Speech by

Mr SANTO SANTORO

MEMBER FOR CLAYFIELD

Hansard 10 November 1999

FAMILY SERVICES AMENDMENT BILL

Mr SANTORO (Clayfield—LP) (5.17 p.m.): No member of this Parliament would disagree with the sentiment underlying this Bill, which is to try to protect children in care and people with intellectual and other disabilities from abuse through criminal activities of staff employed to look after them. Each and every caring person would have been shocked and disturbed by the deeply troubling accounts by many people who have been subjected to sexual and other abuse in institutions over the past few decades. The evidence given at the Forde inquiry and the findings of Mr Justice Stewart from the CJC inquiry into the Basil Stafford Centre only compound the sense of community unease.

There can be no more profound breach of trust in life than one involving vulnerable people, whether they are children, people with intellectual or physical disabilities or the elderly. When that fundamental breach of trust occurs, ordinary people—and that includes 99% of humanity—feel a mixture of anger, helplessness and sorrow. In addition, they want action to help prevent any repetition of such cowardly, base and disgusting behaviour in the future.

This Bill is an attempt to deal with the community's desire to do something positive and practical. From that perspective, I understand what has motivated it, and I say to the Minister, as a fellow citizen anxious to support any measure that will do some good in preventing the abuse of the vulnerable, that I know where she is coming from and I can appreciate how difficult it is to craft legislation to deal with this troubling issue. It is essential, though, that this Parliament carefully scrutinises legislation such as this, which overrides certain civil liberties so that vulnerable people are protected. We must be sure that the legislation achieves its aims effectively and is also a proportionate and reasonable response, and one which in turn does not result in the perpetration of different injustices.

Legislation of the type we are now considering is not of the partisan type. The legislation involves fundamental issues that transcend party politics. The protection of children and vulnerable adults is not a matter that divides us; it unites us. I enter the debate on this Bill in an endeavour to put forward comments designed to help progress good legislation that will actually achieve the object that unites us.

When introducing this Bill, the Minister said that people in the care of the State must not be subject to abuse by staff who are employed to protect them and that the Government has a clear duty of care to ensure that this does not occur. On this point, there is absolutely no disagreement. The Minister also said that the vast majority of the staff of her department are honest and professional people who strive to protect vulnerable clients from harm. I also concur with this assessment.

The Minister did, however, point out that there is a very small number of people who, over the years, whilst in the employ of the Crown, have abused the trust reposed in them. This small minority have, to used the term used by the Minister, engaged in their own gratification at the direct expense of the most vulnerable of the department's clients. This Bill is designed to weed out these individuals and, further, to prevent people who may be inclined in this way from ever being employed by the department. Once again, there would be, I am sure, unanimous support for this objective. However, the question we have to debate is whether this Bill as currently drafted maximises the achievement of this objective or whether it could be improved.

Before I proceed further, I must say that I read with great concern the facts surrounding the

successful prosecution of Raymond John Simpson late last year. He was a former child-care officer who pleaded guilty to 26 child sex offences committed over a 15-year period in the Brighton/Redcliffe area. The very disturbing aspect of the case was that Simpson's role in the Family Services Department was to ensure that youths complied with probation and court orders and was employed to offer support and direction. As a result of this position of trust, he abused one of the youths under his supervision in 1996.

Also of concern was the fact that Simpson worked as a residential care officer at the Basil Stafford Centre, the Bush Children's Home and a local youth club. This predator told his psychiatrist that the boys he abused "were served to me on a platter". The sentencing judge described the offences as being in the worst category of their type, and it is clear that disgusting, despicable sexual predators such as Simpson deliberately seek access to positions of trust so that they can manipulate, abuse and corrupt vulnerable people. These criminals are the lowest of the low and, because of their predatory behaviour and the premeditated nature of their criminal modus operandi, are some of the most dangerous individuals that our society has to deal with. Anything responsible that will help to weed out these criminals has to be tried.

