Speech by

Hon. ANNA BLIGH

MEMBER FOR SOUTH BRISBANE

Hansard 11 March 1999

CHILD PROTECTION BILL

Hon. A. M. BLIGH (South Brisbane—ALP) (Minister for Families, Youth and Community Care and Minister for Disability Services) (12.06 p.m.), in reply: A number of speakers throughout the debate have raised a consistent range of themes. I will address a number of the concerns that members have raised, many of them by the shadow Minister. At the outset, I acknowledge and state our appreciation of the support of the coalition for the Bill.

The first issue raised by the shadow Minister and a number of other members is the question of the capability of the officers of my department and other officers such as police officers who exercise powers under this legislation. I publicly state that I take the accountability for decisions made in this department very seriously. I expect nothing less than professionalism from every officer of the department and, in my view, professionalism is always underpinned by accountability and openness, and a willingness for decisions to be exposed to scrutiny.

This Bill will increase the accountability of the department in a number of ways. Firstly, it contains more accountability measures than were contained in the Children and Families Bill, which was the predecessor of this Bill and which was subsequently withdrawn by the coalition Government. For starters, there is an increased judicial oversight of the decisions made by the department. There is now a requirement that where significant powers, such as the power of entry, are used by either police or departmental officers, the use of that power must be recorded on a central register. Parental rights to information about the cases that involve them and decisions in relation to their children are increased under this Bill. The administrative decisions of the department are open to appeal from the Children's Services Tribunal, including some that are not currently appealable. There are more checks and balances introduced during the process of application for orders and the Bill imposes obligations on the CEO when an order is made.

The shadow Minister raised the question of a case that has been the subject of some discussion in the Courier-Mail. That case is a good example of the decisions of the department being exposed to external scrutiny. It is currently before the Children's Services Appeal Tribunal. While there are always a number of sides to every such report, it would be very inappropriate for me to discuss it in any more detail, other than to say that the tribunal will decide the matter and the department will abide by the decision of the tribunal. That is a good example of exposing a departmental decision to external scrutiny, which I support heartily.

The issue of responsibility has been raised by a number of speakers. The issue has been raised in general terms by most speakers without, in my view, having sufficient regard to the fact that this Bill is not a Bill about all children. This Bill is about how we deal with those children in our community who, unfortunately, have suffered abuse and/or neglect at the hands of their families. It becomes very difficult when we begin to speak about the responsibilities of these children. None of the speakers who have addressed this issue have given answers to questions such as how we would define the responsibilities of these children, what the Bill should make these children responsible for, how we could monitor their compliance and how would we make it an offence for children to not appropriately exercise their responsibility.

No honourable member would suggest that it is not a significant concern of all parents, and of the department to ensure that children be assisted throughout their development to reach the point at

which they are responsible adults. That is a charge of all parents. Indeed, foster carers associated with the department and its work take that responsibility very seriously. I commend them for their work.

Let us be clear about the children to whom this Bill applies. It applies to children in the care of the department or children at risk of coming into the care of the department. By its very definition, it refers to children who are victims of abuse and neglect. For example, let us take another piece of legislation of this Parliament that deals with the rights of victims, the victims of crime legislation, which sets out at some length the rights of victims. It does not, and nor should it, define the responsibilities of those victims and it does not suggest for one moment that those victims are entitled only to certain rights from the State if they exercise certain responsibilities.

Again, I point out to the shadow Minister that the Children and Families Bill introduced into the department by his former Government, and which he endorsed when he had the opportunity to do so in Cabinet, did not make any reference to the responsibilities of those children who are either in or at risk of coming into our care. In my view, we need to be very careful about introducing the concept of children's responsibilities into an Act that is concerned with their protection and care. We need to be doubly careful about tying their protection to the exercise of these responsibilities. In many respects, I find this suggestion offensive.

Many speakers have raised the issue of resources. I acknowledged the need for additional resources in my second-reading speech. These resources are needed to ensure that our legislative requirements can be met and that the services that are required to support the implementation of the Bill are available to children and to families.

In respect of the questions of how we might go about doing that and when we should bring in the Bill, most commentators would agree that this Bill is long overdue and that we should not be delaying its passage through the Parliament until those questions have been resolved. The question of resourcing for this Bill will be a question for the Budget process, and one which I am confident will see the Bill supported satisfactorily.

