Speech by

Hon. ANNA BLIGH

MEMBER FOR SOUTH BRISBANE

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FAMILY SERVICES AMENDMENT BILL

Hon. A. M. BLIGH (South Brisbane—ALP) (Minister for Families, Youth and Community Care and Minister for Disability Services) (11.30 a.m.), in reply: I would like to thank honourable members for their contributions to the debate and their support for this important piece of legislation. There is no doubt that this Bill treads a very fine line—a line that balances the civil liberties of adults and the protection of children. It is equally clear that, despite their stated support for the Bill, members of the Liberal Party are not yet comfortable with the course proposed in the Bill. The shadow Minister continues to squirm on the horns of a dilemma. Unable to simply stand up boldly and unequivocally for children, at every turn he has sought to have two bob each way.

When I announced this law the shadow Minister warned, "She has gone too far this time". He now supports the Bill, but he thinks that in some areas I have not gone far enough. He claims to understand the need to put the protection of children first, but his comments yesterday were almost entirely focused on the rights of adults to natural justice. He asserts the need to take tough measures to deter potential offenders, yet focuses on the need to protect the reputations and job prospects of those found unsuitable for employment under this Bill. I commend those members of the House on both sides who have had the courage to resolve these dilemmas firmly in the favour of vulnerable children and clients of the department.

I would like to address some of the questions that were raised specifically by members, starting with some of the concerns and questions raised by the member for Indooroopilly. Firstly, in relation to the case involving Mr Simpson, which drew my attention to this problem initially, the member for Indooroopilly asked whether in fact if these laws had been enacted they would have found that there were charges or that he was subject to investigations. Of course, the answer to the member's question is that we cannot know the answer, because at this stage police are not authorised to disclose the information. However, it is clear that if there were charges or investigations and this Bill had been in place at the time, it would have remedied the situation.

The member for Indooroopilly raised the question of the separation of powers. In his speech during the second-reading debate, he asserted that this Bill attacked the separation of powers and would lead to a situation in which the courts were no longer the arbiters of guilt or innocence. For the benefit of the member for Indooroopilly and other members on his side of politics, I would like to again assert the very basic definition of the separation of powers, which is as follows: in a free society, the liberty of the citizens is secured by the separation of the power to make laws from the power to administer those laws and from the power to hear and determine disputes according to law. Nothing in this Bill threatens this doctrine. Any suggestion otherwise is nothing more than ill-informed, ignorant claptrap. Courts will continue to determine the guilt or innocence of accused citizens. The Director-General of the Department of Families, Youth and Community Care will use information that he gains under this Bill to make well-informed employment decisions, not determine the guilt or innocence of accused persons.

The member raised concerns about whether the Police Commissioner would have access to interstate and overseas material. The Police Commissioner and delegated authorised officers will have access to the national database, which will include both Queensland and interstate information. I

accept the member's point that there may be some difficulty in accessing international data, but in my view that is no reason not to proceed to do what we can to strengthen our screening procedures.

The member asked about the inclusion of concerns regarding the mental health of prospective employees of the department. He asked why this was not included in the Bill. In my view, the answer is very simple: to do so would have been a clear breach of the Anti-Discrimination Act—something that I would have thought the member would be familiar with as he is a former Attorney-General who administered the Anti-Discrimination Act. If a person's psychiatric disability manifests itself in criminal or potential criminal activity, then that will be picked up by the Bill before the House. If the person's psychiatric disability does not involve any potential for criminal behaviour then, frankly, their psychiatric disability is none of our business. In workplaces right across Australia, the psychiatric disabilities of many members of our community do not impair their ability to be valuable contributors to their workplaces. Moreover, the Public Service Act provides for action to be taken in relation to employees where there is a reasonable belief that an illness or disability prevents them from performing their duties. These actions include transfer to more suitable employment, redeployment, or retirement on the grounds of ill health. In my view, that is the appropriate way to deal with those sorts of problems.

The member asked about the provision of appeal mechanisms. I will clarify for him that currently the only appeal right for any external member of the public applying for a Public Service position before or after this legislation for failure to get a job is through judicial review. So people who are denied employment for any reason, whether it is a check of their criminal history or any other reason, are not eligible for an appeal right. In my view, there was no need to include one in relation to this Bill. There is judicial review available to people applying from external positions. Existing public servants who might be seeking a job in my department—who may be, for example, employed in another department and who are denied a position on the grounds of criminal history checking—would have access to all the appeal provisions that are currently part of the normal Public Service appeal and grievance mechanisms. They would have an opportunity to appeal or to take a grievance to the Office of the Public Service Commissioner and, indeed, if termination was the result, they would have the right to appeal to the Queensland Industrial Relations Commission.

