Speech by

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FAMILY SERVICES AMENDMENT BILL

Mr BEANLAND (Indooroopilly—LP) (3.34 p.m.): This Bill amends the Family Services Act 1987, which is the overarching legislation for the Department of Families, Youth and Community Care. It is worth while noting the objects of that legislation, because I think that they are significant—

> "Without limiting the operation of this Act, the objects of this Act include—
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> (a) the promotion and support of the welfare of families as the basis of community wellbeing;
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> (b) the establishment of services and the encouragement of the development of services that promote, support and protect the wellbeing of families;
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> (c) the encouragement of the development of coordinated social welfare services and programs that promote and strengthen local neighbourhood and community interests;
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> (d) the promotion of the wellbeing of the community by assisting individuals and families to overcome social problems with which they are confronted."

I think that we need to keep those objectives in mind when we are debating this piece of legislation.

In rising to support the object of this amendment legislation, I think that it is fair to say that the amendments are to ensure that children and people with intellectual disabilities cared for by the Department of Families, Youth and Community Care are suitably protected by providing appropriate screening procedures for departmental staff. However, areas will need to be monitored carefully, and I emphasise the word "monitored". This Bill gives the director-general of the department significant powers and likewise imposes obligations on current departmental staff and future job applicants as well as the Queensland Police Service and prosecuting authorities. At the end of the day, this Bill is aimed at ensuring that the Director-General of the Department of Families, Youth and Community Care is aware of the criminal history, in the widest sense of that term, of anybody who wants to work in the department in any capacity and in any area.

The Bill replaces and expands the obligations imposed under the Criminal Law (Rehabilitation of Offenders) Act 1986 and section 13 of the Public Service Regulation. Before commenting on the Bill, I will deal with some recent history that illustrates why the very broad and intrusive powers set out in this Bill can be considered to be needed by our society. The starting point is the 1995 Stewart report into allegations of misconduct at the Basil Stafford Centre. Stewart dealt at length with the issue of criminal history checks. Although his comments on pages 324 and 325 of the report are lengthy, they are worthwhile recording in Hansard. He states—

> "Severely or profoundly intellectually disabled persons, such as those residing at the Centre, are in an extremely vulnerable position. On the evidence before the Inquiry, many of those clients do not have any regular or substantial contact with family members or other concerned persons. While an entity such as the Office of the Public Trustee may administer the affairs of such clients, to an overwhelming extent, their welfare, and the safeguarding of their rights, is placed in the hands of those officers employed by the Department to provide services of support and day to day care. The public at large, and the Division must of necessity place a

great deal of trust in those officers; trust that they will act properly, in accordance with the objectives of the Division, and in a diligent, honest and lawful manner. That trust is amplified in circumstances where the supervisory or regulatory mechanisms of the Division have not been, on the evidence before this Inquiry, adequate in all respects. Unfortunately, the evidence before this Inquiry indicates that this trust has all too often been broken.

I cannot think of any group of society which is in a more vulnerable position than those intellectually disabled persons whose welfare and protection is entrusted to facilities such as the Basil Stafford Centre. In those circumstances, it is essential that those persons intending to apply for positions within the Division responsible for the administration of the welfare of the intellectually disabled, should be called upon to disclose all criminal convictions... While such a disclosure requirement, to an extent, impinges upon an applicant's rights, the situation is one where those rights must not be placed before the rights of the vulnerable intellectually disabled.

Accordingly, I recommend that the provisions of section 9A of the Criminal Law (Rehabilitation of Offenders) Act 1986 be amended so that applicants for positions within the Division of Intellectual Disability Services be required to disclose any and all contraventions of or failures to comply with any provision of law, whether committed in Queensland or elsewhere."

Stewart specifically recommended that convictions include those instances where a person pleaded guilty but no conviction was recorded. In 1997, the royal commission into the New South Wales police force, when dealing with paedophile activities, noted that in that State there were no clear and consistent guidelines for screening those workers and volunteers who have close contact with children and that that was a significant complicating factor in providing protection to those most in need of protection.

