




Speech by

Hon. Curtis Pitt

MEMBER FOR MULGRAVE

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FORENSIC DISABILITY BILL

 **Hon. CW PITT** (Mulgrave—ALP) (Minister for Disability Services, Mental Health and Aboriginal and Torres Strait Islander Partnerships) (10.13 pm), in reply: I would like to thank all members who have contributed to the debate this evening on what I and many others consider to be progressive legislation. The Bligh government takes seriously the issue of disabilities. That is why we provided record funding—more than \$1 billion—to meet the needs of people with a disability, their families and their carers. Indeed, I spoke in the House this morning on the issue of unmet need in Queensland and in other jurisdictions. I will certainly be joining the other two people who are watching the federal budget this evening to see what extra funds may have been delivered in this area and what is in it for Queensland. I will be watching that with interest.

I wanted to take this opportunity to expand on my answer to a question without notice asked by the member for Callide this morning. I gave an undertaking to get back to the member. I wanted to take the opportunity, while I had the floor, to do that.

It is important to note that the department does not take a one-size-fits-all approach to the assessment and funding of support packages for people with a disability. A wide range of disability and community care services are provided by staff employed by the department or through funding of non-government service providers. The range of services and support varies according to their needs and can include information and referral services that provide accessible information to people with disabilities, their families and carers and professional groups; community support, including therapy and other specialist services such as behaviour support; respite services, which are intended to provide a short-term, time limited break for families or other voluntary carers who provide ongoing support to people with disabilities; accommodation support to enable the person with a disability to remain in their existing accommodation or move to more suitable accommodation where they can receive the level of support required.

The type of service provided is dependent on an individual client's needs and circumstances. Therefore it is not possible to estimate with any certainty how many people can be supported with a particular amount of funding without first assessing their needs and understanding their individual services. To do so would require a manual review of records which would be extremely resource intensive and would take staff away from delivering their core responsibilities to Queenslanders in need. To reiterate, the type of service we provide to people with a disability depends on the individual client's needs and circumstances.

This bill caters for the individual needs of people with a disability, specifically those individuals with a disability who have entered the criminal justice system. The common law defence of insanity was adopted in the Queensland Criminal Code over 100 years ago. The Mental Health Act incorporates this common law concept based on the notion that persons found of unsound mind or unfit for trial should not be subject to punishment. Let us be clear, the people to whom this bill will apply have been found unfit for trial or not of sound mind as a consequence of their intellectual or cognitive disability. They have not been convicted of an offence.

This bill is not about punishment. It is about habilitation and rehabilitation—two of the most significant rights of the United Nations Convention on the Rights of Persons with Disabilities. To date, legislation has not responded to the specific needs of this cohort. The Forensic Disability Bill is about providing the Mental Health Court with a more appropriate option for secure care for people with an intellectual or cognitive disability, but no mental illness requirement or involuntary treatment.

For too long there has been no distinction between the care and treatment needs of people with an intellectual or cognitive disability, distinct from those with a mental illness. The proposed new Forensic Disability Act will provide the legislative framework for their care and protection while, at the same time, safeguard their rights and the safety of the community.

Australia became a signatory to the United Nations Convention on the Rights of Persons with Disabilities on 17 July 2008. As a signatory state parties have responsibility to ensure that people with a disability enjoy human rights, freedoms and respect in society, the same way other people do. The principles and model of care and support in the bill reflect the objectives and principles of the UN convention. For example, article 14 of the convention—liberty and security of the person—emphasises the importance of not arbitrarily depriving people with disabilities of liberty where they should be treated in accordance with international human rights and in compliance with the objectives and principles of this convention, including the provision of reasonable accommodation. In many ways this bill does this and more.

The focus on habilitation and rehabilitation is consistent with article 26 of the convention which states that parties shall provide habilitation and rehabilitation services to enable people with disabilities to attain and maintain maximum independence and full social, mental and physical ability to enable full inclusion in all aspects of life to the extent that this is possible while ensuring the safety of others in the service and protection of the community.

Since the 1990s there has been a significant amount of international research evidence that supports habilitation and rehabilitation centred treatment programs for offenders with intellectual disabilities. Programs that focus on positive social engagement, including the involvement in every day activities, are now known to reduce the likelihood of the person engaging in criminal or antisocial behaviour.

