Speech By

Hon. Cameron Dick

MEMBER FOR WOODRIDGE

Record of Proceedings, 18 February 2016

MENTAL HEALTH BILL; MENTAL HEALTH (RECOVERY MODEL) BILL

Second Reading (Cognate Debate)

Hon. CR DICK (Woodridge—ALP) (Minister for Health and Minister for Ambulance Services) (11.37 am): I move—

That the Mental Health Bill be now read a second time.

I thank the Health and Ambulance Services Committee—the chair of the committee, the member for Nudgee, and in fact all the members of the committee, both government and non-government—for its detailed consideration of the Mental Health Bill. It is evident from the report of the committee that the committee gave very thorough consideration to the matters that were raised in submissions to the committee's inquiry. I table the government's response to the Health and Ambulance Services Committee report on the Mental Health Bill 2015 and the Mental Health (Recovery Model) Bill 2015.

Tabled paper: Health and Ambulance Services Committee: Report No. 9, 55th Parliament—Mental Health Bill 2015 and Mental Health (Recovery Model) Bill 2015, government response [192].

I acknowledge that the committee was unable to decide whether to support the government bill or the private member's bill, the Mental Health (Recovery Model) Bill 2015. That is now a matter for this House to decide.

As I indicated when I introduced the bill, there were reform directions in common in both bills, and I acknowledge the opposition's support for these reforms. However, the Mental Health Bill 2015, in my submission to the parliament, is unquestionably a better bill. It is a superior bill. The reason for that is the detailed consultation process that the government engaged in once we came to government, prepared a draft bill and circulated that for community comment. It was out for public comment by anyone in the community, not just stakeholders but anyone with an interest in public health and mental health. We gave the community an opportunity to consider our proposals in detail.

I was surprised to find that there had not been detailed and open public consultation on the previous government bill in the 54th Parliament. I thought that was most surprising in all the circumstances for such a comprehensive and important piece of legislation—one that will change very significantly and very positively the way that our health system and the way that, I hope, our community will deal with people with mental illness. That was a deep flaw in process by the previous government. When the government changed as a result of the people's view of the previous LNP government—a very emphatic view expressed by the people of Queensland at the ballot box in January 2015—the opposition continued down its path of a lack of formal consultation and rushed a bill into the parliament—that is, the private member's bill that is the subject of debate today, which of course continued to contain those same flaws. While I acknowledge the support of the opposition for the direction of reform in Queensland—and that is a credit to the opposition and I think to all members of parliament; I hope that the government's bill receives support across the chamber—the process that was engaged in by the opposition led to a bill that was inferior. The purpose of our election to this place is to deliver the best

outcome for Queenslanders by delivering the best legislative outcome, and that is why I believe the Mental Health Bill before the parliament is the bill that should be supported by the House.

For the benefit of members, I want to elaborate on some of those matters that I think are important and that show the difference very clearly between the government bill and the private member's bill. The Mental Health Bill 2015 includes provisions to regulate the use of physical restraint in authorised mental health facilities. It has been an ongoing concern for mental health consumers to ensure that physical restraint is only used when necessary and, if it is required, in an appropriate and safe way. The provisions in the Mental Health Bill 2015 will, for the first time, enable the use of physical restraint to be managed and monitored. The Mental Health (Recovery Model) Bill 2015 does not include these provisions. The parliamentary committee has recommended that they be included. I note that in remarks to the committee the member for Caloundra himself spoke positively of the government's changes in that regard—and I thank him for that—but I think that illustrates again a significant point of difference which should persuade members of the parliament to support the government's proposed legislation. The Mental Health Bill 2015 also includes provisions to ensure the appropriate use of medications such as sedation on patients in authorised mental health services. This has also been a longstanding concern of consumers. Once again, the Mental Health (Recovery Model) Bill 2015—the private member's bill—does not include these provisions and the parliamentary committee has again recommended that they be included.

