Speech By

Yvette D'Ath

MEMBER FOR REDCLIFFE

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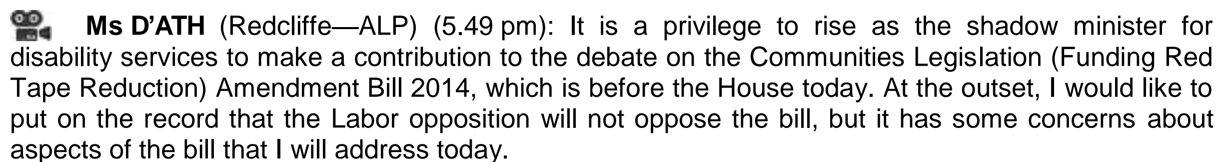
COMMUNITIES LEGISLATION (FUNDING RED TAPE REDUCTION) AMENDMENT BILL



Ms D'ATH (Redcliffe—ALP) (5.49 pm): It is a privilege to rise as the shadow minister for disability services to make a contribution to the debate on the Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, which is before the House today. At the outset, I would like to put on the record that the Labor opposition will not oppose the bill, but it has some concerns about aspects of the bill that I will address today.

As honourable members would know, this bill was introduced into this House by the Minister for Communities, Child Safety and Disability Services, the Hon. Tracy Davis MP, on 11 February 2014 and it was sent to the Health and Community Services Committee for public consultation and scrutiny, with the committee's report being tabled on Wednesday, 12 March 2014. The committee has recommended in recommendation No. 1 that the bill be passed. We on this side of the chamber support that recommendation, albeit with reservations that I will outline.

That brings me to the bill before the House today. As previously mentioned, this bill was introduced by the current Minister for Communities, Child Safety and Disability Services on 11 February this year and proposes a raft of changes that will reduce duplication and inconsistency in the current legislation that has been added over the years with the goal to ultimately reduce red tape while maintaining adequate safeguards. As the Department of Communities, Child Safety and Disability Services stated in its briefing material to the parliamentary committee, this bill—

> ... streamlines the current laws while preserving essential safeguards that protect tax payer's money, the delivery of essential community services and service users.

The department continues by stating—

> Under the Bill, the *Community Services Act 2007* will provide a simpler and shared legislative base for funding across the Department, and other agencies that decide to use it. This will reduce red tape costs for funded organisations and support and enable the streamlining of funding contracts and other administrative reforms.

As honourable members are aware, this bill will make changes and amendments to the Community Services Act 2007 and the Disability Services Act 2006 and will completely repeal the Family Services Act 1987. The bill sets about removing duplications in the funding arrangements, including in the monitoring and enforcement provisions that are located in both the Disability Services Act 2006 and the Community Services Act 2007.

As the minister stated in her introductory speech—

> This bill will deliver reforms that slash red tape and reduce the cost of doing business for funded organisations. This will enable them to focus more of their valuable resources on services and products that make a real difference in people's lives.

I could not agree more with those words. As the minister is fully aware, and as has been noted, this bill is not solely the work of the LNP government. In fact, many of the elements contained within the bill that is before us today have already been before this House in a previous session of this

parliament. I refer to the One Funding System for Better Services Bill, which was introduced by the former Labor minister for community services and housing and minister for women on 6 September 2011. As the then minister stated in her introductory speech, that bill, if passed, was going to deliver on the following three key objectives—

... it will provide, for the first time, consistent legal powers for safeguarding the delivery of crucial products and services that are delivered with funding provided by the Queensland government and for ensuring the proper use of these public funds; it will simplify existing funding laws and reduce red tape for entities that are currently funded under multiple acts; and it will help to improve the transparency of government's funding decisions.

The then minister went on to state—

I am pleased to be bringing to parliament a bill that will reduce red tape for this sector and free up resources for direct service delivery.