Of even more pressing concern were the reports late last year of the notorious paedophile Raymond John Simpson, who was sentenced to 14 years' imprisonment for various child sex offences over a 15-year period. Simpson worked for the department, ensuring that youths complied with probation and court orders. One of the victims whom this sexual predator was convicted of molesting was a juvenile whom he cared for as a child care officer. Simpson abused the youth on the very day that the youth was released from a detention centre. Simpson was sentenced to 14 years' imprisonment and the judge also ordered that he report his address to police for a further 10 years after release because of the risk of reoffending.

Having just read into Hansard the comment of Stewart J, it is profoundly disturbing to see that Simpson worked as a residential care officer at the Basil Stafford centre from 1995. At the time, the Minister said that Simpson had twice been the subject of departmental criminal history checks, but that this failed to identify any problems. I assume from that that Simpson had not been convicted previously but had only been investigated by the police without charges getting to court. In any event, I assume that if this Bill had been in place it may have picked up Simpson. Perhaps the Minister could confirm if this is the correct assumption.

I approach this Bill with a keen appreciation that there are some extremely dangerous members of society who seek to obtain access to the young and vulnerable to satisfy their criminal intentions. They are very cunning individuals and often plan their activities carefully and over a long period. Sometimes they are part of a group of like-minded criminals who offer mutual support and assistance. To successfully and proactively deal with those criminals and deviants before they ruin the lives of vulnerable people, it is clear that expanded criminal history checks are needed.

Before commenting further on this element of the Bill, I wish to say that many of the problems that I have with the current approach in this initiative relate to the fact that it is a reactive proposal. It is aimed at getting information on persons who have already applied for jobs or who are already employed in sensitive areas in the department. I accept that, so far as existing departmental staff are concerned, expanded criminal history checks are a sensible way of proceeding. However, so far as those not already in the department are concerned, surely there are other methods of approach. I suggest to the Minister that we should be deterring potential paedophiles from making a job application to the department in the first place. We should be sending a clear signal to persons who wish to abuse a position of trust and who have a track record of serious sexual misconduct that they are not welcome.

Further, by the provision of a penalty up front we should make it clear that, if any person with a serious record of sexual offences even seeks employment in this sensitive department, they will face prosecution. In the scheme of things, this would be the best deterrent of all. It would be far better if we had a strong publicly advertised or advised proactive policy of saying, "Don't bother applying. You won't get a job. We will do a criminal history check and if we find out about your past history as a sexual predator, you will be subject to a possible lengthy jail term." I suggest to the Minister that a message like that would nip in the bud many of the problems that may arise in the future.

I turn now to the provisions of the Bill. While it is clear that we need to arm the department with broader powers, we should never forget that appropriate checks and balances must be put in place. Giving intrusive powers to public servants carries with it a series of ethical, administrative and even

criminal implications. I am sure that the Minister is fully aware of the careful balancing of rights and protections for all concerned that has to occur. However, considering some of the comments that the Minister made in her second-reading speech, I question whether she fully appreciates the extent of the checks and balances that we need to put in place.

The essence of this Bill is that, in the future, any person considered for employment in any capacity within the Department of Families, Youth and Community Care will be subject to a search that will potentially provide information on any criminal history background. The Bill allows for the provision of information that goes beyond convictions or even charges being laid. Pursuant to proposed section 26, the Commissioner of Police will disclose the existence of any investigations into serious offences committed by the applicant.

It is important to realise that this Bill covers convictions, sentences where no convictions were recorded, charges that were either dropped or where the person was found not guilty, and even investigations—and I emphasise investigations. The fact that information can be disclosed about investigations where no charges have been laid is a major extension of the law. It is a matter that warrants very careful scrutiny to ensure that innocent persons are not subject to unfair treatment. In fact, when introducing the Bill the Minister acknowledged that potential exists for the disclosure of information that could be "potentially erroneous".

I also suggest that the provision of possibly misleading information could not only result in a person unfairly failing to gain employment but, if the information is misused, could also ruin a person's reputation. In fairness, it should be mentioned that if a person is subject to an investigation, that does not have to be disclosed in various circumstances—most importantly, under clause 26, if the investigation is unlikely to lead to a person being charged with a serious offence.