How much this will cost, a question which a number of speakers raised, is something that at this stage is impossible to determine because the department will have to go through a fairly lengthy and extensive translation exercise to ensure that children on current orders have their orders translated to new orders under the Bill. When that is known, it will be something that will inform the Budget process.

Queensland's position in relation to services and the funding that we allocate to children and families who are in need of services is one about which we have nothing to crow. In the category of child and family welfare, Queensland spends $31.91 per capita; New South Wales spends $47.78; Victoria spends $51.10; and the national average is $51.10. Our per capita spending on services in this area is very close to half the national average. This situation did not happen overnight.

We saw the mind-boggling hypocrisy of Opposition members, given the 30 years of neglect during the Bjelke-Petersen years, when they spoke about a lack of financial support in this area. When the Goss Labor Government prepared the draft of the Bill currently before the House, it provided an additional $8m for a Child Protection Strategy to underpin the Bill. Well might we ask: what has happened to that $8m? I spent quite a bit of time in my Ministry trying to track it down. Very little of it actually went into children's services. Some of the initiatives proposed did not proceed at all. Funds were redirected to areas that had little impact on the protection and care of children. In fact, some of those funds were used by the previous coalition Government to meet the 10% head office savings target imposed by former Treasurer Joan Sheldon.

As I said, additional resources will be considered in the Budget process. We will also be taking a very close look at the internal allocation of resources at the moment, and extra assistance into the child protection area will be a priority over the next two Budget cycles. However, the current lack of available resources should not, in my view, deter the Parliament from consideration and passage of the Bill. Proclamation of the Bill will take place following the determination of the 1999-2000 Budget.

Some speakers have raised the definition of "harm" and the fact that the words "moral harm" are not referred to in the Bill. This is a very difficult matter to define. Moral standards differ quite widely across the community that we are seeking to serve. The concept of moral danger is one which is often used to censor certain lifestyles. It is one that is very difficult for us legislate or to ensure any standard morals about. The other definitions of "harm" centring on physical, psychological and emotional wellbeing can be defined and tested objectively with the assistance of expert help. There is a community consensus about physical and mental health. Where the term "moral danger" is being used by members of the House to describe choices made by young people that are harmful or potentially harmful—for example, sexual exploitation or drug taking—the Bill can respond to those harms, and powers are available to officers to exercise in those circumstances.

The Bill seeks to take a protective response, not a punitive approach, and care and control orders under the Children's Services Act will no longer be a part of our child protection regime as a

result of the passage of this Bill. That is something of which this Parliament should be proud, and it should not in any way try to take a backward step in this regard. The use of care and control orders under the Children's Services Act led to many undesirable outcomes and did little to meet the needs that gave rise to the problems of young people in the first place.

In his speech the member for Yeronga outlined a number of past practices that are now well relegated to the past, and the care and control order is certainly one of them. Its inappropriate use resulted in many young people who had committed no crime other than arguing with their parents in many cases being detained against their will in facilities such as the Sir Leslie Wilson Youth Detention Centre, and it had many outcomes that could often be described as abusive.

Although care and control orders still exist under the Children's Services Act 1965, they are now rarely made. Young people are assisted in other ways, and orders relating to lifestyles or morals have been dismissed by the court on many occasions. For example, over the past five years there have been 22 applications, mainly from police officers, seeking care and control orders. Of those 22 applications, only five care and control orders have been made. Four of the applications have been converted to care and protection orders and 13 have been dismissed. In the context of more than 600 care and protection orders being made in the same period, care and control orders are clearly a thing of the past, and that is a welcome development.

A number of speakers have also addressed the issue of corporal punishment, and we will have an opportunity to speak about that in the debate on the clauses. We need to be very clear about this, because there seems to have been some confusion. Clause 123 of the Bill sets a series of standards that apply to foster carers and other care providers who are caring for children who have been removed from their homes. It establishes that corporal punishment must not be used by these care providers and foster carers when they are caring and administering behaviour management to children who are in our care. There is no conflict in this regard with the Criminal Code. The Bill makes no comment at all on the right of parents to discipline their children.