The Mental Health Bill 2015 enables a person to appoint in advance up to two nominated support persons who may receive information about the person and support the person if they become an involuntary patient, and of course the bill sets out new rights and obligations as well for the process of individuals in our community becoming an involuntary patient. That is a very significant thing in a free society, but in the case of someone who becomes very seriously ill—to protect themselves and on occasion to protect other members of the community—they must be subject to the regime of treatment that the bill provides for. The bill also has improved provisions, I believe, for the appointment and revocation of those appointments of nominated support people. Again, the Mental Health (Recovery Model) Bill 2015 does not include these provisions. The parliamentary committee has recommended that they be included, and that is another reason the government's bill should be supported.

There are a number of members in the House who will be particularly interested in certain provisions of the bill—in particular, provisions such as wherever a person such as an authorised doctor is required to tell or explain something to or discuss something with a patient the person must also do the same with the nominated support person or at least one of the patient's family members or carers. I believe this bill is an improvement on the Mental Health (Recovery Model) Bill—the private member's bill—which required consultation with family and other support persons only to the extent practicable. In public consultation on the draft bill, this was seen as insufficient to ensure that family members were consulted by the doctor or medical practitioner concerned. The bill also expressly states that the bill does not limit how information may be disclosed under the Hospital and Health Boards Act to family and support persons—that is, clause 286 of the government bill. Under that act, personal information can be disclosed to a person with sufficient interest in the patient or for the patient's treatment and care. This provision is not in the Mental Health (Recovery Model) Bill, and that is an important thing.

One of the messages that the government received as part of the consultation on the draft bill was the enhanced information-sharing regime that family members and carers sought in relation to people who may live with a mental illness. In many instances in our community, people with mental illness are cared for very closely by family members or other care supporters in their immediate life. One of the challenges of course in the mental health space is not only respecting the rights of individuals and the rights of citizens but also as a community understanding that their health is often dependent on the support that they are provided by family members and carers. The information that those family members and carers require can often, if that information is appropriately provided, assist in the appropriate recovery and care of people with mental illness. We think an effective balance has been struck in the government bill, which is why we would urge the parliament to support those mechanisms, and we hope that those provisions will be of assistance to family members and carers who want to support their family members or someone they know who may have a mental illness.

To strengthen community protection, the Mental Health Bill enables the Mental Health Court to impose a non-revocation period of up to 10 years on a forensic order for the most serious and violent offences such as murder and rape. The Mental Health Court also provided this government with advice on ways to improve operational aspects of the Mental Health Court, and I want to thank members of the court and members of the judiciary for their contributions not just on those matters but on a number of other matters that relate to the interaction between the mental health system and our justice system in Queensland. The government is strongly of the view that the non-revocation period of up to 10 years for a forensic order is an appropriate measure. That is again an expansion and an enhancement of the

provisions in the private member's bill, which provides for a seven-year maximum non-revocation period—not a mandatory maximum but a potential maximum for a non-revocation period for a forensic order. We think the 10-year period is more appropriate to again try to balance the need not only for individuals to be protected who may have a mental illness but also for the broader community in certain cases to be protected while people go through a pathway of recovery with mental illness. So we think that is an important part of our bill.

We believe those improvements in the justice space—these improvements in the way that our court system, particularly the Mental Health Court, engages with individuals who may come into the criminal justice system because of offending but who may nevertheless have a mental illness—will enable the Mental Health Court to hold a hearing with one assisting clinician where it is appropriate to do so and extends legal protections to assisting clinicians. The bill also does not restrict the appointment of assistant clinicians to two terms, as is the case in the Mental Health (Recovery Model) Bill. The bill also enables the Mental Health Court to dismiss frivolous or vexatious appeals. Again, that is an enhancement on the current system.

Improvements have also been made to the provisions relating to magistrates' powers. This is a significant change in the law in Queensland. My view is that, when it comes to people with a mental illness, this is a very positive change in how the justice system will operate. The bill clarifies the types of hearings in which a magistrate may dismiss charges based on the concept of a simple offence under the Justices Act. The bill also removes the ability of magistrates to set conditions on the dismissal of a charge, noting that there is an express power for a magistrate to refer a person to an authorised mental health service for examination.