While that protection is reassuring, as the Minister and her advisers would recognise it does not result in any iron-clad guarantees that inappropriate, unfair or erroneous information may not be disclosed. I accept that the protection of the vulnerable is the most important consideration in this equation, but there is a consequent need to ensure that potentially erroneous information is handled correctly and in a strictly confidential manner. I emphasise that, because it is particularly important.

I wish to pursue briefly two matters in this area. Firstly, in her second-reading speech the Minister claimed that the powers that this Bill proposes are the same as those already available to check criminal histories of teachers and some others. I refer to the Minister's statement indicating that it is not quite the same. In fact, there are at least two major differences. I will focus on those differences and spell out their seriousness, because it is important that the public realises what those differences are. Even though one might support this legislation, one has to be aware of these very serious differences. In doing that I will not only demonstrate the significant path that this Bill is taking us down, but I will also indicate to the House how the provisions of the legislation could, in fact, be made more acceptable.

As I have already indicated, the legislation is required to weed out paedophiles and sexual offenders should they apply for jobs in the department. The Minister indicates that the powers being proposed by this Bill are already available in relation to checking the criminal histories of workers under the Education (Teacher Registration) Act, the public transport Act and also in the gaming/casino control area. In this regard, honourable members should be aware of the practical implications of the Bill. Firstly, as I have indicated, it winds back the Criminal Law (Rehabilitation of Offenders Act) 1986, in that offences that would normally not be disclosed by the operation of that Act will now be reported to and acted upon by the Minister's director-general. That in itself is a significant legislative action.

However, the Bill goes further in that it requires police to provide information on investigations in addition to charges and convictions covered by other legislation that I mentioned a few moments ago. It is a little misleading for the Minister to claim in one breath that the powers are already available under those other pieces of legislation and then in the next breath to concede that "there are ... two things contained in this Bill which are not contained elsewhere in Queensland's statute book". That is right. The "two things" are momentous. Therefore, we need to be aware of them.

It can be argued that these amendments undermine a basic principle of the system of justice that is paramount in our society, namely, the assumption of innocence until proven guilty. Furthermore, the Bill clearly breaches the doctrine of the separation of powers. In relation to people applying for jobs, the fact that there will be reporting under this Bill will mean that it will no longer be the courts that decide guilt or innocence. Even if a person is proven innocent in the courts, in the eyes of the director-general that person may still be considered unsuitable—or perhaps some would say "guilty"—for a job within the department. This also conflicts fundamentally with one of the great principles underlying the system of justice and the system of government on which our society is based. One wonders how this legislation would have gone down many centuries ago when people were fighting for the separation of powers and for a person to be considered innocent until proven guilty in an independent court of law. How times and society's attitudes to these matters have changed.

If the Minister is saying in her second-reading speech that a number of people are getting off in the courts because of the age of children giving evidence and because of the way in which evidence is being tendered, then the references that I made back in 1997 to the Queensland Law Reform Commission in relation to these issues, which are now under consideration by the commission, are timely and need to be pursued. I look forward to the report and recommendations of the Queensland Law Reform Commission. It is looking not only at the issue of evidence but also at the recommendations of the Sturgess report. It is important that this be looked at by an independent body such as the Queensland Law Reform Commission, which can then make an independent assessment of what is needed in our courts in respect of the important area of evidence from children—the way in which that evidence is presented, the pressures on children and the need to ensure that people before the courts also get a fair hearing. Audiovisual technology can now be used to assist the courts in this regard. I predict that significant changes will be made. However, we will have to wait for the report of the Queensland Law Reform Commission, which I believe is the appropriate body to carry out this thorough investigation, which has to be undertaken sensitively and carefully. I trust that the commission will resolve these issues soon so that any legislative changes can be considered by the House.

