



Speech by

**Hon. Curtis Pitt**


**MEMBER FOR MULGRAVE**

Hansard Thursday, 7 April 2011

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## FORENSIC DISABILITY ACT

### First Reading

 **Hon. CW PITT** (Mulgrave—ALP) (Minister for Disability Services, Mental Health and Aboriginal and Torres Strait Islander Partnerships) (2.41 pm): I present a bill for an act to provide for the involuntary detention, and the care and support and protection, of particular people with an intellectual or cognitive disability, and to make minor or consequential amendments of this act and the Bail Act 1980, Child Protection (Offender Reporting) Act 2004, Child Protection (Offender Prohibition Order) Act 2008, Commissions of Inquiry Act 1950, Coroners Act 2003, Crime and Misconduct Act 2001, Criminal Code, Criminal Practice Rules 1999, Disability Services Act 2006, Guardianship and Administration Act 2000, Guardianship and Administration Regulation 2000, Limitation of Actions Act 1974, Mental Health Act 2000, Mental Health Regulation 2002, Police Powers and Responsibilities Act 2000, Powers of Attorney Act 1998, Queensland Civil and Administrative Tribunal Act 2009, Queensland Civil and Administrative Tribunal Rules 2009, Residential Services (Accreditation) Act 2002, Residential Tenancies and Rooming Accommodation Act 2008 and Supreme Court of Queensland Act 1991. I present the explanatory notes, and I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.


Motion agreed to.

Bill read a first time.

*Tabled paper:* Forensic Disability Bill [[4259](#)].

*Tabled paper:* Forensic Disability Bill, explanatory notes [[4260](#)].

### Second Reading

 **Hon. CW PITT** (Mulgrave—ALP) (Minister for Disability Services, Mental Health and Aboriginal and Torres Strait Islander Partnerships) (2.43 pm): I move—

That the bill be now read a second time.

Under the current legislative framework, people on forensic orders with an intellectual or cognitive disability but no mental illness are detained by an order of the Mental Health Court to an authorised mental health service. The framework for their care is provided by the Mental Health Act 2000. The care and support needs of people with intellectual or cognitive disabilities are different from those of people with mental illnesses. The inappropriateness of detaining people with an intellectual or cognitive disability, who are subject to a forensic order and do not require treatment for a mental illness, within authorised mental health services was highlighted in both the Butler and Carter reports, published in 2006. The Butler report was the result of a review of the Mental Health Act 2000 and the Carter report provided recommendations on the support needs of people with intellectual disabilities who exhibit severely challenging behaviour.

The Carter report, *Challenging behaviour and disability: a targeted response*, made 24 recommendations relating to a new model for service delivery and legislation to protect the human rights of people with an intellectual disability who exhibit severely challenging behaviour. Recommendation 22 specifically addressed the issue of possible amendments to the Mental Health Act to give the Mental Health Court power to make a forensic order in respect of a person with an intellectual disability to enable that person to be detained at a place other than an authorised mental health service.

We have built a medium secure detention facility at Wacol for up to 10 people on forensic orders with a sole diagnosis of intellectual or cognitive disability. The Forensic Disability Bill establishes this facility as the Forensic Disability Service and provides the legislative framework for the involuntary detention and the care, support and protection of people detained in the service. Our thinking about people with disabilities has come a long way in the last few decades and has progressed along with the recognition of human rights.

A primary goal of the bill is to be consistent with the principles, goals and objectives reflected in the United Nations Convention on the Rights of Persons with Disabilities. To this end, the focus of the legislative scheme, within the constraints of a detention environment, is on safeguarding rights and freedoms, promoting individual development, enhancing opportunities for quality of life and maximising opportunities for safe reintegration into the community when the Mental Health Court and Mental Health Review Tribunal consider the person is ready.

Two of the key terms in the bill are 'habilitation' and 'rehabilitation', which are derived from the United Nations convention. Habilitation is about learning skills to enable a person to participate in society and their community. Rehabilitation is about restoring capacity and ability. Together, habilitation and rehabilitation involve individualised approaches, multidisciplinary assessment and intervention so that people with disabilities can develop and acquire skills to better realise their full potential.

The past decade has brought significant change in the development of offender programs targeting people with an intellectual or cognitive disability. While in the past programs were developed for the mainstream population and modified for people with an intellectual or cognitive disability, over the last 10 years programs have been specifically tailored and adapted for this group. The Forensic Disability Bill provides for this model of care and support. It does so in the context of the equivalent need to protect the community from a person's offending behaviour. The legislation, therefore, balances the therapeutic objectives of care and support with a secure Forensic Disability Service, the need to protect the community and to ensure the safety of forensic disability clients and others.

