 7 October last year.

The Bligh government has been ducking and weaving the LNP opposition's Disability Services (Criminal History) Amendment Bill since that time, while it devised a way to avoid voting against the bill without having something else in its place that it could offer up as an alternative. For three sitting weeks in a row, the Disability Services (Criminal History) Amendment Bill has been No. 1 on the *Notice Paper* for general business on a Wednesday night, but it has been held over, passed over and moved aside while Labor developed the Criminal History Screening Legislation Amendment Bill. Nevertheless, I welcome the Criminal History Screening Legislation Amendment Bill. There is an old saying: better late than never. I offer the apologies to the House of the shadow minister for community services, housing and women, the member for Burdekin, who is unfortunately unwell and is unable to be here for the consideration of this bill.

When this bill was introduced by the government just two weeks ago, two things were evident: firstly, it is a substantial bill of over 500 pages with obviously far-reaching implications for the sector it relates to; and, secondly, while on the face of it the bill has good intentions, it is somewhat overdue. Eighteen months ago in this House the member for Burdekin asked a question of the then minister for community services as to why a man with disabilities had been placed in the care of a man with a violent criminal history. This man was assaulted by his carer. He suffered great trauma and his family endured great distress. Since that time the government has not taken any action towards strengthening the system that is supposed to protect people with disabilities, until now.

That incident involving the assault of a man with a disability by his carer was a glaring weakness in the existing system whereby consideration of a violent criminal history did not play a part in deciding whether or not to employ someone as a carer, notwithstanding that the member for Burdekin had drawn attention to the incident in the parliament. The ongoing inaction on the part of the government resulted in my introduction of the Disability Services (Criminal History) Amendment Bill four months ago, because clearly there was no urgency on the part of the government to act on criminal history screening. Now, just two weeks after the introduction of a bill of more than 500 pages amending some 25 acts, we are debating the bill.

I am sure all members would agree that central to the objectives of this bill is the concept of trust. A parent needs to be able to trust the child-care services that their child attends. A family member needs to be able to trust a carer for their son or daughter with a disability. A husband needs to be able to trust the health practitioners caring for his wife. A student needs to be able to trust their teachers at school or the bus drivers on the way to and on the way home from school. A young person needs to be able to trust the

police upholding the law in our community. These are all relationships in our community built on trust. Unfortunately, despite the best efforts of 99 per cent of people in organisations in these sectors, there will tragically be the odd occasion when that trust is breached.

I pause to pay tribute to the overwhelming majority of professionals, employees and volunteers involved in the sectors covered by the provisions of this bill. They work in some of the most difficult circumstances thrown up by our community. It is not easy work. At the same time, these professionals, employees and volunteers work with some of the most vulnerable people in our community. That is why we need the government of this state to implement the best system of checks and balances possible. As I have said previously, while this bill appears to have good intentions, I would like to discuss some of the aspects of its proposed implementation.

Across-the-board, consistent screening is a step in the right direction. Sacrificing the detailed needs of individual sectors is not. Expecting a screening process that attempts to pull together a number of different existing processes to deliver the best level of criminal history screening is optimistic at best. Members need to understand that what is proposed is not the implementation of a single criminal history screening process to replace a number of existing processes. What is proposed is more than 500 pages worth of amendments to existing criminal history screening processes that will attempt to minimise the inconsistencies between these individual systems. The success of this proposal will be contingent on various government departments and statutory authorities effectively communicating with one another.

While I welcome efforts to streamline the system, I express my concern at the prospect that there will be an increase in costs to community organisations and individuals working in these sectors. When it started in 2001-02, the cost of a blue card was $40; today, it is $61.75. Under this bill, it jumps again to $70. The fee to replace a card is now $10.30. The cost of a yellow card, which was previously borne by the government, will now hit the applicant and the cost will be the same as for a blue card—increasing to $70.

Opposition and Independent members were briefed this morning on this bill. The question was asked expressing concern about the possible financial impact on organisations and individuals accessing a criminal history check under these new provisions. We were advised that, in relation to community organisations at least, additional recurrent funding would be provided to compensate them for additional costs incurred by the new fee regime associated with obtaining a blue or yellow card associated with this bill commencing in the 2010-11 budget. I request that the minister comment in this regard in her summing-up and confirm that this will be the case.

I will wait with interest to learn of the amount of funding the government will produce to help our community organisations bear this burden. I am sure that my colleague the member for Burdekin will be equally interested. Our community organisations are at the front line of the provision of disability and social support services in our community. They have been faced with increasing costs and ever-increasing bureaucracy. That does not appear to be alleviated by this bill.