Another issue that has been conveniently blurred in the discussion of this Bill is the extension of the powers of the director-general, which are significant. I predict that there will be all sorts of problems down the track whereby people who are subject to investigations and who have not been proceeded against in court will claim that they are being unjustly discriminated against. We are granting this extension of power for the benefit of children and those with disabilities, and society will have to live with that. The Minister tells us that under this legislation the risk is reduced in respect of repeat offending involving paedophilia and in respect of difficulties arising in gaining a successful prosecution because of lack of evidence. This should mean that children are better protected from a departmental employee being involved in this type of activity, including sexual offences—and I would think in particular because of sexual offences. That may be so. Nevertheless, the Minister is faced with an apparent contradiction between a fundamental assumption on which her department operates and these proposals for unilateral and virtually unreviewable actions by the director-general of the department.

Secondly, I note in the legislation that the definition of "criminal history" covers not only convictions but also, importantly, charges for every offence in Queensland, interstate and overseas. It reads—

> "(a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this definition; and
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> (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this definition."

Clearly, if overseas or interstate offences are involved, in many instances it will be up to the individual to supply that information, as I am sure that the Commissioner of Police would not have access to that information in all cases. I accept that the commissioner can check with Interpol and a whole range of other organisations. However, there is no guarantee that a lot of this information will not slip through once people are outside the jurisdiction of the State of Queensland and even if, within the State of Queensland, the Police Service is undertaking investigations of which the commissioner may not be aware. I presume that the commissioner will appoint a senior officer to liaise with the department in relation to these matters. For example, in one part of this vast State investigations might be in the process of being undertaken in relation to a matter involving a person who is making an application. That might still not come to light even though the investigations are well advanced and involve a serious matter. There are concerns. This is another reason why I believe we need to be imposing the onus and duty on those people making applications for jobs.

The duty imposed on the Commissioner of Police is to comply with the request from the chief executive of the Department of Families, Youth and Community Care. However, it applies to information in the commissioner's possession or to which the commissioner has access. I have already outlined instances where that may not be the situation. What is of greater concern and what constitutes the major shortcoming in the legislation is the lack of requirements for due process in the handling of this information when it comes to the director-general's review of a decision stemming from its use. Also crying out for an answer is the question as to why information relating to mental health issues is not required to be supplied but only that relating to criminal histories. For example, someone with a mental health history could make an application. In the absence of a legislative basis for the submission of such information, there is no way that such relevant medical advice could be obtained. I think it is fair to question the Minister as to why only alleged criminal acts—I stress "alleged"—and not mental health conditions are covered by this legislation. Mental health issues can often be just as serious as criminal histories when it comes to the department's dealings with people. I look forward to the Minister giving an indication of why that was not covered and what consideration was given to it. Some mental health conditions could prove just as serious as criminal acts.

I mentioned the need for natural justice, which is a glaring omission from this Bill. I accept that there may be some difficulties with that. We have a selection panel. Of course, the Minister will no doubt argue that that is separate from the director-general. Of course, the director-general has the final say. We know that the director-general is responsible for all staff within the department. One could argue that the director-general, because of that responsibility, must have the final say. Nevertheless, people will be interviewed by selection panels and some may feel that they have been denied natural justice by them. No appeal mechanism has been put in place within this legislation. I am not sure whether that has been considered. One of the issues I will mention in detail later is that, according to the Explanatory Notes, there was no public consultation on this issue before the legislation was drawn up. I take it that this is something that the department did not consider worthy of inclusion. I would like the Minister to explain the reasoning behind this, because the consideration that was given to this matter should be put on the record. I know this will be an issue that will crop up in the future. People will feel that they have not been afforded natural justice. They will argue that the selection panel is part of the departmental process under the control of the director-general; that the director-general has had some say; that it is Caesar appealing to Caesar. We need to clear up that issue and get something on the record in relation to it so that independent and fair-minded people can see what the situation is.

The Minister in her second-reading speech made much of the fact that the Bill contains what the Minister calls "a whole set of safeguards to ensure that powers contained within this Bill do not impact unfairly on individuals". I suggest that that may not be the case. We will have to wait and see. To say it in those terms without including some of the other checks and balances shows that the Minister does not really understand what checks and balances we need to apply in this regard. I do not think that she can make the assertion that it is contained within the legislation.