As members can see, both sides of this House agree that work needs to occur in this space to ensure that our front-line support staff and organisations are properly resourced and funded and that there is a proper framework as we move forward to meet the challenges of tomorrow. However, although the Labor opposition agrees with the overall holistic approach and objective of the bill, it believes that the minister and the Newman LNP government have gone too far with some elements of the bill by proposing to amend the legislation beyond that which had already been drafted in the One Funding System for Better Services Bill. Unfortunately, that bill was never debated as it lapsed due to the March 2012 election. These detrimental additional amendments have been introduced by those opposite, who came to office preaching that they would revitalise front-line services but they have actually taken a wrecking ball to front-line services. Public submissions made by key bodies such as the Queensland Council of Social Service, PeakCare Queensland Inc., Meals on Wheels Queensland, the Office of the Public Advocate and the Queensland Law Society during the parliamentary committee's investigation into this bill all raise genuine and serious concerns about the detrimental impact on the non-government sector of aspects of this bill. I take this opportunity to thank the key bodies that took the time to make submissions to the parliamentary committee to ensure that we as legislators are fully informed of the issues that matter as we debate this legislation today.

As I have mentioned previously, the bill before us today stems from a previous Labor bill, the One Funding System for Better Services Bill, which lapsed in 2012, which at that time prevented the parliamentary committee reporting its findings back to this House. However, since then we have had a newly formed parliamentary committee, the Health and Community Services Committee, analyse the current bill with a variety of stakeholders making submissions and raising valid points of concern. It should be noted that some of those points of concern relate to issues that were dealt with in the previous bill, but unfortunately the government of the day was unable to make amendments or address those concerns as the bill lapsed. More importantly, these submissions and the concerns that the stakeholders have raised show the failure of the LNP government and the minister to address their concerns as we would have done. As members would know, those opposite came to office nearly two years ago, which has provided the minister with ample time to undertake consultation, which she indeed has, as she stated in her introductory speech—

Key human services peak bodies have been consulted about the proposals in the bill. These included the Queensland Council of Social Service, the Local Government Association of Queensland, National Disability Services and PeakCare.

The minister went on to state—

Their input and feedback was extremely valuable in helping to shape the bill and was very much appreciated.

Therefore, it is disappointing that the issues that were raised by QCOSS and PeakCare, which made public submissions to this bill and which most likely raised the same issues with the minister during her consultation work, were ignored by the minister in the legislation that we are debating today.

With those comments in mind, I would like to turn to the new objective of the legislation, which will be inserted once this bill is passed. Although the new objective is similar to the objective that would have been inserted under the One Funding System for Better Services Bill, the context and climate that we now find ourselves in under the Newman LNP government is vastly different. This is a government that is cold at heart. This is a government that puts dollars and cents above Queenslanders and, in particular, those vulnerable Queenslanders who need assistance. This is a government that rips money out of the department's grants funding for the non-government sector and expects them to find efficiencies and savings while maintaining an acceptable level of service to their clients and the community. We only have to look at the situation that unfolded in my electorate of Redcliffe at the Regional Community Association Moreton Bay to know that those opposite are failing the community at every turn.

For the benefit of the House, I will read to members the current objective of the Community Services Act, which states—

The main object of this Act is to help build sustainable communities by facilitating access by Queenslanders to community services.

Government members interjected.

Ms D'ATH: Maybe those opposite should be listening to the community stakeholders. I compare that objective to the new objective, which is—

... to safeguard funding for the delivery of products or services to the community that—

(a) contribute to Queensland's economic, social and environmental wellbeing; and

(b) enhance the quality of life of individuals, groups and communities.

Although that objective may appear similar in nature to the objective proposed under the One Funding System for Better Services Bill, we have to read this new objective in the context of the brave new world in which we live under the regime of the Newman LNP government. We know that those opposite want to flog off everything that they can. From government buildings in the Brisbane CBD to government services, this government is determined to outsource what it can to save a buck which, in the long run, will have a detrimental effect on the Queensland community.

I would like to turn now to an area of the bill that we do agree with. This bill omits part 3 of the Community Services Act that compels and requires an entity in the non-government sector to apply for an approval and be placed on the approved service provider list before it is eligible to apply for funding through the different funding areas of the department. The removal of this procedure will allow for a one-step funding process, which will enable a finding agency to submit one application and thus reduce the red-tape burden. As the minister stated in her introductory speech—

The bill removes the need for organisations to become 'approved service providers' before they can apply for funding. Instead, organisations will only need to make one application for the funding itself. During this process, departments will confirm the organisation's bona fides, governance arrangements and capability to manage the funds and deliver the required services.

