



Speech by

LINDA LAVARCH

STATE MEMBER FOR KURWONGBAH

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FAMILY SERVICES AMENDMENT BILL

Mrs LAVARCH (Kurwongbah—ALP) (4.40 p.m.) This Bill amends the Family Services Act 1987 in relation to criminal history checks applicable to employees and persons being considered for employment in any capacity within the Department of Families, Youth and Community Care. Under the existing legislation, criminal history checks are mandatory for all persons being considered for employment in any capacity within the department. It is also the existing law that the protection normally afforded by the Criminal Law (Rehabilitation of Offenders) Act of 1986 in respect of expired convictions are expressly excluded for applicants for employment in the Department of Families, Youth and Community Care. Whilst it would be expected that these already powerful criminal check provisions would provide protection for the clients of the department, it is sadly found that this has not been the case.

As the Minister pointed out in her second-reading speech, her department can only be provided with information about convictions. Obtaining information about charges and investigations is still outside the authority of the existing legislation. The Bill will remedy this, as it provides the police with power to provide information about a person's criminal history, including charges, as well as investigations against the departmental staff member or prospective employee.

Of course, there is nothing new in the police having this power. As other speakers have pointed out, and as was pointed out by the Minister in her second-reading speech, this same power exists in relation to other employee groups, including teachers, taxi drivers and casino staff. These powers are also consistent with the Child Protection Act and will bring into line equal scrutiny of departmental staff, as well as prospective carers of the children for whom the department has responsibility.

I must also point out that the House recently passed another piece of legislation which contained similar criminal history checks. I refer to the Road Transport Reform Bill which provided for criminal checks of crossing supervisors—the lollipop ladies and men who safely take our children across the road when they are going to and from school in the morning and afternoon.

This Bill reflects contemporary community expectations where the protection of children is concerned. It has been by bitter experience that we have learned that there are some individuals who, for perverse and sinister reasons, seek to have close contact with children. It is as a result of inquiries and commissions such as the Wood royal commission that we have learned of the traits of paedophiles. The member for Burleigh, who has just spoken in this debate, mentioned some of these traits. I, too, would like to mention them in my contribution today.

I have gained a lot of this information from the excellent legislation note prepared by Kelly-Anne Collins from the Queensland Parliamentary Library. I will now quote the relevant section of the report of the Wood royal commission into the New South Wales Police Service which are applicable to this debate. In his report, Justice Wood stated—

"It can be a trait of a paedophile that he seeks and attains positions where he can be in contact with or have influence over children. Also sad, but true, is the fact that the paedophile may well be extremely plausible, devious in their exploitation of children and capable of gulling those caring for them and of covering up his activities."

Adding to this, Justice Wood also comments—

"Once a person engages in an act of paedophilia there is a great likelihood that he will re-offend, whether with the same or another young person."

The probability of recidivism is accordingly an important factor in the balancing exercise that underlies a fair and responsible approach to the problem. What we have also learned from other inquiries and from criminal cases is that convictions in respect of child sex offence cases are often difficult to secure. Often it is subsequently found that there has been a history of offences being committed over an offender's lifetime. Just because a conviction has not been secured does not necessarily mean that the offence has not been committed.

The Wood royal commission was replete with evidence to support this view. For example, witness P7, a clerk employed by the Department of Community Services in New South Wales to handle sensitive child protection files, testified that he had been peddling obscene photographs of boys for years and had used confidential information to prey sexually on a former ward. His victim complained but the allegations did not lead to charges or convictions. Because nothing was proved, P7 had the right to require that the allegations be removed from his personnel file.

A later police prosecution based on 6,000 obscene photographs—photographs seized from his home—failed, too, because P7 had a right not to be prosecuted on evidence obtained by a technically flawed warrant. In that case, the police did not tell the Department of Community Services of what they found.

Moira Rayner, in an article entitled "Children's Rights Must Have Priority", uses this example to argue that our legal system values the word of an adult more than the complaint of a child. She uses the example of witness P7 to drive home this point. She says—

"The righteous outrage is misdirected. P7 kept his job because he had rights that we value more than children's rights. His victim complained but his word was not good enough in law to prove P7's misconduct. The police didn't tell the Department of Community Services what they found, no doubt because P7 had the right to protect his reputation. P7 couldn't be sacked unless he confessed. Even now, he cannot be prosecuted on his Royal Commission evidence because he has a right not to incriminate himself."

I hope the member for Indooroopilly is taking note. She continues—

"Putting adult needs and interests before children's is the essence of child abuse. A paedophile's emotional needs which are satisfied by sexual relationships with children are so powerful that they override both the universal ethical obligation to use adult power over children for children's benefit and conventional taboos. Paedophilia is not just a sickness, nor a paedophile's powerless reaction to their own childhood abuse, though many convicted paedophiles—a fraction of the most common, extreme offenders—seek so to excuse themselves. Most abused children do not grow up to abuse children."

In the 1989 Burdekin report it was recorded that paedophiles select their partners from among children who feel unloved and who are emotionally needy, or who are homeless, detached from or deeply unhappy in their families, and needing "father figures". Paedophiles graze on children who are not only already victims of abuse and neglect, but an astonishing proportion of whom are State wards who are entitled to our special protection. The best is a family environment of love and understanding.

The provisions of this Bill are a powerful protection measure for children and for persons with an intellectual disability. It goes without saying that in strengthening the powers of the chief executive of the department to make inquiries there may be an adverse impact upon some individuals. As legislators, we have to strike the balance between doing good by protecting our children and the potential damage we may do to some individuals.

In saying that, I note that there are a number of safeguards in this legislation. For example, information about investigations cannot be given by the Commissioner of the Queensland Police Service if he or she considers that the investigation is unlikely to lead to a reasonable suspicion that the person committed the offence. We have safeguards which include, for example, that the chief executive may only use the information obtained under the provisions of the Bill to assess the person's suitability for engagement or continued employment by the department. The person must be given the information obtained from the Commissioner of Police and be given an opportunity to respond to that information to the chief executive officer.

The Bill also contains confidentiality provisions, accompanied by offences and high penalties for breach. One of the most notable and positive aspects of this Bill is that it also provides for guidelines for the use of information about criminal history checks. I commend the Minister for tabling these guidelines in the Parliament at the time of the introduction of this Bill.

These draft guidelines set out general principles to be followed when assessing prospective employees and continuing employees with a criminal history. Although certain offences would automatically preclude a person from a job or placement, the existence of other offences is only an

indicator. In meeting the duty of care, the department will give overriding consideration to the safety and wellbeing of children and clients with an intellectual disability.

Children and people with an intellectual disability are our most vulnerable members of society and deserve our full protection. I know from talking to those who work in the child-care industry and talking to teachers and professionals who work with children or who work with people with an intellectual disability that they have no qualms about having criminal history checks made. The only complaint I have heard is the length of time that it takes for that criminal history check to come through from the police. I understand that the police advise that, for those seeking the checks, it will take about 28 days.

As a member of my local Safety House Committee, I also know that the committee members and prospective safety house providers have no hesitation in signing authorities to have criminal history checks carried out. We all have a duty to do everything in our power to protect our children and protect people with an intellectual disability. I will fulfil that duty by supporting this Bill before the House today and I trust that all honourable members will do likewise.