Of course, there are other matters that one must take into account, which is where the Minister has trouble, namely those matters that members on this side of the Chamber are supporting. All of us know how feared the department is in the community. Every electorate office has tales to tell in this regard. Although the department is going to be given more significant powers in this respect, complementary powers are not being given to the Children's Commissioner. Perhaps a way to overcome this is to give some of the accountability for the department to the Children's Commissioner.

I mentioned before that the Minister was creating some red herrings by referring to the legislation that covers casino workers, teachers and taxi drivers. I think this legislation goes further than that and has much wider provisions. This Bill does allow for the disclosure of matters that are under investigation or even those that may not lead to charges being laid as well as those that do not lead to convictions. Clearly this has to be understood by all.

It is clearly set out within the Bill that the duty imposed on the Commissioner of the Police Service to comply with a request from the chief executive applies to information only in the commissioner's possession or to which the commissioner has access, but the commissioner has to be reasonably satisfied that giving the information will not prejudice charges being laid. At the same time, if the commissioner believes it is relevant, then the commissioner has to supply it to the department. For an investigation that has been completed and the investigation has not led, and the commissioner is reasonably satisfied it is unlikely to lead, to a reasonable suspicion that the person has committed a serious offence, then it is not necessary to put that forward. On the contrary, if the Commissioner of Police believes that it might do so, then he is required to supply that relevant information.

Another matter that I just want to refer to is one that has raised some concern within the community—and we need to give some careful consideration to it—is the wide term "engaged by the department" used in the legislation. I find it difficult to fathom that work experience students from high schools and universities will be caught up in the legislation. The Minister no doubt will indicate the reasons for this in due course, and I look forward to hearing them. Nevertheless, it is going to mean that people who are volunteering for a little work experience are going to be picked up by this legislation.

I read carefully the reasons advanced by the Minister for such a broad definition in her letter to the Scrutiny of Legislation Committee. The Minister said—

> "Each of the persons included within the proposed section 18 definition of `engaged by the department' is likely to work within, or on occasion have access to, a Departmental office. Information of a confidential nature is contained on files located within such offices. Many area offices are quite small and there is little or no physical delineation between sections of the office where officers may be working on child protection matters, disability matters, or other more administrative operations. A person with an undetected criminal background could potentially gain access, whether as part of their job or by unauthorised prying, to personal information about vulnerable clients of the Department. Such information could include the names and address of the clients and other information about their day to day lives."

This is only part of the response. The Minister went on to deal with the issues of secondments and the possible misuse of information inappropriately obtained. The Minister's reasons are compelling up to a

point. However, as I understand it, in all the problems that have arisen in the past with persons abusing trust and sexually preying on clients of the department, they have been carried out by staff with physical access to departmental clients. I am not saying that all departmental staff—even if they have no contact with juveniles or people with a disability—should not be subject to rigorous criminal history searches. However, I question whether the very width of the legislation is potential for injustice. I have required a more targeted approach to which persons it would apply.

As I said, I find it a bit over the top that a work experience student or a volunteer who has no access to vulnerable clients or files should be subject to this sort of intrusion. I suggest to the Minister that perhaps it would have been fairer to have provided that staff without physical access to clients be subject to one level of criminal history checks and those with access be subject to the highest level of checks. This could have applied both at the appointment stage and the stage of secondment and transfer.

The reason care has been shown is that not only are staff subject to criminal history searches, but they also have positive obligations imposed on them to disclose information, with the Bill penalising disclosures that are "false, misleading or incomplete in a material particular". If, for example, a person fails to disclose that they have pleaded guilty and did not have a conviction recorded for whatever reason as an impressionable 18 year old, then they could have the full weight of the law come down on their heads under this legislation. I fail to see the logical justice in that. I also fail to see what harm such a person could pose to anybody in the community, including a client of the department.

A key provision in the Bill is proposed section 31, which imposes on the department a requirement to establish guidelines for use of information gained or disclosed. In addition, the Bill provides that information gained or disclosed can be used only to determine a person's suitability for employment. An applicant is to be given the opportunity to respond to information provided by the police. The Minister has publicly disclosed the draft guidelines, and it is reassuring to see that the criminal history checks with the police will be limited to the preferred applicant or applicants. The guidelines also differentiate between the type of offences and the type of work that an applicant will be performing.