This approach, which the former Labor government had also embarked on, has been supported by the sector. In particular, the Queensland Council of Social Service stated in its submission to the committee dated 27 February 2014—

In particular, we support removing the requirement of organisations to undergo an Approved Providers application process before applying for government funding. This removes a duplicative process and reduces red tape for community service organisations.

The Queensland Law Society on the same issue stated that one of the positive aspects of the bill was the removal of—

… requirements under the Community Services Act 2007 and Disability Services Act 2006 for entities to become approved service providers before being able to apply for funding. We suggest this may improve access to funding opportunities for small organisations and potentially reduce paperwork for larger providers.

I note, however, that the Public Advocate had some reservations in relation to the removal of the preapproval process when read in conjunction with other aspects of the bill that removed other safeguards. While we agree with the Public Advocate that some of the aspects of the bill may be detrimental, which I will address shortly, we believe that the removal of the preapproval process is a positive step forward ensuring that our hardworking and vital front-line non-government organisations are not burdened by excessive red tape and can get on with the job of looking after some of the most vulnerable Queenslanders.

I now turn my attention to omissions being made in the Disability Services Act 2006, in particular clause 59 of this bill which will omit parts 11 and 12 of the Disability Services Act. As the minister would be aware, the committee received many submissions from key stakeholders, one of which was the Public Advocate. The Public Advocate raised numerous concerns, one in particular regarding section 134 of the current Disability Services Act 2006 which deals with the power to enter a place in certain circumstances without a warrant. The Public Advocate stated in her submission—

This section will be removed with the omission of Part 11 from the *Disability Services Act 2006*, but it is not proposed to replicate this provision in either that Act or the amended *Community Services Act 2007*.

The Public Advocate further stated—

It is well known and understood that the abuse of vulnerable people, including many people with disability, is difficult to uncover. People with disability themselves may find it difficult to complain, or not know that they have a right to. It may be difficult to gather the evidence needed to support the application for a warrant or an immediate police response.

It is therefore prudent, one might have thought, to maintain this provision in the act to ensure that vulnerable people were protected. While I am only new to this House, during my first sitting week

this House passed the Fair Trading Inspectors Bill 2013 on 6 March 2014 which to my knowledge inserted provisions into statute that allowed fair trading inspectors and other authorised officers to conduct searches without a warrant if the circumstances arose. So I ask the minister: why is it that powers have been given on one hand to fair trading inspectors to undertake searches without a warrant, if the circumstance arise, under approximately 14 pieces of legislation, but on the other, the Minister for Communities, Child Safety and Disability Services, the person who is charged with the sole responsibility for ensuring that vulnerable members of our community are protected, is removing the ability for authorised officers to undertake searches of service providers if they suspect a breach is occurring? I question why this has been excluded by the minister and ask the minister to outline in detail what safeguards will be in place to protect Queenslanders.

Government members interjected.

Ms D'ATH: I understand that the minister did just provide a government response to the committee report. That response was provided at the start of the second reading speech. I will take into account the comments made by the minister, but the comments specifically made by the stakeholders to the committee were that they believed that those provisions should have remained in legislation.

I would like to turn now to the issue of ministerial declarations. Clause 7 of this bill, as the committee report outlines, enables the Community Services Act to be applied to any minister who administers a department which provides funding, thus allowing any department to use the one legislation which reduces duplication across the statute books. This means that a minister will be allowed to make a declaration, which will be made public, in relation to what organisation was funded, for what purpose and the total amount of funding for a particular period.

The Queensland Council of Social Service has raised concerns with this approach, stating that the legislation may have unintended consequences for organisations if the underpinning legislative requirements of their current contracts are markedly different from those in the new bill. This is a valid point, with QCOSS citing an example of a dispute resolution process which is located in its existing service agreements and, should there be a different dispute resolution process located in statute, which one would be enforced. I note that the explanatory notes to the bill, which was extracted into the committee's report, states—

Applying the amended Act will not impose additional obligations on funded organisations; rather it will provide funding departments with additional powers to safeguard service users and public funds where a funded organisation seriously fails to meet its obligations

While I understand that this is the intention, I ask the minister to please explain in detail how this bill will affect current service providers with current service agreements. Will the minister assure the parliament today that this legislation will not have retrospective consequences for existing service providers?