What has to be paramount in any debate concerning criminal screening is the protection of vulnerable people. The needs of our children and people with disabilities need to be foremost in our minds. The best way to do this is to ensure that no-one with a violent criminal history can work in a position of trust with vulnerable people. There is no compulsion to work in these areas of employment. The interests of the vulnerable people must outweigh any other considerations. A responsible government owes it to these people to ensure that the employees who are paid to care for our children and people with disabilities are people in whom we can safely place our trust. I am uncertain that this bill will fulfil this vital goal.

The stated objectives of the bill are to reduce duplication and increase consistency across criminal history screening systems employed in various sectors in Queensland. The provisions of the bill propose to reduce duplicate screening by providing for the following exemptions between these sectors. Police officers and registered teachers will be able to apply for an exemption from holding a blue card when providing child regulated services which are outside of their professional duties. Blue card holders will be able to apply for an exemption from holding a yellow card, and registered health practitioners including nurses and midwives will be automatically exempt from requiring a blue card or a yellow card when they are providing services to children as well as adults with a disability as part of their professional duties.

The explanatory notes accompanying the bill state that the provisions of the bill will increase consistency across various criminal history screening processes by amalgamating into the blue card system screening of the following groups: all persons providing services to children with a disability; all employees and volunteers of state government entities who are engaged in child related roles; health students undertaking placements that involve service delivery to children within private or public facilities; and all employees and volunteers of local governments undertaking child related roles.

In order to achieve consistency in criminal history screening frameworks, the provisions of the bill also align the exclusionary frameworks of the blue card, yellow card and teacher registration systems. The bill proposes to amend some 25 acts of parliament across a range of professions and sectors. The bill amends the Disability Services Act 2006 and Guardianship and Administration Act 2000 to extend the

maximum period for short-term approvals of restrictive practices and to commence these provisions as soon as the provisions of this bill are given assent.

The bill also makes a technical amendment to the Disability Services Act 2006 to clarify a further circumstance when the transitional period for the use of restrictive practices stops applying. Understandably, different criminal history screening systems have different focuses to maintain safeguards for different groups of vulnerable people in the community and to target screening at individuals providing different types of services. For example, the teacher registration system screens teachers to safeguard children and determine a person's suitability to teach, the blue card system targets screening at individuals providing child services to safeguard children, and the yellow card system targets screening at individuals providing services in funded organisations to safeguard adults and children with a disability.

Presently, the teacher screening process does not exempt teachers from requiring a blue card. Individuals holding a yellow card are not exempt from requiring a blue card. Individuals with a blue card are still subject to a teacher screening process if they apply to become a teacher. As such, significant duplications, inefficiencies and unnecessary costs are experienced by organisations and individuals in these sectors. In addition, there are some inconsistencies created by this tangled web of screening processes. For example, individuals providing services to children with a disability in non-funded organisations are not screened under the yellow card system but are screened under the blue card system.

To try to address the duplication and inconsistencies involved, the bill proposes a range of amendments which will extend appropriate exemptions to certain professionals, provide exemptions to individuals holding one coloured card from being required to hold another, and recognising the possession of an existing coloured card as grounds for an exemption to the requirement to undergo a further criminal history screening process to enter a particular profession.

In 2008 amendments were made to the Disability Services Act 2006 and Guardianship and Administration Act 2000 to create a legislative scheme to regulate the use of restrictive practices by disability service providers and to mandate positive behaviour support following the report by Justice Carter titled *Challenging behaviour and disability: a targeted response*. I have previously discussed the detail of the issues canvassed in the Carter report in this place during the debate on the State Penalties Enforcement and Other Legislation Amendment Bill on 11 November last year. That bill contained amendments that extended the transitional period for restrictive practices for a further nine months. Restrictive practices are used at times to manage the challenging behaviour of a person with a disability to prevent risk of harm to themselves or others.

When the scheme commenced on 1 July 2008, provision was made to allow for short-term approvals for restrictive practices where it is necessary to use a restrictive practice to prevent an immediate and serious risk of harm to a person where there is no time to obtain authorisation under the full scheme requirements. A short-term approval can be given by the chief executive of the Department of Communities, the authorised delegate of the chief executive or the Adult Guardian depending on the type of restrictive practice proposed.