There is an attempt to differentiate between the seriousness of the record and the risk of harm to clients. Nevertheless, under the guidelines, it is clear that copies of all employment decisions are to be forwarded to the department's workplace relations section where they, according to the draft guidelines, "will keep a confidential central database on all decisions so as to guide future decisions made and promote departmental consistency." Extreme care will need to be taken to ensure that information of this very sensitive nature is not disclosed or misused.

The risk that a person's reputation could be damaged or career destroyed is all too apparent. I note the Scrutiny of Legislation Committee queried why the confidentiality requirement is limited to only present and former public servants. The Minister's reply to the committee was correct so far as it went, but I would suggest that the Bill should have been drafted to deal with any potential problems that may arise. In the scheme of things it is highly likely that, as time goes by, sensitive information will be disclosed to non-departmental staff either innocently or deliberately. For whatever reason, and no matter with what intention, I think we should have a provision that picks up such persons and imposes on them a confidentiality obligation. I think the focus of the Bill should have been not so much on the character of the person who has obtained access to the confidential information but on the fact that such information, once obtained, must be kept confidential. In her reply, I would ask the Minister to give further indication as to whether that has been considered. If not, perhaps it is an issue that needs to be considered in an amendment.

As to confidentiality—members are well aware that in the past the Criminal Justice Commission has leaked like a sieve. In spite of all the formal and procedural safeguards under which it operates, it has become one of the biggest leaks in town. What assurances do we have that that will not occur with the highly personal material that is referred to in this Bill? That potential problem has been referred to by the Scrutiny of Legislation Committee. When going through the Bill, one cannot help but pick up that aspect. A high profile person may apply for a particular job, but something from that person's history may crop up, such as a conviction or a police record of an investigation that was carried out that did not lead to a conviction. That matter would become an issue that is quite sensitive indeed.

Proposed section 30 spells out that a public servant is not to disclose information that comes to their attention. It would appear that such information cannot be given to the Minister or the Minister's staff. However, if it does accidentally happen to be disclosed, we then face other problems. I ask the Minister to clarify the situation in that regard, because it would be intolerable if a public servant were able to disclose that information to the Minister or a member of the Minister's staff. I do not believe that is permitted, but I would like it clarified. A public servant may give that information to somebody else and we want to ensure that those people are bound by confidentiality provisions.

The penalty for disclosure is 100 penalty units—$7,500—or two years' jail. During her second-reading speech, the Minister had a crack at me because I raised some of those issues during a radio interview. The Minister has addressed some of the issues since then. To be fair, some of the issues still exist and the Minister will have to answer them. The Scrutiny of Legislation Committee has raised them and I will raise them. Of course, they will not be resolved satisfactorily here, although there is no doubt that we will be proceeding with the legislation. They are relevant issues. The Minister is very touchy on some of these matters. It is clear from details about these matters that, in some cases, the homework has not been done. After reading through the Bill quickly, it was obvious what the situation would be. I would have thought some of those issues would have been covered in the Minister's second-reading speech.

I turn now to the issues raised by the Scrutiny of Legislation Committee. If it were to become known that a person had been dismissed by or refused employment with the department, that person will have long-term problems obtaining jobs in the wider community—even though a conviction may not have been recorded. We have to recognise that. If someone does not get a position because of information received by the department, the mere fact that some type of information was obtained by the department will produce a suspicion that that person fell within the broader ambit of some of the areas now taken into account by the department when considering people for jobs. Even if a person has not been convicted but the Police Commissioner sees fit to forward information to the department and if that is the basis of a person not getting a job, that can have quite an horrific impact on a person.

I refer to the section of Alert Digest No. 4 which covers that issue—

> "The potential for the bill's provisions to impact adversely upon individuals is self-evident, not only in respect of the privacy of the persons concerned but in its actual or potential effect on their employment prospects in the department, and quite possibly in the wider employment market."

I think we have to be aware of that last part. The report continues—

> "For example, a person dismissed from his or her position in the department because of information obtained under the bill might find that dismissal in itself to be an impediment to re-employment outside the department."