The committee's report raised the issue of what is referred to as a Henry VIII clause which, as the committee's report explains, is a clause which enables an act to be expressly or impliedly amended by subordinate legislation or executive action. The bill, in particular proposed sections 10 and 12, which are inserted into the legislation by clause 8, allows and enables a decision of the executive arm of government, in particular the current Minister for Communities, Child Safety and Disability Services, to determine when legislation will be imposed, for example when a declaration will be made to allow funding to be provided to an organisation. While the bill requires a minister who makes a decision by declaration to provide funding to an organisation to place the declaration on a government website to ensure that public confidence is maintained and to allow the parliament the ability to scrutinise the minister's declarations, we support the committee's recommendation that the minister be compelled to table a statement in the Legislative Assembly about any declarations that he or she makes. This will ensure that we as parliamentarians, and the parliament as the peak legislative arm of this state, are in a position to analyse and scrutinise how public funds are disbursed.

Before I leave the topic of ministerial declarations, I would like to touch on an issue raised by the Queensland Law Society in its submission which was not covered by the committee in its report. The Queensland Law Society comments on the proposed section 12(3) which outlines a range of factors which the minister may consider when making a declaration of the funding to which this legislation applies. The Queensland Law Society state—

Given the considerable power that has been provided to the minister in making these declarations (also noting that funding declarations can be made before or after funding has been provided), it may be prudent to ensure the minister 'must' consider the list of stated considerations in proposed s 12(3).

I therefore ask the minister to outline her view on whether a minister must take the items listed in section 12(3) into consideration before making a funding declaration, considering that it is public

funds which are being dispensed. I also pick up the point that in the government's response they have said that they will table in the parliament on the first occasion in relation to declarations, but will then consider whether they will from time to time continue to do so. We ask that they pick up the recommendation of the committee in full, which is to continue to put before the parliament any declarations approved.

Mr Ruthenberg: There is an undertaking to give it in parliament.

Ms D'ATH: To make it clear, the minister's response that was just tabled says the minister will consider making further statements to parliament from time to time about other declarations. There was not a guarantee beyond the initial proposal to fulfil the intent by making a statement on commencement of the bill. After that point it would be considered from time to time. We ask that there be a commitment that it will be done into the future.

Ms Davis: It's already on the website. The information is there.

Ms D'ATH: I remind the minister that it is the committee's recommendation that we are asking for the minister and the government to adopt. I now turn my attention to clause 8 of the bill, which omits and replaces parts 2-6 of the current Community Services Act 2007. In particular, clause 8 inserts a new section 16 which will act as a prerequisite for action to take place when a serious concern is alleged. In particular, this new section sets out four provisions which will be used as trigger points for action when a serious concern is alleged. They include when the funding received by the funded entity is improperly used; the funded entity significantly fails to deliver a funded product or service; an act done or omission made by the funded entity in providing a funded product or service results in harm to an individual; and if the funded entity received the funding to deliver disability services to which the Disability Services Act 2006 applies and the funded entity contravenes provisions of the Disability Services Act 2006.

It has been submitted by the Queensland Law Society, the Queensland Council of Social Service and PeakCare that this section acting as a prerequisite is subjective in nature and open to interpretation. The Queensland Law Society stated—

... these concepts (for example, 'harm to an individual' and 'significant failure') have the potential to be extremely wide, and we note that they appear to be subjective.

It went on to state—

We note in particular that s4(3)(k) of the Legislation Standards Act 1992 in relation to fundamental legislative principles provides that legislation should be 'unambiguous and drafted in a sufficiently clear and precise way.'

The Queensland Council of Social Service stated—

While legislation should be flexible with some room for interpretation, the current definition is subjective and risks being applied inconsistently.

These are valid points raised by key stakeholders and show that the parliamentary committee system, by seeking the views of key stakeholders, works effectively. I ask the minister to outline in detail how this section will work in practice within her department and what safeguards or guidelines will be put in place to ensure that the trigger points for serious concern are used in an appropriate manner to ensure that vulnerable Queenslanders are protected.

