



Speech by

**Hon. ANNA BLIGH**

**MEMBER FOR SOUTH BRISBANE**

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Hansard 24 March 1999

**FAMILY SERVICES AMENDMENT BILL**

**Hon. A. M. BLIGH** (South Brisbane—ALP) (Minister for Families, Youth and Community Care and Minister for Disability Services) (12.07 p.m.): I move—

"That the Bill be now read a second time."

There is no doubt that children in the care and protection of the State, and people with intellectual and other disabilities, are among society's most vulnerable. These people must not be subject to abuse by staff who are employed to protect them, and the Government has a clear duty of care to ensure that this does not occur. Much has been written about the abuse of people in the care of the State. The Forde inquiry and other recent discussions have highlighted the risks of sexual abuse and paedophilia within familial and institutional settings. His Honour Justice Stewart discussed the matter at length in his inquiry into the Basil Stafford Centre.

I am proud that the vast majority of staff in my department are honest and professional workers who strive always to protect vulnerable clients from harm. Unfortunately, this is not always the case. I must emphasise that I am talking about a very small number of individuals intent on pursuing their own gratification at the direct expense of the protection of our most vulnerable clients. Occasionally, it has become clear that employees of my department who were convicted of serious sexual offences had been previously charged with similar offences, but that these charges had not proceeded to trial, often because prosecution witnesses had withdrawn or were unsuitable. In the context of the vulnerability of some of my department's clients, the existence of these charges is surely a matter to be taken into account in making employment decisions. I have moved swiftly to address these serious issues by introducing this Family Services Amendment Bill into the House. The Bill will tighten existing procedures surrounding the conduct of criminal history checks. They will, however, be balanced by significant safeguards, which are the first of their kind in Queensland.

Criminal history checks are currently mandatory for all persons being considered for employment in any capacity within my department. Offences which are ordinarily sealed through the operation of the Criminal Law (Rehabilitation of Offenders) Act 1996 must still be disclosed because of the operation of an existing exemption to that Act. However, my department can only be provided with information about convictions—not charges. This Bill provides the police the power to provide information about a person's criminal history, including charges. This same power exists in relation to other sensitive employee groups, such as teachers, taxidriver and casino staff.

There are a number of circumstances in which the presence of certain charges, even without convictions, is a relevant factor in making employment decisions within my portfolio. This is particularly the case in relation to sexual offences against children, where convictions are hard to obtain. Often, even with compelling evidence, police are unable to obtain a conviction because the court considers a child witness too young to give evidence, or because a child may not be mature enough to withstand the rigours of an adversarial trial.

The Bill will go further, however, and require the police to provide information about investigations against a departmental staff member, if such investigations might reasonably lead to that person being charged with a serious offence. The Bill defines a serious offence as including serious violent offences, such as incest, rape and manslaughter, as well as the offence of possessing dangerous drugs. Such information must not be supplied if it could prejudice an ongoing police

investigation, identify an informant, or affect the safety of a police officer, complainant or other person. Importantly, such information must also not be supplied if a completed investigation has not resulted in a charge, or an ongoing investigation is unlikely to lead to a charge.

As well as increasing the extent of information supplied by the police, the Bill also strengthens existing requirements concerning disclosure by departmental employees. Under section 13 of the Public Service Regulation 1997, a public servant charged with an indictable offence, or convicted of any offence (regardless of whether a conviction has been recorded or not), is required to immediately report the fact and circumstances of the offence in writing to the chief executive or delegate. The Bill will strengthen this existing requirement by requiring that all charges be disclosed, not just convictions, prior to a person's employment, and will increase the onus upon existing employees to advise the chief executive of charges for any offence during the term of their employment, not just indictable offences.

Finally, the Bill places an obligation upon prosecuting authorities, such as the police or Director of Public Prosecutions, to notify the chief executive where a person who they are aware is employed by the department is committed for trial on an indictable offence, convicted of such an offence, or where there is an acquittal, mistrial, or the prosecution process has been otherwise ended. Similar provisions are contained in legislation relating to the registration of teachers.

I am aware that this Bill contains serious powers which have the potential to impact adversely on individuals. I have carefully considered these issues, but have included major safeguards in the legislation to preserve the principles of natural justice for all concerned. I acknowledge that there is a potential for information provided to my department to be unproven and potentially erroneous. But by making the use of this information a matter of public accountability, decision-making processes for all concerned will be transparent and fair, rather than conducted under a veil of secrecy.

The Bill before the House today is a responsible and considered Bill, which reconciles these two conflicting imperatives, through the inclusion of significant safeguards for the individuals affected. Information supplied to the chief executive must only be used for the purpose of assessing suitability for employment in the department. When assessing suitability, the Bill stipulates the factors to be taken into account, such as the timing, nature, and relevance of the offence to the person's duties.

The Bill requires that these checks occur in an open and transparent way and that natural justice is provided to affected persons. It requires that persons being checked be informed of the nature and extent of the check that will take place, informed of any information supplied by the police, and requires that they be given a reasonable opportunity to respond. The Bill also incorporates strong penalties for the improper disclosure of this confidential and intensely private information about a person.

Finally, the Bill requires that guidelines, consistent with the Act, be developed to further flesh out these broad principles. These guidelines must be drawn to the attention of people who are affected by them, and provided to them on request. My department has prepared these draft guidelines, and I table a copy for the information of honourable members. I must also reinforce that the existence of charges or convictions will not automatically prevent employment within my department, but it may be a factor which will need to be considered.

This Bill responds to increased community expectation that persons employed by Government to care for and work with children and young people in care and persons with a disability have been properly screened to ensure that they are fit and proper for such employment. No longer will those people who look after children and other vulnerable people in the care of my department be subject to a lesser level of scrutiny than currently applies to teachers, taxidriver and casino staff, for example.

There has been some recent discussion in the media about the powers contained in this Bill. Even the member for Indooroopilly, well known for his commitment to the rights and liberties of individuals, thinks that I have gone too far. On the contrary, this Bill is consistent with the coalition's 1997 amendments to the Education (Teacher Registration) Act 1988 which responded to increased community concern on the issue of paedophilia. It is also consistent with provisions of the Child Protection Bill 1998 requiring the police to provide information to my department concerning convictions and charges against people being assessed as potential care providers for children in care and protection.

Let me be quite clear. There are only two things contained in this Bill which are not contained elsewhere in Queensland's statute book, whether in relation to casino staff, teachers or taxidriver. Firstly, this Bill contains the power for the police to provide my department with information concerning investigations into departmental staff, or potential staff, concerning serious offences. The second thing contained within the Bill—but nowhere else—is a whole set of safeguards to ensure that the powers contained within this Bill do not impact unfairly on individuals.

My department often sends batches of criminal history checks to the police for processing. It might be that those checks revealed that a prospective employee had been charged with a substantial

number of sexual offences, but that a successful conviction could not be obtained because of an absence of witnesses. Under the current law, the name of the potential employee could not lawfully be disclosed to my department. I ask whether those who would oppose this Bill are prepared to condone these circumstances?

This is a serious Bill with serious powers, dealing with a serious issue. The safety of vulnerable people in the care of the State must not be sacrificed. However, that being said, there must be no doubt that I am as committed to the rights and liberties of my department's current and prospective staff as I am to the rights and safety of my department's vulnerable clients. This Bill strikes a comfortable balance between the two. It contains significant powers to protect the clients of my department, but is balanced by significant safeguards to protect departmental staff and potential staff. I commend the Bill to the House.

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