



Speech by

**Hon. Anastacia Palaszczuk**

**MEMBER FOR INALA**

Hansard Tuesday, 23 February 2010

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

**Hon. A PALASZCZUK** (Inala—ALP) (Minister for Disability Services and Multicultural Affairs) (9.03 pm): I rise to speak in support of the Criminal History Screening Legislation Amendment Bill. Safeguarding vulnerable people, including people with a disability, is one of the Bligh government's key priorities. The Disability Services Act 2006 contains two key objectives to uphold this priority. Section 6(a) of the act acknowledges the rights of people with a disability and promotes their inclusion in the life of the community and section 6(b) of the act ensures that funded disability services are safe, accountable and respond to the needs of people with a disability. These drivers of reforms, introduced by the Disability Services Act 2006, include criminal history screening.

Queensland has the strongest and only legislatively mandated criminal history screening system for people working in government provided and funded disability services in Australia. The screening process under the existing system considers charges and convictions for all offences regardless of when they were committed, including all violent offences. Let me give members some examples of what the act identifies as excluding offences. These offences include rape, abuse of intellectually impaired persons, indecent dealing with children under the age of 16, procuring prostitution, certain offences under the Classification of Films Act 1991 and making, possessing and/or distributing child exploitation material under sections 80 and 81, schedule 5 of the act. The existing scheme automatically excludes people imprisoned for the most serious offences, including the ones I have just identified. The existing criminal history screening regime targets the full range of criminal history—charges and convictions—with no time limits.

As at 19 January 2010, over 58,000 criminal history checks had been carried out under the Disability Services Act. Those checks resulted in 10 applicants being automatically excluded from holding a yellow card and, therefore, not being able to be engaged as a disability worker. For those who have an identified criminal history, the chief executive of the Department of Communities can issue a yellow card only after considering the criteria in the act together with the comprehensive criminal history screening guidelines. This criteria includes consideration of whether it was a conviction or charge, whether the offence was a serious offence, when the offence was committed, the nature of the offence and its relevance to disability employment and any penalty imposed.

The government's Criminal History Screening Legislation Amendment Bill makes changes to the screening process across a range of employment types, including child safety, police, teaching, health and disability services. The amendments that relate to disability services will strengthen what is already the strongest system in Australia. It will also achieve greater streamlining of criminal history screening in Queensland.

For disability services, some of the main changes in the government's bill are expanding the range of serious offences that prohibit a person from holding or applying for a yellow card—and this will include people subject to certain orders and obligations under Queensland sex offender legislation; the screening of people who deliver government provided or funded disability services to children under the blue card

system instead of the yellow card system; and allowing blue card holders who seek employment in government provided or funded disability services for adults to apply for exemption from holding a yellow card.

The Bligh government will be assisting the funded non-government disability services sector in relation to the changes to the yellow card system. The Department of Communities will also be working with the funded sector to continue to support the recruitment of volunteers with a targeted communication strategy. These changes will both strengthen the safeguards for people with a disability and streamline criminal history screening in the government provided and funded disability services sector in line with the Disability Services Act.

I now address the private member's bill. The opposition's Disability Services (Criminal History Screening) Amendment Bill 2009, which the government is opposing, complicates criminal history screening for government provided and funded disability employment. The opposition's bill introduces screening for a particular type of disability employment, namely, employment as a carer. The bill introduces the new concept of a carer prohibition notice to both the government provided and funded disability services sector and the non-funded sector.

Under the opposition's bill, a person convicted of any violent offence within the past seven years, however minor, is automatically excluded from working as a carer. Although the reasons for that exclusion would include serious violent offences such as murder and grievous bodily harm, it would also include less serious offences and not take into account that range of other issues that I have canvassed previously.

The opposition's bill proposes two things: it introduces screening for people engaged as carers in provided and funded services in addition to the current yellow card system and it extends a limited form of screening to carers in the unfunded sector. That could potentially cover private care arrangements made by families and individuals. Such intervention into families and individuals' lives would be very intrusive, difficult to justify and very difficult to monitor or police.

