Speech by

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MEMBER FOR GLADSTONE

Hansard 10 March 1999

CHILD PROTECTION BILL

Mrs LIZ CUNNINGHAM (Gladstone—IND) (4.40 p.m.): As has been said by other members, this Child Protection Bill is a most important document for children in our State. I would like to acknowledge not only this Minister for tabling the document but also the previous Minister for Family Services, Naomi Wilson, because I know that she was greatly committed to the intent of this Bill—albeit her document may have been different. But I know that she worked fairly hard to try to get additional protection for children in our State.

The difficulty that I have with child protection matters and family services is that, in my electorate, I usually only ever hear about incidents in which, in the view of the person visiting my office, the department has failed to meet its responsibilities. I do not know how many members have people coming into their electorate offices and talking about all the great things that the Department of Families does. So it is very easy for me to read this document from a relatively jaundiced point of view because of that experience. I have to say to the Minister that I have not had anyone come in and say what brilliant people her officers are, but I have had many people come into my office and say how they felt that the officers had abused their power or, on the part of other family members, particularly grandparents and non-custodial parents, how they felt that the department had overstepped its powers and responsibilities. This is one sector of government that I believe is very, very difficult. I have said to the Minister on another occasion that I do not envy her job one bit, nor do I envy the departmental officers, either, because it is such a difficult line to walk.

It is reassuring that the purpose of this Bill has been kept very simple. It is to provide for the protection of children. I am sure that all members in this Chamber today would agree wholeheartedly with that aim. We would have different interpretations of aspects of the Bill and the ways in which protection can be achieved, but we would all agree that children deserve as much protection and as much safety as we can possibly offer.

I also commend clause 5(c)—Principles for administration of Act. That is a reaffirmation that "families have the primary responsibility for upbringing, protection and development of their children." There was a period—and it was not that long ago—when responsible mothers and fathers felt very vulnerable if they were out in public and their child misbehaved and their recourse in the situation was to give the child a smack—and I mean a smack as opposed to abusing them. They went through a period when they genuinely felt vulnerable if they did that, because the word had been spread that smacking one's child was tantamount to abuse and that court action or legal action could be taken against them. I believe that there are thousands and thousands of responsible parents in Queensland who administer correction to their children in a scale. It might start with deprivation of certain activities or articles that the child would receive normally as a reward, and they are withheld, and it escalates to the point at which the child is given a smack. In common with many members, I have had children, and sometimes that is the only action to which children respond.

I also commend clause 5(d)—Principles for administration of Act, which states that—

"... the preferred way of ensuring a child's wellbeing is through the support of the child's family."

Nothing could be truer. The best nurturing, the best care and the best developmental controls and guidelines are provided by a child's own family. It is in keeping with their culture, it is in keeping with their needs and it is in keeping with all that they need emotionally, physically and spiritually.

We are here today discussing a Bill which addresses the situation in which elements (c) and (d) in particular break down; when for some reason—and there are many of them—a family either becomes dysfunctional or develops serious problems in its structure. More and more we are hearing about situations in which abuse occurs, particularly physical and sexual abuse, within a family unit, and the non-offending parent either cannot or will not exercise his or her parental responsibility to stop that abuse occurring. That is very much the point at which the department has to step in and provide some care and protection to the affected children.

I have a query of the Minister about the Basic Concepts on page 18 of the Bill. I acknowledge the advice and the briefing that the Minister and her officers gave me on this and a couple of other questions that I had. I valued the opportunity to talk with the Minister and her officers. I thank the Minister also for the written advice that she provided. I valued that a lot. The Basic Concepts on page 18 define "harm". That is a brave step to take. "Harm" is defined as—

> "... any detrimental effect of a significant nature on the child's physical, psychological or emotional wellbeing."

I just want to clarify in my own mind why two elements were omitted from that definition, that is, why moral or social elements were not included. I also want to clarify who will be responsible for the determination of "significant". The answer that I am expecting is that the courts will determine what "significant" is. With the greatest of respect, judges in courts have found that greater than usual force is acceptable between a husband and a wife, so I have a reduced confidence in the ability of a court, on the basis of community standards,to objectively assess what "significant" is. If it is a subjective assessment, and that assessment can change from judge to judge, then there is a problem with a potential inequity in the decisions that are made from family to family. I would be interested then to ascertain who will define "significant" and what opportunities there might be for an appeal against that assessment by the carers of the children who are involved.

I also wish to comment, in a supportive manner, on the power that has been given to the department to remove a child at immediate risk. This appears on page 23. I have had cases drawn to my attention in my electorate office in which a non-custodial parent has been concerned about the actions of the department in not stepping in and removing a child from what they deemed to be an abusive situation. In another case, a child was returned to a situation of abuse, and that child subsequently died. It is always easy for me; I am not involved, and I am usually making assessments in hindsight. However, I believe that the ability of the department to take a child out of what is assessed as an immediate risk, and for a short time to be taken for a responsible assessment of the whole situation in order to reduce that child's risk, imposes a great responsibility. However, I query what constraints there are on officers—and there are not many of them in the department—who may overstep the mark and what rights parents have to challenge an officer's actions.

I turn now to page 24 and an officer's obligations on taking a child into custody. We have had discussions about this type of issue during debate on another Bill under the previous Government. I refer to terminology such as "as soon as practicable" and that the authorised officer "must ... take reasonable steps to tell at least 1 of the child's parents." I want to clarify with the Minister how that will be monitored—that reasonable steps are taken and that "as soon as practicable" is achieved. An aggrieved parent is obviously going to be dissatisfied if it takes a couple of hours for a parent to be contacted and the actions of the department explained. I do understand the reasons for including non-definitive periods, but I just wonder how that will be monitored to ensure that parents are not disadvantaged, particularly those who are doing the right thing by their children.