Experts in the field of offenders with intellectual disabilities such as Dr Leam Craig, a forensic clinical psychologist from the UK, and Professor Nick Bouras, a psychiatrist also from the UK, have contributed greatly to our knowledge of what works for this specific cohort. In addition to our own Dr Jeffrey Chan, chief practitioner disability, and Professor Karen Nankervis, Director of the Centre of Excellence for Behavioural Support, we have access to a significant body of research evidence that has emerged regarding the efficiency of an approach that focuses on treating offence specific behaviours, developing communication, problem solving, anger management, decision making and socially appropriate skills, and providing opportunities for vocational employment and other interests that will help in reintegration.

The requirement for an individual developmental plan for each client is integral to this objective and to the model of care provided in the service. The focus of the individual development plan is on promoting the person's development, habitation and rehabilitation with the aim of reducing the risk of re-engaging in offending behaviours and facilitating eventual community reintegration.

A special feature of this legislative model is the five-year review for each client. The Director of Forensic Disability will conduct a review of a person who has been detained to the service for a continuous period of five years. The purpose of this review is to determine if the client is receiving benefit from the care and support provided by the service and can continue to receive this benefit. This notion is important. Let me be clear that it does not impose a limit on the person's forensic order, but it is another safeguard to ensure that people are not languishing indefinitely without a thorough assessment of how they are progressing and where their care and support needs could best be met. This focus will go a long way to addressing any concerns in relation to arbitrary and indefinite detention.

A number of members have asked about prevention and early intervention. It is true that this bill is for those challenging behaviours that have already brought them into contact with the criminal justice system. It is true that by this stage their care and support needs are high and require intensive and, yes, costly interventions. However, the Forensic Disability Bill is the culmination of a range of reforms in the disability sector under the banner of Positive Futures.

In response to Justice William Carter's 2006 recommendations, the Queensland government launched the Positive Futures initiative—a \$228 million, six-year investment to promote best practice in positive behaviour support and to help protect the rights of adults with an intellectual or cognitive disability. This is through legislative amendments to the Disability Services Act 2006 and the Guardianship and Administration Act 2000; service reform; the establishment of the specialist response service to assist service providers in conducting assessments and developing and implementing positive behaviour support plans; the establishment of a new centre of excellence for behaviour support to lead research and training

in best practice; and the redevelopment of Disability Services' Wacol site and establishment of accommodation in other key regional sites to provide transitional accommodation support models for adults whose community living arrangements have broken down due to challenging behaviour.

The key element of this initiative is a focus on a new way of working with people with intellectual and cognitive disabilities to address challenging behaviours to reduce the need for any type of restrictive practice such as containment and seclusion in disability services and to intervene in such a way that can prevent their behaviour escalating to the extent that brings them into contact with the criminal justice system.

The focus is on an individualised and flexible approach based on a comprehensive multidisciplinary assessment which provides for and specifically addresses the person's specific needs. The fundamental process of renewal, regeneration and reform that Justice Carter envisaged is being realised with real improvements in people's quality of life. Like all preventative programs, reducing the numbers of people with intellectual or cognitive disabilities who are subject to forensic orders may take a few years to achieve.

The Forensic Disability Service is aimed at those people who are alleged to have committed quite serious offences. But, as many commentators have rightly pointed out, people with intellectual disabilities can come into contact with the criminal justice system more often for simple offences such as stealing, public nuisance or damage to property. The Department of Communities is working with other key government departments, including the Department of Justice and Attorney-General, the Queensland Police Service and the Department of Communities, to coordinate and enhance government responses to people with intellectual and cognitive disabilities in the criminal justice system.

As has also been noted during the debate, this is a small service. It is a start. It will accommodate up to 10 people. As it is a small, specialised service, it is vital that only those for whom the service is designed and are likely to benefit from the model of care and service are detained there. To this end, the bill amends the Mental Health Act to provide additional criteria that must be considered by the Mental Health Court and the Mental Health Review Tribunal before making an order to detain a person in the service—that is, whether the person has an intellectual disability or cognitive impairment as defined in the bill but does not require involuntary treatment for a mental illness and the person is likely to benefit from the care and support provided in the Forensic Disability Service.