Frankly, I find it extraordinary that the member for Indooroopilly would come in here and suggest that this sort of information being used in relation to people's employment should be subject to appeal rights and I remind him of the notorious days when Special Branch kept files on people from all over Queensland. The very existence of such a file, which was not transparent, not accountable, not achievable and not findable, could in fact affect their employment prospects and there was no way that people could overcome that.

A number of members, including the member for Indooroopilly and the member for Clayfield, raised the question of consultation in relation to the Bill. As the member for Chermside outlined in his contribution, the motive for this Bill and the recommendations behind it have been widely canvassed already in a number of very public forums, including the Wood royal commission and the Basil Stafford inquiry. It was raised again by the Forde inquiry. For the past 12 months, it has also been the very, very public intention of this Government and, as the member outlined, the Bill has been on the table for seven months. I can assure members that during the time the Bill has been on the table this proposal has been discussed in great detail and at some length with Task Force Argos, with the Crime Commission and the commissioner himself, with the Children's Commissioner, and in a number of meetings with the State Public Services Federation of Queensland. I am happy to report to the House that all of those people approve of and support the Bill.

This has been a very, very public proposal. I can also happily report to the House that I have not received one submission or complaint opposing the Bill. In fact, the only opposition in the public arena that I can find or recall in the past seven months is from an editorial in the Kilcoy Sentinel. So perhaps the member for Indooroopilly finds himself in good company.

Again, the member for Indooroopilly is suggesting that I went too far. The member for Indooroopilly asked whether employment in the Children's Commission would be covered by the Bill.

Mr Beanland interjected.

Ms BLIGH: If the member wants his questions answered, this is his chance. The provisions relating to employees of the Children's Commission and the criminal screening that will apply to them will be mirrored in the new Bill covering the Children's Commission.

There was some concern expressed by members about the extent of coverage. Again, I think that is indicative of members wanting to have two bob each way. On the one hand, the member for Indooroopilly acknowledged that the very people whom we are seeking to keep out of these workplaces have a reputation for being cunning. On the other hand, he seems to think that they would not be cunning enough to exploit an obvious loophole. People who do social work pracs in our department and people who volunteer from time to time are people who have a great deal of access not only to individuals in terms of direct service client contact but also to a great deal of personal information about

clients of our department that could be exploited. Even the member for Caboolture could figure that one out. I direct the members for Indooroopilly and Clayfield to the speech given by the member for Caboolture, which in my view gave two excellent examples of why one should not restrict the coverage of this Bill simply to direct service workers.

In relation to the confidentiality provisions, some concern has been expressed that penalties for a breach of confidentiality should apply beyond the officer of the Public Service who breaches it and that we should be pursuing second, third and fourth parties. I point out that the Bill is constructed on the view that the penalty should apply at the source of the information. It is currently the case that many Public Service positions— including existing officers of my department, the Police Service and other Public Service departments—already possess a great deal of very sensitive information about people. For example, people within my own department have access to information about people's adoption backgrounds, deeply personal information about the nature of people's disabilities and our child protection register. The Queensland police already have access to extensive information about charges against individuals and investigations into alleged crimes committed by them. All of those officers are already very well used to the strict confidentiality requirements of the positions that they hold.

The Police Service Administration Act requires both sworn and unsworn police to meet exactly the same confidentiality requirements that are being proposed in the Bill for officers of my department. Again, the penalty applies to the source of the information being given out. There is no mechanism within the Police Service Administration Act for second, third or fourth parties to be pursued. It is my view that it is appropriate to apply the same standard to officers of my department as apply to officers of the Police Service in regard to this kind of information. The penalty is exactly the same as for police, that is, 100 penalty points.

The member for Indooroopilly referred to the definition of "agent" in section 4 of the Family Services Act. "Agent" is defined as an agent under a contract entered into under section 9. Section 9 then provides that the chief executive may enter into contracts for services with such persons having qualifications and experience appropriate to the proper discharge of the contracts as the chief executive thinks fit, with a view to those persons acting as the chief executive's agents in giving effect to the Family Services Act 1987 or any other Act.