The bill incorporates a model that will allow the management of risk for people subject to forensic orders in a manner more appropriate for clients with an intellectual or cognitive disability while also promoting better outcomes for the person. The key elements of the bill reflect this framework. The principles in the bill focus on the concept of habilitation and rehabilitation and promoting individuals' rights and needs and are intended to reflect the objects, goals and principles of the United Nations Convention on the Rights of Persons with Disabilities and also the Disability Services Act 2006.

The new Forensic Disability Service is part of the existing mental health and forensic system. Decisions about forensic orders will continue to be made by the Mental Health Court. The Mental Health Review Tribunal will continue to review a person's forensic order under the Mental Health Act 2000. The bill also amends the Mental Health Act 2000. However, it does so without interfering with the framework for managing risk and ensuring community safety that is integral to that act.

Importantly, the bill also makes some significant changes to the Mental Health Act. First, the bill amends the Mental Health Act to allow the Mental Health Court to make a new type of forensic order specifically for this cohort—that is, a forensic order: Mental Health Court—Disability. While this is its full and formal name, I will refer to this new order simply as a forensic disability order. Second, specific criteria have been included for the Mental Health Review Tribunal to consider when conducting a review of a person subject to the forensic disability order more appropriate to a person with an intellectual or cognitive disability rather than a mental illness.

These criteria will focus the tribunal's consideration on a person's progress in modifying their behaviour in response to their individual development plan. The individual development plan is an integral part of both the legislative framework and the person's care and support while detained in the Forensic Disability Service. The focus is on promoting the person's development with the aim of reducing the risk of re-engaging in offending behaviour and facilitating eventual community reintegration.

Statutory positions are created to administer, operate and oversee the Forensic Disability Service and to ensure the care and support of persons detained in the Forensic Disability Service. The provisions for the appointment of practitioners under the bill are designed to ensure a multidisciplinary service staffed by people with appropriate expertise and experience who are committed to the principles in the bill. The position of the Director of Forensic Disability will provide independent statutory oversight of the Forensic Disability Service and will have responsibility for the proper and efficient administration of the legislation.

The director will also be a party to proceedings before the Mental Health Court and Mental Health Review Tribunal.

A key aim of the bill is to provide transparency and accountability in relation to the care and support provided to clients. The director will have an important role in this regard monitoring the protection of the rights of persons detained in the service. I am pleased to advise that Dr Jeffrey Chan has been appointed by the Department of Communities to take up this position. Dr Chan comes to us from Victoria and is recognised internationally for his expertise and high-level credentials in working with this group of people.

The bill also authorises, in limited circumstances and as an option of last resort, regulated behaviour controls including the process for authorising medication for behaviour control, restraint or seclusion if required to ensure the safety of the person or others in the Forensic Disability Service. The bill provides a further safeguard by limiting the maximum authorised period for seclusion or restraint of an adult to three hours. Amendments to the Mental Health Act in the bill also apply a three-hour time limit to the use of seclusion and mechanical restraint in mental health services, which aligns the management of those practices with best practice. When any regulated behaviour control is exercised in relation to a client, written notice about its use must be provided to the director. The director can also order the immediate release of a client from seclusion, order restraint to be removed from a client or order the immediate review of a client's medication.

The director will provide me with an annual report on the administration of the act and I will table this in parliament. In addition, the bill amends the Guardianship and Administration Regulation 2000 so that the Forensic Disability Service will be a visitable site. The Guardianship and Administration Act 2000 sets up a community visitor scheme that has investigatory and advocacy functions and powers. Community visitors may visit the site at any time, investigate and provide reports to safeguard the interests of those detained. Further oversight will be provided by the Adult Guardian, in their existing statutory capacity to investigate any abuse, neglect or exploitation of an adult with impaired capacity.

While it is fundamental that forensic disability clients are accorded basic human rights in accordance with the Convention on the Rights of Persons with Disabilities, it is also important to give proper consideration to the fundamental right to protection of people in the community. The Forensic Disability Service will have a level of security consistent with a medium secure detention facility and will allow the exercise of powers to ensure the security of the service. The security provisions and powers in the bill to regulate behaviour of forensic clients are important to maintain the security and safety of the clients, staff and the community. As I mentioned before, the service forms part of the existing mental health forensic system and the Mental Health Review Tribunal must not revoke a forensic order or place a forensic disability client on limited community treatment if the client represents an unacceptable risk to his or her safety or the safety of a member of the public on account of their intellectual disability. As members can see, the bill traverses a complex landscape of ensuring the fundamental rights of clients are protected, the safety and security of the community is ensured, all within a framework of transparency and accountability.