In that respect, I would like to acknowledge the advocacy over many years of Mrs Collein and Mr John Avery. I accept the acknowledgement of the Attorney-General and member for Redcliffe, who is present in the chamber. She has had engagement at a constituency level with Mr and Mrs Avery. I thank her for her acknowledgement of support there. I want to acknowledge Mr and Mrs Avery, who have presented the case for reform to the justice system as it affects people who are not fit for trial. I first met Collein and John when I had the privilege of serving as the Attorney-General of Queensland. They put proposals to the government, including an application for a pardon for their daughter. That proceeded by way of an application to the Court of Appeal. As the then attorney-general, I was pleased to pursue that matter. As a result of the decision of the Court of Appeal, certain law reform recommendations were made. Regrettably, they could not be implemented by the previous government, although I believe it made an attempt in its last bill at the end of its term. But I am very pleased that, as a result of the advocacy of people such as John and Collein Avery, this legislation will ensure that a person with a mental illness or an intellectual disability will be treated fairly in hearings before magistrates.

In many ways the Queensland magistracy and the Queensland Magistrates Court is the engine room of our justice system. Overwhelmingly, it deals with the largest number of criminal matters in Queensland. It is important that, when individuals who may have a mental illness or an intellectual disability come into the justice system, magistrates have powers to make effective and practical decisions. I am pleased that the Magistrates Court will be able to exercise those powers in a practical, sensible and common-sense way for individuals who may come before the court because of some criminal offending driven by an intellectual disability or mental illness.

The consultation that was undertaken on the draft bill by the Palaszczuk government also identified ways to improve operational aspects of the Mental Health Review Tribunal. That includes enabling the tribunal to refer questions of law to the Mental Health Court—very important interaction between the Mental Health Review Tribunal and the Mental Health Court. I am very pleased that the bill will enable those questions of law to be referred to the Mental Health Court. The bill also includes a head of power to make a regulation to extend free legal representation for other types of tribunal hearings in the future.

The Mental Health Bill 2015 clarifies the circumstances in which a person may be taken to a public sector health service facility for emergency examination, treatment and care. The bill achieves this by placing emphasis on high-risk individuals who need urgent examination or treatment, such as persons threatening to commit suicide. To better protect patients in emergency departments—something that I am very keen to do for both patients and staff as a general comment, but in this instance to better protect patients in emergency departments—the bill enables a person to be detained on the oral instructions of an authorised doctor while the doctor prepares a recommendation for assessment. That focus is on protecting individuals from harm that they may cause to themselves. This reduces the risk of patients absconding while the documentation is being prepared and potentially harming themselves. I think that is another practical initiative that will help people. Again, these are significant improvements on the provisions of the Mental Health (Recovery Model) Bill.

The government's bill also strengthens the requirement for authorised doctors to consult with families, carers and other support persons. We think that that strengthening of the consultation process is very important. The bill requires consultation with support persons at key decision-making points, such as when treatment decisions are being made unless, firstly, the patient who has capacity at the time requests that the consultation not take place; or, secondly, the support person is not reasonably available; or, thirdly, the consultation would adversely affect the patient, such as if there was a dysfunctional family relationship. These provisions are a significant improvement on those in the Mental Health (Recovery Model) Bill. They will further strengthen the role of support persons and the recovery orientation approach to the treatment and care of persons with a mental illness.

In response to the views expressed by stakeholders, the Mental Health Bill requires authorised doctors to explain to a patient and document in the patient's records why an advance health directive prepared by the patient was not followed. The bill also clarifies the protections under the bill for persons being treated under an advance health directive or with the consent of an attorney or guardian. These important safeguards are not included in the Mental Health (Recovery Model) Bill.