The Family Services Amendment Bill inserts a new section 18, which is about the chief executive obtaining the criminal histories of persons engaged by a department and other information about those persons. The section goes on to provide that an agent is a person engaged by the department. The honourable member for Indooroopilly correctly makes the point that the Acts Interpretation Act defines "persons" as including corporations. His point is that a community organisation incorporated under the Associations Incorporation Act may have to make disclosure to the chief executive of any criminal history that the organisation may have before the chief executive engages the organisation to give effect to the Family Services Act or another Act. The linkage to an Act means that we are not talking about commercial contracts entered into by the department for services.

The Criminal Code applies to offences committed by individuals. Officers of my department have spoken to the Police Information Centre, which confirmed that no records are held by the Police Information Centre in relation to criminal offences committed by associations or corporations. The reason for this is that only individuals can be charged with such offences under the Criminal Code. It is true that corporations can be charged with offences under other legislation, such as environmental protection or trade practices legislation, but those are not the kinds of offences contemplated or targeted by this legislation. The kind of information that the chief executive is authorised to seek under this legislation is criminal history information held by the Queensland Police Service in its central database. No information is held by that body in relation to corporations. The issue of criminal history checks on persons employed by organisations that are funded by the department to perform a service will be dealt with in the new Children's Commissioner Act, a matter that has already been the subject of public discussion and release of information by myself.

The issue raised in relation to this point can therefore be dealt as follows: while the member for Indooroopilly does have a point, it is a rather ethereal and technical point. It is that "person" is defined to include a corporation within the Acts Interpretation Act. This definition will have no effect in relation to the implementation of this legislation, because those types of organisations cannot have a criminal history of the type contemplated by the Bill before the House.

The member for Indooroopilly and the member for Clayfield have raised some concerns about whether or not stricter penalties ought to apply to certain persons for the act of applying to the department for a position. I can understand the motives and the concerns of the honourable members in this regard. However, in my view, it poses a number of difficulties in the context of this particular Bill and, indeed, in the context of the member for Indooroopilly's own concerns with the Bill. I presume that we will discuss these matters further in the Committee stage, but I will touch on them briefly here.

Firstly, this Bill covers all criminal history across all offence types. It is neither practical nor, in my view, desirable to prosecute everybody who applies to my department and who has any kind of criminal history. I assume that the member for Indooroopilly is not seeking that sort of breadth of coverage. I assume that he would seek to limit such an offence and the penalty for it to those who are convicted of certain prescribed offences.

How are we to define such offences? At face value some offences raise serious concerns, but on further investigation we may find that those concerns are not warranted. A good example of this is the offence of an indecent act. The indecent act provisions of the Criminal Code could indicate that someone has committed very serious offences. However, it is precisely that provision that would have been used 10 or 15 years ago to prosecute somebody involved in an act that we would now consider to be larrikinism. For example, streaking at a cricket match as a dare with one's mates or coming home from a football match, having consumed a few too many light ales, and urinating in the garden of one of the neighbours are precisely the kind of acts that could lead to a conviction or charge of committing an indecent act. In my view, those are precisely the sorts of cases where we should sit down with someone and find out the circumstances surrounding the conviction or charge.

There are other offences which, while they are very serious, may not be grounds for a blanket ban on a person from all employment for all time—even something as serious as manslaughter. For example, as we speak senior members of the coalition are campaigning for a more lenient sentence for and perhaps even the release of a woman from the Sunshine Coast who has been convicted of manslaughter after suffering a long history of domestic violence. I am sure that people would not suggest that Lorna Mackenzie should be prosecuted should she ever apply for a job as a filing clerk in the Department of Families. In my view, the situation is more complicated than is being proposed and I am happy to have the debate later in the Committee stage. The system proposed in the Bill before the House allows the circumstances of a conviction to be considered. It affords individuals the very natural justice that the honourable member for Indooroopilly seems to value so highly.

The member for Gladstone raised some concerns in relation to the obligation that the Bill places on the DPP and the QPS to notify my department where they have knowledge that an employee of the department has been charged or convicted. Information about a person's employment is normally supplied to the police in interviews, but I accept that people might lie about that or might be able to disguise it. It is very plausible that situations could occur where the police would not know that a person was, for example, a casual youth worker in my department. The obligation rests on the DPP and the QPS where they have the knowledge. If they do not have the knowledge, obviously they cannot pass the information on to us. I suggest that in many serious cases that information would come to them through the process of investigation.