The Queensland Law Society also raised concerns with section 17 of the bill, which states—

... a chief executive may obtain a written report from an authorised officer appointed by the chief executive about whether a serious concern exists for funding received by the funding entity.

The Queensland Law Society stated—

The current drafted threshold is 'may', the Society suggests that in the interests of transparent and informed decision-making this is made ' ... must, unless there is a risk of imminent misappropriation of funds or harm to an individual, obtain a written report...'.

While the opposition understands that the purpose of the bill is to provide a mechanism for quick and decisive action to occur if an alleged serious concern exists, we ask the minister what administrative arrangements will be put in place to ensure that the chief executive only embarks on actions regarding a serious concern if it is lawful and appropriate. Once an alleged serious concern is alleged, the chief executive may, under proposed section 129 of the bill, require the service provider to produce documents or information relating to their funded products or service or, if an interim manager is appointed, they are charged with a broad range of powers to obtain and elicit information, which has raised some concerns with stakeholders regarding confidentiality of information.

The Queensland Law Society has raised concerns that community legal centres, which may draw funding under the act, may be subject to this legislation and is fearful of client information being

exposed. The Queensland Council of Social Service has also raised concerns regarding the protection of client and staff confidential information. It states—

We recommend that additional protections are introduced to the legislation to ensure delicate information is treated appropriately.

We ask that those on the government side take more heed of what the stakeholders are actually saying to the committees. While we understand that information is required to form the basis of any investigation into an alleged serious concern and that legal privilege would not be waived, it is important that information is used wisely and within the confines of the law. We ask the minister what internal administrative processes will the minister's department put in place to ensure that confidential information remains as such and will only be used for the relevant circumstance for which it is permitted.

I would like to turn now to the issue of external reviews, or reviews to the tribunal as they are called, which basically means to QCAT, the Queensland Civil and Administrative Tribunal. This is a prime example of how this bill has gone further than the previous bill that lapsed, as it strips away the right to an external merits based review to QCAT. The Queensland Council of Social Service has summed the issue up well in its submission. It stated—

While government's ability to take swift and decisive action to protect state resources and the safety of service users is critical, it must be balanced with fair and transparent mechanisms for funded organisations to appeal decisions which affect their funding arrangements and other related contractual obligations. An external appeal process is an important avenue for organisations to seek impartial reviews of such decisions and without one there is a risk of perceived bias and inconsistent application by government agencies, impacting on the outcomes of reviews.

PeakCare submitted—

The option to pursue an external review process is integral to transparency and fairness for the simple reason that the aggrieved party views the mechanism as independent of the original decision-maker.

While the opposition notes and agrees with the intent of the bill to allow the government the ability to take swift and decisive action to protect the resources and safety of service users, we believe that adequate appeal mechanisms should be put in place to ensure that natural justice is maintained. It should be noted that, under the lapsed One Funding System for Better Services Bill 2011, the external review process to QCAT was maintained, as Labor values due process and transparency, unlike those opposite.

While the minister may argue that funded organisations still have the right to seek a judicial review via the court system, this approach will severely limit the number of external reviews undertaken, as court is a costly exercise and one that our funded non-government organisations should not have to bear and cannot afford. As the Queensland Law Society stated—

Whilst we note that internal review and judicial review avenues are still available, we note that having a review avenue to QCAT can be accessible for small organisations, given its cost effectiveness.

This bill also removes the appeal rights for a stay of a decision while the department is reviewing the decision. We on this side of the chamber believe in fairness. We on this side of the chamber believe that there needs to be a balance between provisions that allow the government to take swift and decisive action to protect the resources and safety of service users and those that protect and provide due process to the service provider. It is unfortunate that the minister's legislation in this particular instance does not achieve that balance and we will not be supporting any move to strip away the external appeal rights to the Queensland Civil and Administrative Tribunal.

Before I conclude I would like to touch on the issue of contestability. During her introductory speech, the minister raised the issue of contestability, stating—

This is part of the Queensland government's commitment to revitalising front-line services and putting customers first, including providing Queenslanders with more choice by strengthening contestability. We are also committed to ensuring better value for taxpayers' money in line with the reports of the Commission of Audit and Child Protection Commission of Inquiry, both of which recommended maximising returns on government investment and improving procurement processes.