There are also other numerous improvements in the bill, including rectifying inconsistencies and errors and improving the readability of the legislation. There are a number of technical defects in the private member's bill that were rectified as part of the drafting process in the preparation of the government bill and following consultation with stakeholders. I want to recognise, as I did when the bill was introduced to the parliament, the contribution that stakeholders have made to this legislation. This is legislation that has been prepared genuinely in deep consultation and engagement with the mental health stakeholder group—one could almost say the mental health stakeholder family in Queensland—which is a number of organisations and other bodies that play such an important role in supporting the government in the delivery of effective health care for people with mental illness.

I want to acknowledge the very significant contribution that has been made along the way in the formulation of this bill by a range of stakeholders, such as the Australian Medical Association Queensland, the Royal Australian and New Zealand College of Psychiatrists, Queensland Voice for Mental Health Inc and Aboriginal and Torres Strait Islander health organisations such as the Queensland Aboriginal and Islander Health Council. So many bodies and individuals contributed to the draft bill through the public consultation process. As a result of that, I think that the government bill is significantly stronger. To keep faith with those stakeholders who engaged so deeply not just in the consultation process that the government engaged in with them but then through the parliamentary committee process, I think it is incumbent upon us to reflect very deeply on their contribution and the improvement to the bill that came from that. I think that all members of the House should be very slow to vote against the amendments to this bill that came from that deep consultation and engagement process. I would be urging members to keep faith with those stakeholders by supporting the government's bill.

Requiring a forensic patient to wear a GPS tracking device was raised in the consultation on the bill and in the committee's inquiry and it remains a point of difference between the government and the Liberal National Party opposition in this parliament. It is important that the use of tracking devices such as GPS tracking devices be put in perspective. The current act and both bills include a range of measures to manage community risks that might arise from forensic patients. Most importantly, those measures include the power of the Mental Health Court and the Mental Health Review Tribunal to prohibit or limit treatment in the community for a forensic patient. Under the revised legislation before the House, there is also a range of binding director of mental health policies that deal with authorising treatment in the community for forensic patients that will be continued in a similar form. Under the current act, the use of GPS tracking devices has been applied only twice. There are currently none in use.

The Mental Health Bill 2015 removes the ability of the Director of Mental Health, who will be renamed the Chief Psychiatrist under the bill before the House, to require a forensic patient to wear a GPS tracking device. This authority will be limited to the Mental Health Court and the Mental Health Review Tribunal where the issues can be considered in a transparent and accountable way, arm's length from government and arm's length from the public sector. As I have said, that authority will be limited to the Mental Health Court and the Mental Health Review Tribunal where those issues can be considered in a transparent and accountable way rather than by the Chief Psychiatrist exercising an administrative power. It is an important point of difference; a significant point of difference for the government. I know that the member for Caloundra has circulated some proposed amendments to be considered when we move to consideration in detail of the clauses in the legislation. I believe that is an attempt by the member for Caloundra to bootstrap his original bill. He is now seeking to provide a power to the Mental Health Review Tribunal to review conditions that may be applied in relation to the application of a GPS tracking device. My view is let an independent decision-maker make that decision,

not a public servant who could be subject to significant forms of pressure from a number of levels. Let us leave it to an independent tribunal and court to make that determination about whether it is appropriate.

We need to acknowledge in this House that there are a number of stakeholders in mental health who do not support the use of tracking devices at all. On consideration of both bills, a number of stakeholders have formed a view, as is the government's view, that if tracking devices are to be used as a possible condition of a forensic order then it should be left to an independent body. The Australian Medical Association Queensland made a submission to the Health and Ambulance Services Committee on that issue in a letter dated 16 October. In its letter the AMA stated to the committee—

AMA Queensland has consistently stated that we believe only the Mental Health Review tribunal or the Mental Health Court should have the ability to place monitoring conditions including the use of GPS monitoring devices given the potential to impose upon individual liberty. We stridently believe that this power should not rest with the Chief Psychiatrist. The operation of Section 217 of the Mental Health (Recovery Model) Bill 2015—

That is, the private member's bill—

explicitly returns this power to the Chief Psychiatrist.