Under the existing provisions, a short-term approval provides up to three months for the development of a behaviour management plan for an individual with a disability exhibiting challenging behaviours. The proposed amendment will extend the maximum period for short-term approvals to six months. The explanatory notes in the bill assert that the proposed amendments are required to provide disability service providers with sufficient time to prepare an assessment for the adult, develop a positive behaviour support plan and obtain consent and/or approval from the relevant decision maker under the full scheme requirements. The explanatory notes suggest that disability service providers have experienced problems with completing these requirements within the current three-month time frame—hence the amendment to extend this time frame to six months.

I wish to express some concern about this amendment. I sympathise with the challenges faced by disability service providers to develop behaviour management plans in these time frames, particularly given the scarce resources they have at their disposal, in respect of the implementation of the recommendations of the Carter report within their organisation. Certainly, disability service providers have been left without adequate financial support from this government to implement the recommendations of the Carter report. I wonder if an extension of the short-term approval time frames for restrictive practices would be necessary if disability service providers were provided with adequate resources by the government to implement the recommendations of the Carter report within their individual organisations that deliver services to the community.

Again, opposition and Independent members were briefed this morning by departmental and ministerial advisers. I asked whether the extension of the short-term exemption for the development of a behaviour plan from three to six months would continue to apply once the transition period for the implementation of the Carter report had expired. The departmental and ministerial advisers indicate that

this would be the case. Six months will continue to be available to disability service providers to develop a behaviour management plan in respect of clients that exhibit challenging behaviour.

Justice Carter delivered what can only be described as a landmark report dealing with the care and protection of Queenslanders exhibiting challenging behaviours. The proposed recommendations from Justice Carter, he believed, provided for a fundamental process of reform, renewal and regeneration of the way in which Disability Services Queensland and the disability sector would respond to the demand for services delivered in this 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 exhibiting challenging behaviour across Queensland.

I really have to question whether Justice Carter would consider an extension from three to six months for the development of a behaviour management plan for a person exhibiting challenging behaviour, even before the transition period for the implementation of the report's recommendations has expired, to be consistent with his vision of having at least an efficient system for the delivery of care and protection to people with disabilities exhibiting challenging behaviours. That is a real concern. Once again, I invite the minister to respond to that particular issue when she sums up.

This government is proud of the blue card system. The system has merit and is supported by the opposition. The system, while not as transparent or enforced as it could be, does provide a familiar framework for Queenslanders and they have some confidence in it. Why, then, has this bill not expanded the blue card system? Why has the government not taken the opportunity to provide an integrated, transparent, strong system which is tailored to the individual sectors of applicants affected by this bill?

That is one missed opportunity that I raise tonight. The other is the chance to provide actual and real security for vulnerable people in Queensland. A person who has a history of perpetrating domestic violence should not be working with children or vulnerable people. A person with a history of convictions for violent mugging should not be placed in a position of care or trust. This could potentially continue to be the case in Queensland notwithstanding the passing of this bill. That is one failing of this bill. It really does not change the system in any substantial way for the better. It does not implement a familiar, consistent system that would offer protection to vulnerable people across all sectors. It relies on relevance of criminal history, forgetting that in some areas of work all criminal history is relevant.

That is why in the bill introduced by the LNP opposition, the Disability Services (Criminal History) Amendment Bill, a criminal history for a period of seven years is acknowledged. While a conviction for a violent act is an automatic exclusion, a violent criminal history is also cause for consideration by the chief executive.

From a disability services angle, the government's bill largely misses the point. There is a need to provide complete criminal history screening and there is a need to differentiate between different types of work undertaken by different people. There are differences between, for example, an administrative assistant and a carer in disability services. A person with a violent criminal history who seeks employment as a carer is an obvious risk to a vulnerable person.

What is needed is not just to increase the ease of movement between areas but to increase trust in the system to make sure that checks are relevant. This bill simply tries to connect the existing systems and, in doing so, as I mentioned earlier, relies on communication between departments and between statutory authorities. That is a big call given the history of this government and the long list of administrative failures that have occurred.

Equally, other areas are left out of the amendments altogether. For example, there is nothing to stop a person with convictions for domestic violence from working in support services for victims of domestic violence. There is no explanation for the absence of such provisions in this bill, which otherwise canvasses a wide range of circumstances.

This bill, nevertheless, is good news for some sectors—that is, people who provide services to children with disabilities, teachers and police engaged in out-of-profession child related duties, health professionals and other people affected by the duplications in our system. The focus is firmly on the applicants for the notices. While we need to ensure the system works for applicants, we cannot afford to forget that the system is in place primarily for protection. The objectives of the bill are to reduce duplication of criminal history screening checks, to increase the consistency of criminal history screening by amalgamating dual-role applications and to align the exclusionary framework of the blue card, yellow card and teacher registration systems.