Further, the court or 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 or care. These mandatory considerations will assist in managing demand pressures for the Forensic Disability Service while providing legislative guidance to the court and tribunal to ensure that appropriate persons who are likely to benefit from the service gain access. These considerations do not interfere with the court's discretion about whether to make a forensic order, and the bill makes this clear; nor is the court asked to decide on issues of resources. This is, properly, an issue for government to consider.

There are 45 people with an intellectual or cognitive disability but no mental illness requiring involuntary treatment subject to forensic orders in Queensland. As we have heard tonight, 16 of those are detained in some kind of authorised mental health service. Some 29 of the 45 are residing in the community on limited community treatment with authorised mental health services monitoring and coordinating their care in partnership with disability and community care services in the Department of Communities. The Department of Communities and Queensland Health will continue to work in partnership to provide appropriate services to this cohort. A service-level agreement is being developed between the two departments to ensure they continue to work in collaboration in the management of the cohort. However, the Forensic Disability Service will therefore not accommodate the entire cohort.

The Mental Health Act will be amended by this bill so that the director of mental health can develop policies and guidelines for the care and support of those patients subject to forensic disability orders who will be detained in authorised mental health services. The Director of Forensic Disability will collaborate in the preparation of these policies and procedures. Further, the Mental Health Review Tribunal will now review their progress against considerations more appropriate to their intellectual disability such as their progress in modifying their behaviour in response to the care and support they receive in the service.

Two years after commencement a review will be conducted on the effectiveness and efficiency of the service model and how the legislation supports management of the cohort in the secure facility and within the broader mental health system. The resulting review's report will be prepared in collaboration with Queensland Health and will include advice on management responsibility for the entire cohort. The bill also provides that the act will be reviewed by the end of the third year of operation.

I want to respond to the comments by the members for Aspley and Caloundra that the bill does not adequately cater for people with dual diagnosis of both intellectual disability and mental illness. The Forensic Disability Service has been established specifically to provide for the detention, care and support of people with intellectual disabilities on forensic orders. The Forensic Disability Service has been

constructed with a specific cohort in mind, but it does recognise that people with intellectual disabilities can also have a number of other mental conditions, including mental illness. The key threshold for the Forensic Disability Service as reflected in the new section 288 of the Mental Health Act is that the person does not require involuntary treatment for a mental illness under the Mental Health Act. People with mental conditions which do not require involuntary treatment can be accommodated in the service. For example, a person with low-level anxiety or depression and an intellectual disability can be accommodated. It makes sense that in the case where a person does require involuntary treatment for a mental illness this is done in a facility designed to provide this treatment—that is, in an authorised mental health service.

The bill also makes sure that people who may have dual diagnosis in authorised mental health services receive better care. The bill provides for the director of mental health to prepare policies and procedures in consultation with the Director of Forensic Disability to guide staff in offering more appropriate care and support to those patients in an authorised mental health service on a forensic disability order. These policies will guide staff in authorised mental health services about how to appropriately care for this cohort. I acknowledge that the diagnosis of mental conditions where there is also existing cognitive limitations is not easy and that there may be some difficulties, but the legislative definition of the cohort will ensure that the Forensic Disability Service will provide care and support for people best suited to the model of care provided in the service.

It is also important to note that this centre will not be run in isolation in a 'we'll look after ours, you'll look after yours' kind of way. The Department of Communities will continue to work in partnership with Queensland Health to manage expectations and demand. I mentioned that a service level agreement is being developed between these two departments to ensure they continue to work in collaboration in the management of the cohort within the constraints available. This service level agreement will outline shared principles and objectives and the roles and responsibilities in respect of parties while addressing issues such as management of people on limited community treatment, transfers between authorised mental health services and the Forensic Disability Service, procedures for clients who are absent without permission from the service, the operation of a victims register, and the procedures for special notification of clients. As I mentioned earlier, this collaborative approach is supported by legislative amendments to ensure that people with intellectual disabilities in authorised mental health services receive better care.