I would like to briefly state that, although I have some concerns with certain elements of the Bill, I applaud any improvement in our laws and administrative practices to detect and deter sexual predators from gaining employment in this critical department. In fact, my concerns relate not so much to penalties or loss of certain civil liberties, but to the risk of innocent persons being harmed by the innocent or wilful disclosure of possibly erroneous information. I would think that it would improve this legislation, for example, to have an up-front deterrence, in other words, to deter people with a history of serious sexual crimes from even applying for employment in the first place.

The honourable member for Indooroopilly, as he has foreshadowed, will deal with a very good initiative in this regard during the Committee stage. I urge the Minister to give careful and positive consideration to his proposal because we on this side of the Chamber would like to see legislation with a proactive edge. I think all of us would like to see a situation in which we can prevent people who want to gain access to vulnerable people for criminal purposes from even approaching the department for a job.

This brings me to the provisions of this Bill. When the Criminal Law (Rehabilitation of Offenders) Act was first developed by the then Minister of Justice, Neville Harper, it was the first of its kind in Australia. It was designed to ensure that those persons who had served their time in jail and had later not committed offences could be given, as far as possible, a "clean slate". It was a further and positive step in the progressive rehabilitation and reintegration of people who had broken the law back into the mainstream. I think that that particular Act reflected the sentiments that have been expressed by the honourable member who has just preceded me. Yet even from the outset it was recognised that this laudable objective was subject to the need of society to protect the vulnerable.

The Act contains in section 9A a list of exceptions to the general rule about sealing of criminal records. One significant exception relates to employees in the Minister's department and any agent of the chief executive of the department, whether under a contract of service or a contract for service. So it has always been accepted that the desire to rehabilitate criminals by the sealing of criminal records takes second place to the protection of vulnerable people who are covered by the Family Services Act. Again, no responsible person could object to that provision.

This Bill goes much further than that. The principle at the heart of this Bill is to move away from the criminal record of people and to compel the Queensland Police Service to provide information on employees and potential employees, including charges laid, the background of charges and even investigations which may or may not result in charges being laid. At the moment, under the Public Service Regulation, criminal history checks are mandatory for all persons being considered for employment within the Minister's department. The exception in section 9A of the Criminal Law (Rehabilitation of Offenders) Act facilitates the provision of a comprehensive criminal history record. However, there is no head of power at the moment for the department to access information on charges or current investigations. This Bill will provide such a head of power.

Unfortunately, as Ian Dearden of the Queensland Council for Civil Liberties pointed out, there is the potential for the powers in this Bill being misused or at least misapplied. Yet one reads with some surprise the statement in the Explanatory Notes circulated that there has been no community consultation, which I know was a point that was elaborated on and stressed by the honourable member for Indooroopilly and about which I would like to add a few more words.

That statement appears on page 3 of the notes and causes me concern. How do the Minister and the Government know that this Bill is desirable and needed if there has been no consultation with the community and with affected persons and groups? It appears that the only consultation has been with Government departments. This is akin to having a conversation in an echo chamber. I would have thought that a Bill which intrudes so significantly on the rights of public servants and members of the community should have been handled in a

different way from this. In particular, I would have thought that the Minister would have had lengthy discussions with Gordon Rennie, the SPSFQ and the other relevant public sector unions.

As this Bill has languished on the Notice Paper since March—another aspect of the progress of this Bill that has been elaborated on extensively by the honourable member for Indooroopilly, and I do agree with his comments—in the charitable mood that I am in this afternoon, I want to say that it is possible that the Minister has since had those discussions. I would be pleased if she could inform us of that in her summing-up.

A reading of the Bill does give rise to the question of whether some elements of it may have been drafted too broadly. For example, the Bill covers persons who are engaged by the department. Yet when honourable members look at whom this includes, many would be surprised to learn that it deals with not only public servants and agents but also honorary officers and even people working or seeking to work in the department as a volunteer or as a student on work experience.

I find it surprising that the whole weight of this Bill will be brought down on high school and university students who may only be working in the records section of the department or learning basic computer skills on a short-term job placement or even a shorter work experience exercise. The way that this Bill has been drafted means that an 18 year old student at a tertiary institution who gets three weeks' work experience can be subjected to the most extensive of criminal history checks imaginable, yet this student may, in the scheme of things, be nowhere near vulnerable people. So my first point is that the type of people caught in the net is very broad.