There is no mention among the objectives of the bill of the need to improve reporting and recording of exclusionary framework information, no statement of the need for greater transparency and no intention to ensure appropriate levels of screening are undertaken to protect vulnerable people. Under this bill, automatic exclusions will occur only when an individual has been convicted of a serious sexual offence against a child or person with a disability and has been sentenced to imprisonment, a person has been convicted of a serious child related sex offence and is subject to reporting obligations under the Child

Protection (Offender Reporting) Act 2004, a person has had a final prohibition order imposed under the Child Prohibition (Offender Prohibition Order) Act 2008 or a person has had a sexual offender order imposed under the Dangerous Prisoners (Sexual Offenders) Act 2003.

While it is right that these orders and convictions should preclude someone from working in these sectors, it is the schedules, particularly under the disability section, that raise concerns in my mind. While applying uniform laws across a range of departments may be theoretically streamlining, there is doubt as to whether these areas are comparable in structure, need and applicability.

The ability of registered teachers and police officers who provide child regulated services outside of their professional duties to apply for exemptions from holding blue cards is a positive step. I would have expected a more streamlined system to allow for the provision of blue cards to teachers or police as part of their registration and swearing in. Instead, we are left with another layer of bureaucracy in having teachers and police needing to apply for exemptions. The automatic nature of the exemption is understandable. The lack of an automatic notice is less understandable and not particularly streamlined. New applicants for teacher registration who are already current blue card holders will escape having to pay for the $23.10 criminal history check. Once again, I think that is a positive step. Instead, teachers will each pay an $11.55 administration fee to allow their registration to verify their blue card status. Certainly, this is really not a streamlined system which can claim to automatically accredit teachers upon registration. After all, a criminal history check is already part of their registration, but it is a slight improvement on the current system and to that extent it is welcomed.

In relation to the amendments to the Child Care Act, this bill covers adult occupants not involved in the provision of stand-alone or home based services. Under this bill, these people will effectively be treated as if they were part of the child-care services being provided, and provisions are made to ensure applications for notices are made on request.

If a carer in a licensed home based service asks the licensee to apply for a notice about an adult occupant the licensee must do so. In stand-alone child care an officer may direct a carer to apply for a prescribed notice or exemption notice about another person reasonably suspected to be an occupant of the home and with a criminal history being deemed unsuitable for presence around children.

An adult occupant of a home in which home based child-care services are provided will be treated as an employee or volunteer employee in terms of processing notices. This bill treats all adults present at a home based child-care service as though they are part of the service. This is an improvement in the system. While it increases the bureaucracy on services which are already suffering from a heavy burden of bureaucracy, it will increase the safety of children in these care services.

With regard to health professionals, the expansion of the automatic exemption across a wider range of practitioners is welcome. Including nurses and midwives in the exemption from the requirement to hold a blue card or yellow card when they are providing professional services to children and adults with disabilities will make the system easier from a health point of view.

Before I conclude, I ought to deal with the concerns of the Scrutiny of Legislation Committee in respect of this bill. A large number of clauses in the bill potentially affect the liberties and rights of individuals who will be required to be the subject of criminal history checks under the provisions of this bill. As the amendments work towards the protection of those requiring it, there is often a trade-off against those rights and liberties. I am satisfied that the interests of our most vulnerable people must take precedence.

The disclosure of the information about a criminal history, including criminal charges not resulting in a conviction, is necessary to ensure the workability of the system. Similarly, information concerning a person's application for a notice and the existence of a negative notice are both required to implement an effective system that protects the most vulnerable in our society.

The essence of the system is ensuring that risk is assessed and people who are in a position of trust cannot be allowed to present a risk to vulnerable people. We need to ensure our community organisations remain in a position where they can rely on a blue card system to provide trustworthy and transparent protections and help to strengthen our community against those who would abuse it.

So I accept the proposition put forward in the explanatory notes accompanying this bill that potential breaches of privacy are considered justified on the basis that it is necessary to effectively protect children as well as people with a disability and to ensure adequate safeguards have been put in place where appropriate. Ultimately, this bill at least acknowledges the need for a framework to protect our vulnerable residents of Queensland. It also calls for more work to be done to ensure their trust is placed in people who can be trusted. It certainly reduces duplication but does little to decrease bureaucracy or increase compatibility. It dictates to the community sector what should happen but then burdens the community sector with the costs at this point in time.

Despite these reservations, I believe that there are positive measures in this bill. On behalf of the LNP opposition, and in the absence of the member for Burdekin, I am happy to support the bill.