On page 25, clause 21 refers to moving a child to a safe place. It deals with a child who is under 12 years of age. The Basic Concepts of the Bill define a "child" as "an individual under 18 years." One of the reasons given to me—and this was not by the Minister's department—was that the child under 12 was the most vulnerable and that the department did not want to give police a power to use against children, especially older ones, who were not at risk of abuse. Under this Bill, children over 12 could also be taken into custody if they were in danger.

I ask the Minister whether that is the reason why she chose 12 in that clause rather than 18, which is the general definition of a child. I also wondered whether, either under this Act or a different Act—for instance the Mental Health Act—there is a special exemption for children who are older than 12 years who, because of a mental disability, do not have the understanding of a more mature child. In bringing the age down the Minister has opened up the spectre of older children, who may be of diminished responsibility, being left in a vulnerable situation.

Page 35 of the Bill talks about hearings in the absence of parents. I had a situation in my electorate where a parent was greatly aggrieved. This was an instance where the parent turned up at court but a representative of the Department of Families, Youth and Community Care was not present.

The court would not proceed until it contacted the department to find out what was going on. As it turned out, the Department of Families, Youth and Community Care in Gladstone had not been notified of a hearing date because the application had been lodged in Brisbane. The information had not been passed on through the system. How will reasonable notice being given to parents be monitored? How will it be monitored that the giving of reasonable notice was not practicable?

I am very mindful of the fact that circumstances surrounding court actions relating to children are emotive. Sometimes there is a situation of conflict where the parents are separated. There could be circumstances where there is abuse by either one or both parents. I wondered how parents would be able to be confident that all attempts will be made to give them notice.

Page 75 of the Bill talks about care services and page 76 talks about the approval of care providers. I want to ask the Minister this: care providers, whether individuals or groups—and I believe the situation applies to both—are given approval and that approval will last for two years before it is renewed. I wonder what mechanisms may be able to be put in place to monitor the situation where, shortly after approval is granted, a licensee commits an offence or performs an action which makes them ineligible to be a care provider. I have spoken to the Minister about this subject on an informal basis. I understand that there is good communication between the police and the department. I wondered if there was any method of having more formal access by the department on a confidential basis to criminal proceedings to ensure non-appropriate care providers do not continue to have a licence because they have somehow slipped through the system. I refer particularly to carers who are guilty of offences that specifically and directly endanger the welfare of the child or children in their care.

On page 97 of the Bill it is stated that authorised officers, on entry, are given the power to photograph. Clause 175 reads as follows—

> "The authorised officer may photograph or film the place, or anyone or anything in or on the place."

There are no constraints. There are no conditions to that power. How will the Minister ensure the privacy of people who are living in these homes? I understand that the primary aim of the Bill is the protection of the child and therefore, perhaps, all the other rules go out the window. I wonder how the Minister will protect the privacy of non-involved people who are in the home. How is the authorised officer accountable for the photographs and the films that are taken? What constraints are on the officer to ensure that the photographs and films are not misused, even to the point of paedophilia? Unfortunately, this could occur.

One of the most controversial elements of this legislation is that of confidentiality with regard to publication. It has been a split issue. We have people who are advocates for the survivors of child abuse who feel that the parents of the child—if they feel it is in the child's best interests to go public—should have that power and that freedom. The Child/Adolescent Family Welfare Association supports the changes in the legislation regarding the non-identification of children in the media.

I believe that everyone in this House understands the reasons for protecting the identity of the children who, through no fault of their own, are abused—particularly those who are sexually abused. Those children have an adult life that they have to achieve and any protection that is given to them, so that they do not grow up with a stigma, is desirable.

I heard the media's response to this proposal—"Trust us. We will do the right thing." I believe history shows that that is not the case. The media does not let someone's privacy stand in the way of a good story. I have discussed this matter with the Minister and she pointed out to me that it does not preclude non-identifying photographs or non-intrusive-type photographs where the story can still be told. I refer to cases such as the "boy in the box". Financial trust could still be established because the story—not the identifying details—could be released. I wondered whether the Minister has received a response from the media in relation to that. There is a difficult balance between protecting the identity of the victim and ensuring that the public understands the real situation.

What is now available to the media, to the community and to the families of victims to enable them to feel—and it is a subjective issue—that this ban on publication does not inadvertently give additional protection to the perpetrator? Most people I speak to do not believe that perpetrators deserve any protection at all. In the past, the perpetrator was protected if it was his or her own child. If the victim was not identified, but the perpetrator was identified with just the rider that he or she had committed an offence against a child—not necessarily identifying the child as being within his or her own family—does the Minister believe that that would maintain the privacy of the victim whilst at the same time giving vent to the community's frustration that perpetrators are being protected unnecessarily? I would be interested to hear the Minister's comment on that issue.

I understand that there is a fine line between protecting the victim and not protecting the perpetrator. The Minister suggested to me that a non-identifying picture of the victim is still admissible in the newspaper. That is not a breach of the provisions of this Bill. I wondered whether that same

guideline could be used in saying that the perpetrator could be identified so long as there was no reference made directly to the identity of the victim. That would answer the community frustration.

As the Minister and many others have said, our children are our most precious thing. I have three children and anyone who hurt any of those children would be subject to my greatest disgust and more. Anything that we can do in this Chamber to give protection to children who are inadvertently the victims of mongrels is a step forward. I know any such action will receive the support and acclaim of the community in general.