Of course, there is the issue of false allegations leading to charges. I am sure we are all aware of that. Unfortunately, that has happened in this State. We have seen people's lives destroyed because of it. Equally unfortunately, there is no doubt that we will see more of it in the future. A person who is allegedly involved in child molestation is treated by the community as a pariah. That is fair enough, unless it is a person about whom false allegations have been made. We have to be very careful that in going down this track we ensure that natural justice is preserved.

I refer to the clause that details to whom the legislation applies. The legislation states that it applies to Public Service employees in the department, an honorary officer, an agent or a person working in the department as a volunteer or as a student on work experience. I presume it relates to the department and not to foster carers, who are covered under section 143 of the Child Protection Act. I refer particularly to the definition of "agent". I ask the Minister to clear that up. The term "agent" covers consultancies, but the limitations and parameters of the definition are not clear, even though the Minister indicated in her second-reading speech that they are. The term is not defined in the legislation. I know that it is covered under section 9 of the legislation. An amendment to the Child Protection Act amended this Family Services legislation. An agent means an agent under a contract entered into under section 9 of the Child Protection Act. Section 9 refers to the Family Services Act. Under the heading "Engagement of agents", section 9 of the Family Services Act states 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 that the chief executive thinks fit with a view to those persons acting as the chief executive's agent giving effect to that Act or any other Act.

Of course, under the Acts Interpretation Act, which is also relevant to this, "person" includes an individual and a corporation. The term is still not clear, because of the range of people with which the department deals. The department deals not only with consultancies. The Minister need turn only to the annual report to be aware of the many community organisations with which the department deals. I would like the Minister to give some advice as to whether that provision picks up those community organisations. Has the Minister received Crown Law advice on that aspect? If so, would she table it so that the Chamber can be perfectly clear in relation to it. The provision could extend to that degree, because of the various functions that are performed by others on behalf of the department and on behalf of the director-general. I do not think that is stretching the imagination too far. There are hundreds of organisations in the community that perform those functions. Of course, a person includes a corporation. Most of these organisations are incorporated. The Minister needs to clarify how far that provision goes in relation to community groups, because they receive Government funding and do valuable work within the community, many of them directly on behalf of the Government. They sign service agreements with the department and/or the Government to provide specific services in a range

of fields. The question is whether those services constitute contractual services for the department or Government and thereby create an agency relationship. I think that needs to be cleared up.

I look forward to the tabling of legal advice. While the Minister may indicate to the Chamber one way or the other, I would like to see the legal advice provided by Crown Law so that we can talk about this with certainty. The community at large should be certain that Crown Law advice has been sought and obtained and that it clarifies the situation. There is some unease in the community about whether these provisions extend to community organisations. Even though various people have given indications to me about it, I am far from convinced of the exact situation.

The Bill states that the legislation relates to persons engaged by the department—that is, a Public Service employee in the department, an honorary officer, an agent, or a person working in the department as a volunteer or as a student on work experience. It does not appear to cover those who are employed by or who act in a voluntary capacity in community agencies, as distinct from the community agency itself. That is another point that needs clarification. If the legislation does relate to anyone in community agencies, does it relate to any of those volunteer groups that are engaged by them? Government funding is disbursed by the department to community agencies, who employ a large number of workers.

I will outline what I think is a fundamental flaw in the legislation—that is, the onus on convicted offenders to disclose their criminal history. The legislation states quite clearly that convicted persons have to indicate their criminal history in their application. Failure to do so carries a fine of around $1,500—and that is it. That is not much of a penalty on someone who has failed to clearly spell out their criminal history in their application. It does not put the onus on a child molester. Of course, one may have to go to court to resolve those issues, and that is fair enough. There might be people who innocently leave information out of their applications. It would then be a matter of the director-general deciding whether to take any action.

I think we need to look at this from the point of view of child molesters—those who are looking to get around the law. A penalty of $1,500 is not going to worry those people. It will not be of any concern whatsoever. I think there needs to be a real onus on these sorts of people to disclose their criminal histories, because these predators—child predators, child molesters and sexual offenders—are surely the types of people we are trying to keep from making applications and obtaining employment within the department. That is the area of real concern.