In my view, the State has the right, despite the Criminal Code, to set the standard that it expects of carers of children who are in our guardianship. As I stated earlier, most of the children who come into our care are children who are there because often they have experienced very significant physical, sexual and emotional abuse in their families of origin. For these very vulnerable children to be placed in a situation where corporal punishment is used against them is simply not appropriate.

This standard has, in fact, been administrative policy for approved foster care for a number of years. I need to say to members that we do recognise that foster carers do an extremely difficult job and that they are, after all, only human. Clause 123 attempts to establish a standard. It does not create an offence where a foster carer does administer corporal punishment to a child. As I said, we understand that foster carers are human. When they are having problems managing the difficult behaviour of the children in our care, we do everything we can do to assist them in that regard rather than seek to punish them for it.

Obviously, foster carers, like natural parents, who overstep the mark in any way and abuse children further would be subject to other provisions of the Bill, but this is not the provision that would be used in that regard. In my view, foster carers are entitled to our assistance, and this Bill lays out a number of areas where the department is actually obliged to provide better services in that regard. It is important to acknowledge that, because of the past history of a number of the children in our care, often their behaviour is more difficult to manage than that of other children. For that reason it is, in my view, important that we set a very high standard for their care.

Members have raised questions about the concept and definition of "harm" in the Bill and how to determine harm, who will determine the harm and what is "significant harm". It is important to note that the key concept of this Bill when acting to protect children is not harm in itself, but rather an assessment of whether the child is in need of protection. The definitions incorporate both "significant harm" or "risk of significant harm" and not having a parent able or willing to protect the child from that harm. When a parent can and will protect a child, for example, from further sexual abuse by a relative, that child is not in need of protection and there is no justification for action under this Bill.

In relation to harm, "significant" has its normal meaning. It will be one that has to be assessed on a professional basis by officers of the department and by the courts. I should inform members that the word "significant" was actually added after consultation. A number of people felt that we were providing fairly extensive and serious powers to both police officers and officers of my department and we should make sure that a substantial hurdle has to be jumped before those extensive powers could be used. "Significant" was added to make it clear that those sorts of intrusive powers can be used only where serious and significant harm is likely to occur.

As I said, it is ultimately a professional judgment that will be overseen by the court, which will decide whether the level of harm warrants one of the orders available to the court under the Act. But the concept of "significant harm" is used in the United Kingdom's Children Act of 1989, and significant

case law is actually building around the use of the term "significant". That case law will guide authorised officers and the courts.

The member for Indooroopilly raised the question of the Act seeking to pursue parents for maintenance. In fact, the current Act—the Children's Services Act—does allow for maintenance to be sought. However, the provision is not used, and I have been unable to find anybody among my senior officers who has any recollection of it ever being used. It is the view and experience of the department that chasing parents for maintenance after the involuntary removal of their child is not conducive to positive working relationships either with those parents, the child in care or the foster carers who are delegated to look after the child. The department is not a debt collection agency. Our focus is on working towards the safe return of the child where possible and working with families and foster carers to protect children in the future.

The member for Indooroopilly also raised the question of access to advice by other professionals, for example, to the court. The value of this is indeed recognised by the Bill. Clause 104 specifically allows the court to call upon expert help and, under clause 64, the court can order reports by medical and other professionals to be prepared for its consideration.

The member for Burleigh raised the specific question of the anomaly in the use of different definitions of the word "parent". In most clauses of the Bill, "parent" has a broad meaning to include all people directly involved in parenting a child. For example, at a family meeting—at a case-planning meeting—all people, including a step-parent, who are involved in the parenting of the child should be there to help plan for the child. However, in legal proceedings the word "parent" has to mean only those whose legal rights are affected by the proceedings, for example those who could lose custody of the child. Persons with no legal rights regarding the child cannot be a party to the proceedings, although they may be present. If the two definitions were not used in the Bill to cover the different circumstances, "parent" would have to be narrowly defined throughout, contrary to the family focus of the Bill. Words used to confine "guardian" are consistent with concepts used in the Family Law Act.