The Bligh government is opposing the opposition's bill for the following reasons: it will impose an additional screening system on top of the existing yellow card system without demonstrable benefit; violent offences are already comprehensively covered and considered in the existing system; and the existing system is working and already contains safeguards for the safety of people with a disability who interact with government delivered or funded services.

The government has already considered the issue of whether to regulate the unfunded sector. As early as 2006 a public benefit test was conducted to test this. It found that regulation of the non-funded disability services sector was not warranted as the size of this sector was not significant. However, it is proposed to commence a review of the Disability Services Act 2006 later this year. The issue of whether or not to regulate the unfunded sector will be revisited and canvassed thoroughly at this time. I have had the privilege of speaking with the peak disability body about this and its members have agreed to this course of action. In summary, the Disability Services Act as proposed to be amended by the Criminal History Screening Legislation Amendment Bill provides the strongest foundation Queenslanders with a disability have had to safeguard their rights.

I briefly want to address the short-term approvals in relation to restrictive practices. The government's criminal history screening bill also makes amendments to the short-term approval provisions for the use of restrictive practices. The short-term approval provisions were introduced on 1 July 2008 as part of a legislative scheme to regulate restrictive practices by disability service providers. This was part of the government's response to implementing Justice Bill Carter's report titled *Challenging behaviour and disability: a targeted response*. Some adults with an intellectual cognitive disability who receive disability services may have what is called challenging behaviour where their behaviour places themselves or others at risk of great harm. Generally these adults do not have the capacity to consent to decisions around their care. At times disability service providers may need to use restraint through a restrictive practice to manage an adult's challenging behaviour to protect the safety of the adult or someone else.

I acknowledge that the member for Hinchinbrook has visited a number of people who are living in accommodation out at Wacol who display this challenging behaviour. I think he would agree with me that these people not only are our most vulnerable clients but also have such complex behaviour that it does take a long time to sit down with them with a number of therapists to work out a positive behaviour support plan. For those incidents where restrictive practices are required, the scheme sets out a comprehensive authorisation process. It outlines when a disability service provider may lawfully use a restrictive practice in the care and support of an adult with intellectual or cognitive disability. Under the full scheme a number of requirements have to be satisfied before authorisation can be provided. This includes demonstrating it is the least restrictive option via an assessment plan for the adult and independent approval.

The main purpose of the scheme is to help people to develop positive life skills. The proposed amendment is to extend the maximum period for short-term approvals from three months up to six months.

Experience in implementing the scheme over the past 18 months has shown that it may take service providers longer than three months to comply with the full scheme requirements.

I take on board what the member for Hinchinbrook said earlier in his speech. I will give members an example. In January I visited a service office in Maryborough. I was sitting down with one of the workers and she told me that it actually took six months to complete this comprehensive assessment in relation to the positive behaviour support plan. I do not think we need to make any excuses at the moment. I think these plans, because we are dealing with our most challenging and vulnerable clients, need to be as comprehensive as possible. After discussions with Justice Carter on this very matter and also Kevin Cocks from Queensland Advocacy Inc., I am quite sure that in the future we will be able to streamline the forms and eventually reduce the amount of time it will take to complete that. At the moment it is a brand-new system that we are setting up. It is complex. It is dealing with our most challenging and vulnerable clients and we need to get it right. For that I make no excuses. I would rather have a fully comprehensive system and not scrimp on anything to make sure that we get it right.

In conclusion, the rights of people with a disability to their safety and wellbeing are paramount. These amendments clearly continue to promote the inclusion of people with a disability in the life of the community. They ensure and strengthen safeguards for people with a disability. Most important of all, they help to ensure funded disability services are safe and responsive to the needs of people with a disability.

Finally, it is very good to see that the opposition is supporting the government on this legislation. This is a very important bill. It streamlines a number of things across a range of different areas and a number of government departments. With those few words I commend the bill to the House.