The Hon. Geoff Wilson has advised that the Queensland Plan for Mental Health 2007-2017 acknowledges the need to improve the provision of mental health services to people who have complex mental health needs. This provision includes enhanced capacity to coordinate services for people with an intellectual disability who have a co-existing mental illness. Importantly, Queensland Health has established intellectual disability coordinators in the Townsville, Metro South and Metro North districts to provide high-level consultation, advice, support and leadership to mental health service support, working with clients with complex needs related to intellectual disability and mental illness. The role of the intellectual disability coordinators assists in enhancing the coordination, availability and access to appropriate early interventions and treatment options for people with complex mental health and intellectual disability needs.

In relation to the assertion made by the member for Aspley and the member for Caloundra that people will be excluded from the service if they do not meet strict criteria around significant limitations in intellectual impairment—that is that they would not be accepted if they have an intelligence higher than two standard deviations below the population average—I would like to point out that standardised measurements of intelligence is just one means that clinicians use to establish if a person has an intellectual disability. I would also like to respond to the comment of the member for Aspley that the bill is a rush job, with little consultation being undertaken. The very nature of the bill is a consequence of us listening during consultation. In fact, in response to this consultation significant changes were made to the bill to ensure that it really reflected the care and support model that best suits this cohort. We consulted on this issue again in the second round. But, yes, we want to get the service up and running—and that is the other part of the equation—so that we can start seeing better outcomes for this cohort sooner rather than later.

I would also like to assure the member for Aspley that the bill provides several safeguards for staff to ensure that they can safely and confidently perform their functions in a forensic disability service. The bill also provides a number of powers to allow staff to reduce the risk that a client may pose to other clients and staff in a service. The bill provides for the administration of behaviour control medication and the use of restraint and seclusion where a client is likely to harm themselves or staff in a service and that is the necessary and the least restrictive way to prevent harm. Although it is expected that such invasive mechanisms of control will rarely be needed, this may be authorised only by the Director of Forensic Disability. The form of restraint used must be approved by the director and outlined in a policy or procedure made under the bill. The Director of Forensic Disability will be available 24/7 to make these decisions if necessary. It should also be remembered that staff in a service will be subject to the legislative framework within the Workplace Health and Safety Act 1995, which has the primary objective of preventing or

minimising a person's exposure to the risk of death, injury or illness in the workplace. It should be noted that an independent security auditor provided advice on the design of the Forensic Disability Service to ensure that it has a level of security consistent with a medium secure detention facility.

In response to the query raised by the member for Caloundra about what will happen to members of the cohort who cannot be accommodated in a service, I say that, of course, it will be necessary for some people to be detained in an authorised mental health service and managed by Queensland Health in collaboration with the Department of Communities. In terms of any expansion of the service, I will say that this is the first service of its kind in Queensland and it is only the second in Australia. We need to make sure that the service model delivers what it is intended to deliver. That is why I will be providing six-monthly progress reports to the Premier and to the Treasurer. A review report into the effectiveness of the service will be provided to the government within two years of the service commencing. The capacity of the service in consideration of the entire cohort of people with intellectual or cognitive disabilities subject to forensic orders will be considered during these reviews.

I would also like to respond to the comments made by the member for Caloundra about tough cases and what happens when a person does not look like they will continue to benefit from the service. I agree that it is not in anyone's interest to have people detained indefinitely in the service, particularly given its small size and specialist model of care and support. Therefore, after five years of continuous detention, the bill provides for the director to conduct a review of that person. The purpose of this review is to determine if the client is receiving benefit from the care and support provided by the Forensic Disability Service and whether the client could continue to receive benefit from the model of care provided by that service. It is envisaged that the results of this review will be considered by the Mental Health Review Tribunal at the client's next review.

If it is clear after a five-year review that a person is not benefiting from the service but that they still require secure care, the Director of Forensic Disability may seek to transfer the person to an authorised mental health service. This, of course, is not the only outcome of the five-year review. The Director of Forensic Disability may decide that the person could continue to benefit from the service or that a further period of time is required to determine whether the person can still benefit from the service. In these instances the Mental Health Review Tribunal will consider retaining the person in the Forensic Disability Service. Other outcomes may include recommendations to the Mental Health Review Tribunal for approval of limited community treatment in order to receive care and support from another disability service. However, it should be remembered that we will see situations where a person needs to be detained indefinitely less and less as the cohort will be receiving individualised care targeted to their offending behaviour and supporting their reintegration into the community wherever possible.