The question of the involvement of parents has been a concern raised by a number of members. The rights of parents to have a say is recognised throughout the clauses of the Bill. It is recognised in requirements for mandatory family meetings. It is recognised in mandatory court conferences when applications are contested. It is recognised by the fact that the Bill provides for many short-term orders where parents will retain guardianship—unlike the present system—while the chief executive officer has protective custody. It reinforces the role of parents to be involved in decisions regarding their child.

The question also of the parents' right to information has been raised. Parents' rights to information is reinforced throughout the Bill. Again, information about decisions is included in appeal rights as well as the right to information about a child's placement and the right to contact the child. Parents can also access these matters through FOI, but there is no impediment to much of this information being supplied without having to go through an FOI request.

A number of specific issues were raised by some members, and I would like to turn briefly to the comments made by the member for Caboolture. I have to say that I am disappointed—I am usually very disappointed by the contribution of the member for Caboolture, but yesterday I was doubly disappointed. I have to say that the depths of the ignorance of this member are yet to be plumbed. It was clear when he rose in the House yesterday that this member had not read the Bill. He made a number of ill-informed and ignorant comments about the intentions of the Bill.

He clearly wanted to criticise a number of elements of the Bill and concluded by saying that it should be entirely rewritten. However, we all know that he will not be coming in here during the debate at the Committee stage with a single amendment to the Bill. We all know that, when it comes to actually doing the hard yards, working through legislation and determining how he can best represent the views of his party and incorporate those views into legislation and argue those views here on the floor of the Parliament, the member for Caboolture and the other members of his party are always absent. Frankly, they are too lazy to ever come in and do the hard work. To come in here and ask for more resources to assist them in doing so is an affront—a further affront—to the taxpayers of this State.

I am not going to grace his ill-informed comments with a detailed response, but I do not want to let the comments that he made about discipline go completely unremarked upon. If honourable members read the comments that the member for Caboolture made yesterday, they will find the words "discipline" and "control" used a lot more frequently throughout his speech than the word "protection". I would like to remind the member for Caboolture that we are debating here the Child Protection Bill, not the child discipline Bill. I would have to say that the member for Indooroopilly and the Liberal Party find themselves in very interesting company on the question of discipline in relation to this Bill.

The question of false allegations of child abuse was raised particularly by the member for Fitzroy. I would like to recognise his contribution and applaud him for raising in the public arena a question on which it is really very difficult to find an appropriate balance. Through his contribution to the debate, I understand that there are parents who are subject to allegations that are sometimes, after

investigation, proved to have no substance whatsoever. It is the experience of the department that, while they are very rare, dishonest reports can indeed cause a great deal of upset, harm and damage to families. This harm has to be weighed in the balance with our requirement and obligation to protect children by investigating all complaints that are made to us.

The identity of notifiers is protected in this Bill because of an overriding imperative to ensure public confidence in the system and encourage people to come forward with legitimate concerns. If the confidentiality was conditional, for example, and did not apply to false reports, in our view many honest and well-intentioned persons would not report their concerns. They may fear that, if it is found that their report is unfounded, they may be liable. It is an extremely difficult and complex issue, but in the end we have to put the protection of children first. It is for the same reasons that no State in Australia has any provision to charge persons who make false complaints, or to release their names.

I would like to correct one of the statements made by the member for Fitzroy, which I think represents a misunderstanding of some of the data provided by the department. He stated in his contribution that 36% of allegations turn out to be malicious. This figure in fact applies to unfounded reports. It is true to say that 36% of allegations turn out to be unfounded. The vast majority of these reports have been made by honest, well-meaning citizens. The fact that the concerns were not substantiated does not necessarily reflect that they were malicious. I understand the points raised by the member for Fitzroy. I would like him to convey my sympathy to his constituents who have experienced this, and I undertake to work further with him on the caucus committee on the issue.

The Bill allows for information on charges as well as convictions to be considered when approving persons to care for children. The reason is canvassed in detail in the Explanatory Notes. I accept the words of the member for Clayfield that this, again, is one of those issues on which we have to find a balance. Unfortunately, there are numerous examples of someone being well known to the police for frequent complaints of sexual dealings with children but who has avoided conviction because the children were too young or intimidated to testify. Would any member of this House be happy for their young child to be placed in the full-time care of such a person? I doubt it.