The service is a small service. Its program of care and support is specifically designed for people with an intellectual or cognitive disability and no mental illness requiring treatment. This is an important distinction. It means it is not intended for clients with a mental illness or with what is known as dual diagnosis—that is, both an intellectual or cognitive disability and a mental illness requiring treatment. For this reason, before making an order to detain someone in the Forensic Disability Service, both the Mental Health Court and the Mental Health Review Tribunal must consider whether the person has an intellectual or cognitive disability, but does not require involuntary treatment for a mental illness, and whether the person is likely to benefit from the care and support provided in the Forensic Disability Service. Further, the Mental Health Court or the tribunal must not make an order detaining a person to the service unless the Director of Forensic Disability gives the court a certificate, issued by the chief executive officer of the Department of Communities, stating whether or not the service has the capacity for the person's detention and care.

The bill also provides for an automatic review after five years to determine if the person will continue to benefit from the care and support provided by the Forensic Disability Service. 'Benefit' is an important concept in this bill. 'To benefit' means individual development and opportunities for quality of life and participation and inclusion in the community. As I have said, the Forensic Disability Service is a small specialised service and it is important that people who will benefit from the model of care are detained there. However, not all people subject to a forensic order with an intellectual or cognitive disability will be detained to the Forensic Disability Service. This bill also aims to ensure they are not forgotten in the larger system. The bill amends the Mental Health Act to ensure that the Director of Mental Health must issue policies and practice guidelines about the care of a patient subject to a forensic disability order. The director must consult with the Director of Forensic Disability in the development of those policies and guidelines.

I cannot finish without once again mentioning both the Hon. William Carter and His Honour Judge Brendan Butler, both of whom laid the foundations for these reforms in their respective reports produced

for government. In his review of the Mental Health Act 2000, Brendan Butler AM SC drew attention to the inappropriate detention of people with an intellectual disability in authorised mental health services. In his final report to government, *Promoting balance in the forensic mental health system*, he recommended a review of those provisions of the act affecting people with an intellectual disability be conducted as part of any reform to provide secure care for people with an intellectual or cognitive disability who exhibit severely challenging behaviour.

His Honour Judge Butler was referring to the review that was about to be undertaken by the Hon. WJ Carter QC. The Hon. William Carter's report, *Challenging behaviour and disability—a targeted response*, explored options and made recommendations for a targeted service and legislative response to adults with an intellectual or cognitive disability who present with challenging behaviour of such a nature, intensity or frequency that it puts themselves or others at risk. He specifically addressed the issue of alternative detention options for people with an intellectual disability on a forensic order. The Hon. William Carter, a former judge of the Supreme Court, was consulted numerous times during the development of this legislative framework. I thank him for his continuing interest in and advice on this legislative framework.

I would like to acknowledge the important contributions of past and present ministers. Firstly, I acknowledge the former minister for communities and my father, the Hon. Warren Pitt MP, to whom the Hon. William Carter presented his report in 2006; the Hon. Stephen Robertson, the former minister for health, who commissioned His Honour Judge Butler to review the Mental Health Act; the former minister for disability services, Lindy Nelson-Carr, who introduced amendments to the Disability Services Act 2006 to respond to many of the Hon. William Carter's recommendations; the Hon. Annastacia Palaszczuk MP, my immediate predecessor; and the Deputy Premier, in his previous and current roles of minister for health and Attorney-General respectively. All have played significant roles in the development of this legislation and the establishment of the new facility at Wacol, which all who visit agree is of a world standard.

In closing I would like to quote from the Hon. William Carter's report. He stated—

The substance of this Report has been directed at the establishment ... of a service modality which is directed specifically at addressing the behavioural issues of each individual person and which is underpinned by the delivery of specialist services—comprehensive assessment, individualised positive behaviour support planning, coordinated and well managed intervention in the appropriate environment by skilled carers.

The service objective to be in the pursuit of excellence is the diminution and/or elimination of the behaviour which in so many more cases is likely to bring the person into contact with the criminal justice system. The service delivery response for the cohort of clients has to be available to all with intellectual disability, wherever they live. Those who come to the Mental Health Court are no exception.

This is our aim. It is achievable. This legislation and the specialised therapeutic facility at Wacol is a good start towards achieving this aim. A true measure of a civilised society is how well the society accommodates and cares for people who are vulnerable. With this bill, the Bligh government is making significant progress against that measure. I commend this bill to the House.