In relation to the storage and destruction of records, I am having a separate brief prepared for the member for Gladstone because this is quite a complicated matter. I reassure her and the House that the storage, recording and destruction of information will be in strict compliance with the requirements of the Libraries and Archives Act and that there will be very limited access to the information. People will have to pass security checks to be employed in positions where they would have access to that information.

The member raised concerns in relation to a situation where my director-general might seek information from the Police Commissioner in circumstances where the Police Commissioner was of the view that to provide that information could jeopardise an investigation and, therefore, did not provide it. The member asked what would happen if, in those circumstances, that person was employed by the department. In those circumstances, the person employed would become an existing employee of the department. All provisions that relate to existing employees, such as an obligation to disclose and a penalty for failing to disclose, would apply to that person. In the circumstances that the member outlined, clearly the department's interest in that person would have been flagged with the Police Service. Should the investigation result in charges, I think we could be pretty certain that they would be ringing us up and saying, "I couldn't tell you then but I can tell you now."

In relation to the honourable member's concerns about taking into account whether a person was convicted of an offence as a juvenile or as an adult, I stress that this is only one of a number of considerations that an officer has to take into account. In relation to the specific example given by the honourable member, I draw her attention to the guidelines, which provide specifically that where a person has been convicted of an offence of a sexual or violent nature against a child they are automatically banned from employment. The question of whether they are a juvenile or an adult would not come into it. But I accept that, beyond serious offences, every case has to be looked at. In relation to the member's concern about the requirement that officers take into account whether the offence of which the person has been convicted or charged is still a crime, I say again that that is only one thing that should be taken into account. It would depend on the nature of the offence.

Again, in relation to whether or not alcohol is a mitigating circumstance, I say that, when it comes to any serious offences, those people are automatically prohibited from employment. But in

relation to the guidelines, I stress that they are draft guidelines. I am happy to incorporate a reference in that section to alcohol not being a mitigating circumstance in respect of incidents of violence. I think that would clarify it for the officers concerned.

The honourable member for Clayfield raised a concern that employees required to make a disclosure might suffer some embarrassment in doing so. There is no doubt that he would be right in respect of some instances, and I accept his point. But I stress that, in my view, honesty and openness are the hallmarks of a good employee/employer working relationship. I have some sympathy for people who might have done something stupid in their youth which they would rather was kept from the knowledge of their employer. However, I think it would be the experience of most employers that, if people are able to be honest about their past, that is something that would go in their favour in the employment process. I have had some discussions with people involved in the casino industry who say that they do employ people who have had past offences for fraud or stealing, if they have disclosed that up front. It is their experience that employees who are up front and honest, even if they offended a number of years ago, make the best employees in the end.

Quite extraordinarily, the member for Clayfield came in here yesterday and expressed a great deal of concern about the reputation of public servants whose lives might be affected by these provisions. His concern is very touching and I hope that he keeps that concern in mind when he next decides to come in here and do an ill-informed and baseless bucket job on the next Tuesday morning of a sitting week.

Both the members for Indooroopilly and Clayfield expressed some concerns over the delay with this Bill. As we know, this Bill has been on the Notice Paper for a number of months. The honourable members are being hypocritical. A number of speakers spoke about the fact that the Simpson case was the genesis of this legislation. I draw to the attention of the honourable member for Indooroopilly the fact that the first complaint about Mr Simpson was made to the department in November 1996, when his Government held power. Mr Simpson was stood down from his position in April 1997. Nothing occurred for 14 months after that case was first brought to the attention of the previous Minister; there was no drafting and no legislation was brought into the House. We moved as quickly as we could once the matter was brought to our attention. I am very pleased to see the matter before the House. In conclusion, I acknowledge and thank a number of people for their work in bringing this Bill to fruition.

Mr Mickel: The Channel 9 film crew. The AWU.

Ms BLIGH: And not the joker in the back row.

I thank my Director-General, Mr Ken Smith, the former Deputy Director-General of the department, Ms Margaret Allison, and the senior legal officer of the department, Mark Healey. I thank members of my caucus committee, the staff of my office, particularly my senior policy adviser, Ms Bronwen Griffiths. I thank also all of the front-line officers of my department who work with children whose lives are affected by neglect and abuse on a daily basis and who know the effect that the types of predators that we are seeking to weed out can have on the lives of those children. I recognise that the vast majority of employees of my department and people who seek employment in my department are people of good character with good intentions and whose motivations are to work in the interests of children and families. It is a great pity that a very small group of predators affects the reputation of the great majority. I recognise their work and their efforts. I commend the Bill to the House.