I stress, however, that the Bill does not require that where a positive criminal history check is returned there is an automatic rejection of that person as a foster carer. In fact, foster carers who are now in their 30s who may have been the subject of minor offending in their teenage years and who have subsequently rehabilitated can be very good role models and very good foster carers for some of the young people for whom we are seeking placements. I think we have the balance right on this matter.

I reassure the member for Clayfield that the child placement principle in relation to indigenous children does not prohibit the placement of an indigenous child with a non-indigenous carer if it is in the child's best interests. In placing indigenous children, the Bill requires us to make our decisions in consultation with relevant indigenous children's agencies. The interests of most indigenous children will be best served by a placement with people from their own community. We do recognise that there will always be exceptions to that, and non-indigenous carers are not ruled out in those circumstances.

I turn to the issues raised by the member for Gladstone. The issue of significant harm has already been discussed. Constraints upon officers who may be overzealous in the use of their powers include the requirement to enter the use of those powers on a register, oversight by the court if the power is exercised and internal grievances to the CEO or the Minister. Also, the decisions are exposed to judicial review, there can be appeals against certain decisions to a tribunal or a court, and the Ombudsman and the CJC are available.

The issue of reasonable steps being taken in relation to telling parents about taking a child into custody is monitored because in considering applications for an order magistrates must check that those steps have been taken. The situation is similar in relation to the same inquiry on clause 40.

Section 21—it relates to a safe place applying only to children under 12—was inserted basically to avoid a situation whereby this provision might find itself being used by police officers in relation to juvenile matters that are really not about protective needs. It provides police with powers where, for example—this does happen from time to time—they might find a four-year-old child wandering down the street by themselves. It provides them with the power to take that child into their custody until the parents can be located. However, children over 12 and children with intellectual disabilities who are clearly in need of protection and are at risk of harm can be removed by police officers under other provisions of the Bill. They must seek an order to do so, after taking the child into their custody.

The authorisation of foster carers every two years is in fact a huge improvement on the current process. There is currently no requirement for renewal of approvals, and approvals go on unchecked for an unlimited period. We believe that a review every two years is a significant safeguard. We accept that there may well be some people who will offend or have some problem within a very short period of time, but we have to balance that against finding a system that is not so intrusive on foster carers' lives and families that it impedes their ability to do their job. We also need a system that is cost-effective and

reasonable for the police and the department to administer. However, I can assure the member that, where foster carers are known to the police, information is passed on through appropriate channels, for example the SCAN teams at a local level.

I refer to filming and the taking of photographs. This can only be used in the context of exercising a stated power under the Bill or executing a warrant. The confidentiality provisions of the Bill apply to any photographs or films and it is an offence to misuse them. Guidelines will be developed for officers to ensure that they understand their requirements in this regard. There are a number of other items which I am sure will be debated at some length when we look at the individual clauses. I think that covers most of the major issues raised.

Finally, I will make a couple of points in relation to the contribution of the member for Barron River, who recognised the particular concerns of the Foster Parents Association of Queensland. I confirm that there are amendments that recognise those concerns. I look forward to debating those when we consider the clauses in detail.

I think the member for Chermside really captured the matter that has concerned speakers on the other side of the House. The member for Chermside recognised that this Bill is challenging some significant vested interests. This Bill does challenge some long-held views about the role of the family and the role of parents. It does set very high standards for the care of children. I know that some of that has concerned some members opposite. I make no apologies for the fact that this Bill will provide police and authorised officers of my department with the ability to use the powers they need to act to protect children who are at significant risk or who are being abused in their families.

I acknowledge the very hard work over an extremely long period of time of a number of senior officers of my department, particularly my Director-General, my Deputy Director-General, Marg Allison, and all of the staff in the Families Program, a number of whom have worked on this Bill for almost a decade. It is, I think, a very proud achievement of our Government that we have this Bill before the Parliament within our first 12 months in office and that it will be passed in that time.

I acknowledge all contributions made by speakers. I particularly thank the staff of my ministerial office. This is the first major Bill that they as a ministerial staff have had to work on. I think they have done a sterling job. I look forward to the implementation of this Bill and to it improving the standard of care for children in Queensland. I believe that this Bill will see Queensland leading the States in child protection, instead of lagging behind as we have for so many years. I commend the Bill to the House.