They refer to the statement made by the member for Caloundra when he introduced his private member's bill. The AMA went on to say—

In its current form, AMA Queensland retains significant concerns about this provision and is unable to support the Mental Health (Recovery Model) Bill 2015 (Qld) as it currently stands.

Then the AMA went on to comment on other matters in the legislation. Similarly, the Royal Australian and New Zealand College of Psychiatrists wrote to me on this issue on 28 January 2016. It is an important issue. The chair of the Queensland branch of the college, Associate Professor Mohan Gilhotra, wrote to me and made it clear in his letter that the Queensland branch does not support the provisions in the opposition's Mental Health Recovery Bill which state that GPS monitoring should be ordered by the Mental Health Court, the Mental Health Review Tribunal and the Chief Psychiatrist. They went on to say in their letter that the Queensland branch's preference is that other forms of monitoring of forensic patients, such as keeping appointments, be used and if they fail only then should GPS devices be introduced. They state that as per the Mental Health Bill 2015, the government bill, GPS devices should only be ordered by an independent authority such as the Mental Health Court and the Mental Health Review Tribunal. The view of the college was made very clear. Other bodies expressed a similar view in the consultation on the legislation. I would ask honourable members to reflect on those submissions made through the process of this bill moving through the consultation process then through the parliament, through the committee process and now to the House for final determination as to which bill the House will support.

I would also like to speak briefly on the requirement under the bill to treat a person in a less restrictive way under an advance health directive or with the consent of an attorney or guardian rather than under a treatment authority. This approach is strongly supported by stakeholders as it gives persons a greater say in their future health care. There are extensive safeguards under the bill for persons being treated under an advance health directive or with the consent of an attorney or guardian. These are in addition to the safeguards under the Powers of Attorney Act, the Guardianship and Administration Act and the Public Guardian Act, including the Community Visitors Program. The use of coercive powers under the Powers of Attorney Act and the Guardianship and Administration Act, for example by keeping a person in a secure ward, is a sensitive issue, as it is for persons held in secure wards under mental health legislation. In implementing the bill the Department of Health will ensure that the powers exercised are in accordance with these acts and that health consumers are fully aware of the implications of making an advance health directive or appointing an attorney, including the use of coercive powers where necessary. I am confident that the Chief Psychiatrist's policies on these matters will be developed with the best interests of patients in mind.

I acknowledge at this point the role that Health Consumers Queensland played in the development of this legislation. They are a very important and valuable partner with our department and our hospital and health services in delivering health care in Queensland. As members would be aware, our government made a commitment to fund Health Consumers Queensland. That funding of more than $800,000 over three years that we will provide to Health Consumers Queensland enables them to do vital work representing the interests of health consumers as a voice for consumers in the health system. At multiple levels in the department and across our hospital and health services we engage closely with Health Consumers Queensland. We invite them to our forums, we ask them to comment on legislation and they provide incredible value. I recently held a round table on the Zika virus, which has created concern around the world about the potential consequences of infection of that virus. We invited Health Consumers Queensland to participate in that round table and they had some useful

comments and contributions. The government strongly supports and thanks Health Consumers Queensland for its contribution to the operation of our health system. I publicly thank them for the contribution they have made to improving this bill.

I also note the advice from the member for Mount Isa and the member for Dalrymple who alerted me, during consultation on the bill, to the position of the Queensland Aboriginal and Islander Health Council. The council has expressed its preference for the government bill and also made some important suggestions regarding the operation of the Mental Health Review Tribunal. We know that Indigenous Queenslanders suffer from high rates of mental illness so it is important that the Mental Health Review Tribunal provides services that are culturally appropriate for Indigenous Queenslanders. I note that the tribunal already has six Indigenous members and schedules hearings in 73 venues across the state, including venues in Yarrabah, Aurukun, Cape York and Thursday Island. The tribunal previously had an Indigenous liaison officer position to promote awareness of the tribunal's role and function, increase Indigenous participation in hearings, promote relationship building with Indigenous communities and assess the quality and effectiveness in the approaches used by the bill to meet the needs of Indigenous stakeholders. While there is broad bipartisan support on the principles and the thrust of both pieces of legislation, I regret to bring a partisan note into the debate by stating that that position was lost under the former Newman government.