I would also like to respond to the concerns raised about the time taken in implementing the reforms of the Carter report. Justice Carter's 24 recommendations were accepted by the government in 2006. An amount of \$228 million was allocated by the Bligh government over six years to implement these recommendations. Progress in implementing Justice Carter's recommendations has been very solid. The Disability Services Act was amended in 2008 to make it an offence for disability service providers to restrain or contain a person with an intellectual disability unless they have an approval from QCAT or a guardian appointed by QCAT itself. Today, around 600 people in Queensland now have a positive behaviour support plan and are subject to restraint or containment only where the practice is the least restrictive way of preventing the client harming themselves or others. Over 200 new staffing positions have been created to provide specialist clinical support and therapy to people with an intellectual disability with challenging behaviour.

As members heard from the member for Brisbane Central, a centre for excellence has been established in partnership with the University of Queensland to undertake specialist research for disability support staff. New purpose-built dwellings have been constructed for this group and, now that the Forensic Disability Service and legislation has been developed, Dr Jeffrey Chan has taken up the role of Chief Practitioner, Disability and he brings a wealth of expertise and knowledge to this role. Dr Chan will also assume the role of the Director of Forensic Disability.

Our record in delivering Justice Carter's recommendations is solid and those recommendations have been delivered with the integrity of his intent. Although I mentioned the government's significant investment in the Positive Futures reform, I would also like to acknowledge the programs that exist to divert people with intellectual disabilities from the criminal justice system. The Special Circumstances Court Diversion Program, an initiative of the Brisbane Magistrates Court and funded by the Department of Justice and Attorney-General, is targeted at people with impaired decision-making capacity as a result of an intellectual disability, cognitive impairment, mental illness or brain and neurological disorders as well as those who are homeless or who are at risk of being homeless.

It aims to reduce the number of these people in the criminal justice system. It does this by providing bail and sentencing options, which place offenders with support services to help them deal with the cause of their offending behaviour. A court liaison office supports and monitors the person during the program while issues that contribute to their offending behaviour, such as accommodation, health, drug and alcohol dependence, are addressed. The Positive Futures reforms and the court diversion programs will ensure that there will be less demand for the Forensic Disability Service as the last port of call for some of our most vulnerable people.

In summary, this bill contributes to the Bligh government's record of reform and regeneration in the disability sector. I would like to acknowledge the contribution of all of the members who supported the bill. I would also like to acknowledge some of the key stakeholders who have been engaged closely in the development of this legislation because of their tireless commitment to the rights of people with disabilities, in particular the Hon. Justice William Carter; the Adult Guardian, Ms Dianne Pendergast; Queensland Advocacy Incorporated, including Mr Ken Wade and his predecessor, Mr Kevin Cocks AO, who has recently been appointed Queensland's Anti-Discrimination Commissioner; National Disability Services; Queenslanders with Disability Network; Multicap; and Life Without Barriers. The Mental Health Court, the Mental Health Review Tribunal, Legal Aid Queensland and representatives of the Australian and New Zealand college of psychiatrists were also generous with their time and provided prompt feedback on the proposed provisions to help clarify their operation and to ensure their workability and consistency with the Mental Health Act. Their feedback to me, my predecessor, the Hon. Annastacia Palaszczuk MP, and to the Department of Communities has been invaluable.

I also acknowledge the work of the Minister for Health, the Hon. Geoff Wilson, for his contribution to this important bill and our ongoing work. I also thank officers from my department for their hard work on this bill: Helen Ferguson, Kim Chandler, Bronwen McNeill, and Tony Cheng. I would also like to thank Queensland Health officers Bobby Clarkson, Helen Borredale, Jeanette Seron and Elizabeth Leach. I am sure members will agree an impressive array of expertise, experience and knowledge has gone into the development of this legislation and they will join me in commending this bill to the House.