It is nonsense to say that this information will be picked up by the department or by the Police Service, because it may not be. I believe there needs to be a severe up-front penalty. We need to make it very clear that the onus is on the people who apply for employment with the department. There needs to be a very severe penalty for those paedophiles and child molesters who do apply and try to get through the net, because there will be some. As I say, $1,500 is hardly going to stop them from making that application.

There needs to be quite a severe maximum term of imprisonment whereby action can be taken in relation to these types of people. Surely these sorts of people should be banned from gaining employment with the department. I thought something like that may have been included in the legislation—putting the onus back on the convicted offender, because that is surely where it needs to be. There has been some talk in recent times—my colleagues have been discussing it—about the Labour Government in the United Kingdom going down this track in relation to this matter.

As I read the provisions of the legislation, if a public servant leaked confidential information on one of these convicted sexual offenders he or she would be liable for a jail term of a maximum of two years or a fine of $7,500. However, the person seeking the job who does not disclose their criminal history in their application—who is trying to get around the department to get the job—faces a fine of only $1,500. I do not know that that is justice. I think there need to be changes in that area. There needs to be a screening process. An onus should be put on the sorts of people we are trying to keep from obtaining jobs in the department.

The Minister is now talking about going much further with the legislation covering the community. I understand that the Minister will have some consultations in that regard. That is fine, but the amendments to this particular piece of legislation do not go that far. I have outlined some concerns about the Bill. It would be true to say that a reasonable person would have a large number of questions in relation to it. I am sure that the Minister would be the first to agree that in a Bill aimed at giving meaningful protection to the most vulnerable of our community a difficult balancing of interests has to take place.

In the past few years we have seen far too many horrific cases of persons misusing power to abuse vulnerable people to not draw legislation in a way which gives the benefit of the doubt to those at risk of sexual offences or physical abuse rather than departmental job applicants. The risk posed by paedophiles is just too great. We must arm the department with power to weed out these predators before they do harm to those in need of protection. This does not mean that we should turn a blind eye to a problem with the Bill and potential injustices.

We must maintain an ongoing capacity to deal with paedophiles. There must be public support for tough, proactive laws. That support will dissipate if the laws are drafted too broadly or applied too indiscriminately and innocent people are harmed. It is incumbent upon the Minister and her department to administer these powers in an appropriate way in order to maintain ongoing public support for tough but fair laws. It is necessary for the Minister and her director-general to be vigilant in monitoring these powers and administrative practices to ensure that the duty of confidentiality is maintained and that the innocent slip-ups are not the subject of overreaction. I think that is particularly important.

In summary, the Opposition supports the Bill. Ample reasons, produced by numerous inquiries and court cases, can be found for the introduction of this sort of legislation. But it is a great disappointment that this Bill has been allowed to lay on the table for some seven months. It was introduced on 24 March. It is now November.

Of course, it is the Government that decides the priority of legislation. The Government decides the order in which these Bills come before the Chamber. A piece of legislation dealing with interactive gambling was introduced and passed very smartly. I note that the Premier introduces numerous pieces of legislation which he gets through after the mandatory waiting period of 13 days. Quite a number of Ministers do it. I could get out the list, if honourable members would like. I notice that Ministers with sugar Bills do it, too. We have had a whole range of legislation come and go, but this Bill has gone further down the list. I am pleased to see that it has finally made the grade today—seven months later.

It is of concern that there has been no consultation in relation to the legislation. Clearly, the Minister could have gone out and consulted. I think some of the issues raised could have been resolved had adequate consultation taken place in the first instance, instead of bringing the Bill in, letting it sit on the table for seven months and then trying to make out that something is other than what it is.

I thank the Minister's departmental officers for the briefing which was given to me and other members. However, it is disappointing that even though extra sitting days have been set aside, members spent a whole day debating the interactive gambling legislation and a whole range of other pieces of legislation, yet this Bill has been left to wither on the vine. However, at long last—and before Christmas—this legislation has been brought on for debate. I know that people are going to watch this legislation very carefully. I look forward to the monitoring of it. The Minister has indicated that there will be other legislation forthcoming in relation to volunteer and community organisations that deal broadly with young people.