Given the significance of the changes in this bill, I am happy to indicate that the department will provide additional funding to the tribunal to engage an Indigenous project position to ensure Indigenous stakeholders are aware of the important changes in the bill. I am very pleased to do that. Regrettably, it is true that Indigenous Queenslanders suffer from higher rates of mental illness, so the better we support individuals and their communities and the better understanding individuals have of the broad system and, in particular, how the Mental Health Review Tribunal and the Mental Health Court work, the better for them, their communities and the overall system of health care. We are very pleased to be able to support that Indigenous project position so that we can properly engage Indigenous stakeholders.

I advise the House of further work that the government will be undertaking in relation to special hearings. In Queensland, persons found unfit for trial may be placed on a forensic order. If the person is found permanently unfit for trial, the forensic order may be in place for many years. Where this applies, the person would not have had the opportunity for a court to examine whether the person did in fact commit the unlawful act that led to the order. As the person is not fit for trial, special legislative provisions called 'special hearings' would be required to enable the matter to be heard in the best interests of the person and on the basis of the best evidence available. If the court decides that the person committed the unlawful act, the forensic order stands but the person is not held criminally liable. If the court decides that the person did not commit the unlawful act, the forensic order ends. Most other Australian jurisdictions have provisions to allow for these hearings. The government has not included these provisions in the bill to enable further consultation on this issue. That consultation will proceed after the passage of the bill and, if further legislative reforms are required, I will give that very close consideration. If that is the best way to proceed, I would be seeking to pursue that, but we will engage again in consultation before I as minister or the government make any final decisions. I think it would be important to properly consult and move forward on those issues, if we can.

During consultation on the bill, concerns were expressed about the use of physical restraints, seclusion and other safety and restrictive practices in emergency departments. Those matters were also raised during the committee's hearings. The concerns relate to ensuring that staff and patients can remain safe in a challenging environment and that there is an effective legal framework to allow appropriate safety and restrictive practices. Members would be aware of the increasing problems our community faces with drug and alcohol affected persons in emergency departments. In most cases, the use of physical restraint, seclusion and other safety and restrictive practices in emergency departments is outside the scope of mental health legislation. However, I have asked my department to review the legal frameworks for the use of safety and restrictive practices in emergency departments.

The parliamentary committee made one recommendation to amend the bill, that is, recommendation No. 15. As outlined in the government's response to the Health and Ambulance Services Committee report on the bill, that recommendation relates to providing information to the public guardian on the admission of minors to high-security units or to adult inpatient units and the use of seclusion, physical restraint and mechanical restraint on minors. The committee has put forward a very sensible proposal. It is a recommendation that the government will adopt. When we consider the clauses in detail, I will move appropriate amendments to ensure that that recommendation is implemented. Again, I think it demonstrates the strength that can come from the committee process with a committee carefully and in a detailed way examining the provisions of a bill and coming up with improvements. Recommendation No. 15 is an improvement and it will be adopted by the government.

I hope it will be adopted without dissent and supported by all members of the House. I can indicate that the department has identified a small number of minor editorial amendments to the bill, which we will seek to address as well.

In conclusion, the Mental Health Bill 2015 represents a major step forward for mental health consumers in this state and will have major benefits for clinicians, the legal fraternity and the wider community. Our state has gone on an important journey to improve legislation. This is the most substantive reform to mental health legislation and regulation for almost a generation, that is, 15 years. I hope that, in a spirit of bipartisanship, the parliament will support the government's bill. I commend the bill to the House.