In fairness, I read the Minister's response to the report of the Scrutiny of Legislation Committee of 28 April, which is set out in Alert Digest No. 6. The Minister's explanation for keeping the term "engaged by the department" very broad was very helpful, but I still would suggest that it would be relatively simple—and good administration as well—to keep far greater scrutiny on internal staff movements. There are always two ways to approach such a matter: by either casting the net as wide as it will go at the beginning or putting in place checks and balances. I understand the Minister's rationale for keeping the net broad, but she has to recognise that administrative problems are bound to arise. I hope that there is appropriate contingency planning in place and that her departmental officers approach this matter with some sensitivity and a sense of proportion.

Secondly, the Bill is not limited to people actually having any dealings with vulnerable people or the potential of dealing with vulnerable people. Some would suggest that, if we want to protect those at risk, there would be some attempt to link its operation to people who have contact with them, or who realistically may have. Yet, as I read it—and the Minister can inform me if I have misinterpreted the Bill—it would cover the tea lady or the cleaner in the department's head office in the city. As I recall, Mr Justice Stewart, in his report on the Basil Stafford Centre, made recommendations on criminal history checks that were specific to persons working in those parts of the department who had access to vulnerable people.

While I appreciate the Minister approaching the issue in a different way, I would suggest to her that perhaps it would have been more appropriate to delineate those parts of the department where there is the potential of a risk posed by staff to vulnerable persons and apply the full weight of this Bill to those persons working in that area, seeking a job in that area or being seconded or transferred to that area. As I just said, the Minister has explained why the net has been cast so broadly, but adopting this approach does have serious administrative ramifications.

The coverage of the Bill is important for two reasons. The first is the requirement for an employee to disclose to the chief executive their complete criminal history, and that includes every charge ever laid against them. Let me be clear: this obligation applies to every charge—not just charges in relation to serious offences but every single offence.

The Bill sets out in great detail all of the particulars that have to be disclosed. If a person omits to disclose every single charge and all of the relevant details in relation to such charges, then they can be prosecuted and fined up to 20 penalty units. One does not have to exercise much thought to come up with instances when a person may not wish to disclose every charge ever laid against them, especially when the charge was dropped or the person found not guilty. Yet if a person, say on work experience in the computer section of the department, who may have been charged with stealing a packet of bubble gum and then had the charge dropped omits to disclose this embarrassing episode to the chief executive, that work experience student in turn can be prosecuted. I fail to see the logic or justice in such a situation.

Secondly, the chief executive is empowered to seek from the Police Commissioner the following information about persons working in or for the department or job applicants: a written report about the person's criminal history; a brief description of the circumstances of a conviction or charge mentioned in the person's criminal history; and information about an investigation relating to the possible commission of a serious offence by the person. In short, the chief executive can obtain from the police almost every bit of

unsubstantiated gossip, innuendo and unproven information imaginable.

It is important to emphasise that the type of information being obtained is not information relating to charges that have been proved. It may not even be information with respect to charges that have been laid. It could, and often will, include information relating to allegations that did not even result in the police laying any charges in the first place. The implications of all of this are contained in the Explanatory Notes circulated by the Minister herself. Page 4 of the notes states—

> "The Bill may breach fundamental legislative principles of the Legislative Standards Act 1992 in that potentially unproven or erroneous allegations or information concerning a person's criminal activities may be provided to the Department and potentially used in a way which is adverse to a person's interests."

The key word in that quote is "erroneous". This Bill will pick up not just unproven allegations but also erroneous ones—possibly allegations motivated by ulterior motives to blacken a person's name.

Of course, the Minister points out that there are protections in the Bill. Firstly, the information obtained can be used only for the purpose of determining a person's suitability for continued or prospective employment by the department. Secondly, the chief executive when assessing the information has to have regard to matters such as when the offence was committed or the charge or allegation made and the nature of the charge, conviction or allegation and its relevance to the proposed duties in question.