Government members interjected.

Ms D'ATH: I note that those on the other side of the chamber are commenting on their own minister's comments. We all know that contestability is the government's fancy catchword for outsourcing government services. Even Queensland's SMOs, our senior medical officers, are now raising their concerns about contestability being code for outsourcing. It is happening right across the government. The minister, along with the Treasurer, who is the chairperson of the Social Services Cabinet Committee, have released a draft consultation document entitled 'Social Services Investment Framework', which basically charts the way forward for contestability in this state or, as we call it, outsourcing. The document even contains a 'contestability lifecycle' and a 'whole-of-government priorities and the social services investment framework', which under the heading 'Government

priorities' has as the final destination 'Becoming an enabler', 'Ensuring the best access, quality and timeliness of services irrespective of who provides those services'.

However, it is not all about the money or, as the minister puts it, 'maximising returns on government investment and improving procurement processes'. As PeakCare Queensland submitted on the topic of contestability—

A disproportionate focus on efficiency and economies of scale could mean that choice of provider, culturally competent services, quality, or client outcomes are sacrificed.

That is something the minister should take note of to ensure that services that are currently being provided by both the government and the non-government sector do not suffer. People should be put ahead of money and profit any day.

As I draw to a close, I take this opportunity to thank the Queensland Parliament's Health and Community Services Committee, of which my colleague the shadow minister for health and member for Bundamba, Jo-Ann Miller, is the deputy chairperson. Like all committees in this place, this committee has an important role to play and I thank the members of the committee for taking the time to review and investigate the Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, which we are debating today. However, it would be remiss of me to think that the members of parliament on the committee do all the work. My thanks are extended also to the hardworking secretariat, led by the committee's research director, Ms Sue Cawcutt, and also Mr Peter Rogers, the research director of the Technical Scrutiny Secretariat, for their assistance in scrutinising the bill. The parliamentary committee process is valuable, as it allows members of the public and key stakeholders to provide their firsthand knowledge and experience to the committee to assist, shape and form legislation that will ultimately have an impact on them, their industry or sector. I look forward to working with the Health and Community Services Committee in my capacity as the shadow minister for disability services into the future.

In conclusion, the Labor opposition will be supporting this bill with our reservations and observations noted. This bill, as previously stated, stems from the former Labor government bill which unfortunately lapsed due to the 2012 state election. However, this bill has added elements which, as I have outlined, we and key stakeholders do not agree with.

It is unfortunate that the Minister for Communities, Child Safety and Disability Services has taken nearly two years to reintroduce this bill. If those opposite truly wanted to reduce red tape and the burden on the non-government sector they would have introduced this bill earlier. I unfortunately have seen firsthand the fallout of what can happen to a funded organisation when things go sour.

Government members interjected.

Ms D'ATH: Those on the other side might actually want to listen to this. We only have to look at the actions of the disgraced former member for Redcliffe and former LNP member to know what can happen to a community organisation like RCAMB and the wider community, to know that we not only need strong laws in place to safeguard and protect the state's funds and the individuals involved but also a government that has the ability to act quickly and decisively with the appropriate tools available to them, which unfortunately was not the case in that situation.

Ms Davis interjected.

Ms D'ATH: And we are still waiting for the report. As the newly appointed shadow minister for disability services, I affirm my commitment to all Queenslanders who encounter disability, whether they themselves have a disability or they are a parent, family member or friend of a person with a disability. I am also committed to supporting the individuals who work within the disability sector or have an interest in disability services. As I said in my maiden speech in this chamber—

There is not one person in this parliament who could disagree with the statement that we are not doing enough to support people with a disability and their family and carers.

I look forward to working with the sector to ensure that more is achieved. The Labor Party has a proud tradition of supporting the non-government sector, in particular the communities and disability sectors. We will continue to stand up for the rights of individuals, in particular marginalised members of our community, and ensure that adequate safeguards are in place to protect their interests now and into the future. With those remarks and our reservations noted, I commend the bill to the House.