Thirdly, the person has to be notified about the information obtained, and that person is given a reasonable opportunity to make representations to the chief executive about the information. Finally, there are requirements about the confidentiality of the information obtained. So there is substance in the Minister's claim that, although this Bill is intrusive, the decision-making processes for all concerned will be transparent and fair, rather than conducted under a veil of secrecy.

I will touch on a few matters about these safeguards. First, it is clear that enormous power is to be given to the chief executive. The chief executive will become, in more ways than one, the judge and jury so far as staff and potential staff are concerned. With all due respect to the Minister, the safeguards inserted in the Bill are flimsy, to say the least, so far as the exercise of the chief executive's powers are concerned. I am not casting any aspersions on the current chief executive of the department or any future one, but I simply point out that this Bill gives to the person holding that position intrusive powers and ones that can be misused, albeit unintentionally.

Who is to say that the chief executive of the day properly weighs up all of the factors that this Bill requires under proposed section 28? When confronted by an unproven allegation, it will be only natural that the chief executive or the member of a selection panel will play it safe. The Minister has said again and again that there is a pressing need to protect the vulnerable, and when a chief executive or a selection panel is confronted with serious unproven allegations, despite what the person may say in their defence, it is only human nature that they will try and play it safe.

The Minister claimed in her speech that the existence of charges or convictions will not automatically prevent employment within her department. However, I would suggest to the Minister that, in the future, people who may have only had a charge laid and then dropped or who may only have been the subject of vicious gossip will have very little chance of gaining employment within her department. So we may have on many occasions in the future people's job prospects harmed or ruined by unproven and sometimes erroneous allegations.

There will be enormous scope for sensitive information to be leaked. In the future, the department will have access to information which could seriously compromise a person's life. It is pleasing that the Bill contains provisions dealing with confidentiality and guidelines for dealing with information, yet when highly sensitive information is around there is always the temptation for people to leak it for whatever motive. The fact that the guidelines outline that the confidential information will be sent to the department's workplace relations section, where there will be a central database, only highlights the potential risks that are posed.

Additionally, the confidentiality provisions of the Bill only extend to present and former departmental staff and persons on selection panels. The Minister's reasons given to the Scrutiny of Legislation Committee for not extending the confidentiality provisions to pick up other persons is technically correct, but I would have thought that it would be better to play it safe and have a more broadly drafted provision. I would suggest that anybody getting their hands on such highly confidential material, by whatever means, should have a positive statutory obligation placed on them to not disclose it to third parties. I ask the Minister to keep this matter under active review.

I said at the outset that I support the objects of this Bill, and I do. When it comes to protecting the vulnerable, it is incumbent on those in authority to do everything possible to protect them, and the State in particular has a very heavy duty of care. Accordingly, I strongly support this legislation, but I do so with my eyes wide open. I have raised those matters in a bipartisan fashion and in the hope that the legislation will be

administered rigorously when required and with justice and sensitivity when appropriate.

I welcome any and every legislative move to help children, vulnerable people and the elderly, even if that entails restricting the civil liberties of others. But we need to be vigilant to avoid creating another group of victims. In fairness, this area involves very difficult balancing acts. It also involves speedy responses. When I originally prepared my speech notes, I was going to conclude my contribution by congratulating the Minister on her speedy response. That was back in March or April. I have watched with disbelief this Bill remain near to the top of the Notice Paper for almost six months now, with the Government giving it no priority at all.

I would have thought that, following the revelations of Raymond John Simpson in November last year, the Minister's colleagues would have ensured that this Parliament could have debated this legislation at the first practical opportunity. Instead, legislation which we are told is critical, needed and overdue has been allowed to gather dust since March. It really is a shocking indictment on the Beattie Government.

No-one would disagree that we need to weed out unsuitable people who prey on the vulnerable in the care of the State. No-one should seriously quibble about arming the department with the necessary powers to make sure that this occurs. If in the process some rights have to be curtailed, then that is a price that must be paid. However, it is essential that the Minister continues to keep this legislation and the practices of her department under very close supervision, lest this House ends up debating incidents of unproven and possibly false claims resulting in innocent job seekers being victimised.

Time expired.
