



Speech by

**Mr S. SANTORO**

**MEMBER FOR CLAYFIELD**

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Hansard 10 March 1999

### CHILD PROTECTION BILL

**Mr SANTORO** (Clayfield—LP) (5.15 p.m.): The primary objective of this Bill is one that every right-minded citizen would totally agree with, that is, to provide a modern legislative vehicle for the protection of children. Unfortunately, it is all too common to read and see reports of children who are the victims of horrific neglect and abuse. To see the photos in the newspapers or on the television of young lives snuffed out by cruel acts of violence or young children who are subjected to often cruel and repeated physical or sexual abuse reinforces the need for proper State intervention.

The role of the State goes beyond simply intervening to prevent abuse and neglect. It is also to provide, either through the State or through private carers, a safe and loving alternative to the family life that children need. The State has an obligation, either directly or indirectly, to provide to deprived and abused young citizens a range of services to assist and promote their physical and emotional recovery, and ensure that their educational needs are met.

The State has an inherent duty of care, and when individual adults fail in their duty of care as parents or carers, the State has a right and a heavy duty to intervene to protect the innocent when they are too young to look after themselves. Sometimes it is necessary to intervene when the families of children are not intentionally maltreating them. The honourable member for Fitzroy has more than adequately covered some of the dilemmas that are involved with that intervention. Through poverty, ignorance or disability, some families cannot cope and it is essential that the State is there to provide the necessary safety net for children.

While I will come to the details of the Bill in a moment, I must say that the interests of children are of the first order and the State must do

everything to assist. That does not mean taking children outside the family unit because, as we all know, by separating children from their families more harm can be done. Separation must be an action of the very last resort, and must be done only when it is clear that the child is being harmed and will continue to be harmed, or that even with targeted assistance the child will continue to suffer from severe neglect. The primary responsibility for raising, educating and caring for children rests with the family. The family is the core unit of our society. Without the family unit our society would quite literally fall apart. It is the growing realisation of the central role of the family that has increasingly changed child protection policies from reactive investigations of real and alleged child abuse to more proactive policies designed to prevent such abuse and help families nurture and protect children in need. There is no doubt that a family support policy achieves a much better level of family cooperation and a better outcome for the children as it leads to sustainable results.

One fact that cannot be denied is that, no matter how well-intentioned the State is, whenever a child is taken from his or her family often the result is that the child is further stigmatised and traumatised. Obviously in some cases there are no realistic or safe alternatives other than active intervention and separation of a child from an abusive family environment, but such action should be a matter of last resort.

In recent times there has also been a growing debate about children's rights and how those rights should not be subordinated to those of the child's parents and family generally. I do not wish to go into this debate except to say that it is entirely illusory to pretend that a child can or should be treated as an adult. A child is not mature enough to be treated as an autonomous

human being who has fully developed concepts about right and wrong, or about concepts that only develop through maturity. Children certainly have inalienable rights as human beings and it is incumbent upon parents to ensure that those rights are respected. It is only when families fail that the State moves in.

It is axiomatic that we should discuss and debate the rights of children, because they have important and fundamental rights. However, the family unit is primarily responsible for the care of children, and it is through the duties and responsibilities held by families that those rights find expression. I certainly hope that we never reach the stage that exists in some parts of Europe and America when immature children are allowed to act as adults. To allow immature children to act and behave as adults when they are still children is a misplaced and socially repellent policy. In this context, I am pleased that the House has an opportunity to debate legislation that will replace the Children's Services Act.

As the Minister said, that legislation is the product of a different age and is no longer an appropriate legislative vehicle to deal with the myriad complex problems and issues that our society is experiencing. It is also clear that we need legislation that is more dynamic, proactive and supportive of the role of the family and also more alert to the prevalence of the many forms of child abuse and exploitation.

The Bill also goes a long way towards fairly balancing the need for the State to be vigilant about child abuse and the need to protect innocent people, both children and adults, from the overuse or abuse of intrusive police powers. Unfortunately, when introducing the Bill, the Minister could not help herself and had to take a few cheap shots at the previous Government. I remind the Minister that when Labor was in power for six years, between 1989 and 1996, it did not act to fundamentally reform this legislation even though it had plenty of chances to do so. Labor did not establish a Children's Commission, and I remind her, too, that her Labor predecessor in this portfolio recommended to her Labor Cabinet colleagues in 1990 that all evidence of child abuse at the John Oxley Youth Detention Centre be shredded.

It was the member for Beaudesert who oversaw the reform of the Children's Services Act, and it was Naomi Wilson who ensured ongoing public consultation. The Minister's Bill is not a totally new reform that she dreamt up but is, as other members have acknowledged, a continuation of the good work carried out by her predecessors over the past few years.

I am more than happy to congratulate the Minister on a job well done when she deserves it, because in the area of the protection of children we should be acting as responsible

Queenslanders. Child abuse is not a partisan issue; members on all sides of politics should join together to help the innocent and prevent further acts of abuse or neglect by irresponsible adults. I would suggest to the Minister that she should always show a little more courtesy and acknowledge the achievements of others who have previously held her portfolio. Her failure to do so in her second-reading speech reflected more on her than on anybody else.

This Bill has a number of very positive elements and should advance the cause of child protection significantly.

**Ms Bligh** interjected.

**Mr SANTORO:** I say that in the interests of bipartisanship.

As the Minister said in her speech, the protection of children, as one of society's most vulnerable groups, can never be compromised. The rights of children have been the subject of legislative intervention in almost every State of Australia in the last decade and also at the United Nations. The United Nations Convention on the Rights of the Child, which Australia ratified in 1990, is a very significant and overall very positive international exposition on the inherent rights of children. However, I do agree very strongly with the Commonwealth Joint Standing Committee on Treaties, which in its report to the Federal Parliament last year recommended—

"The Convention should be implemented in such a way that the parents and the family unit are supported."

I am pleased that the Bill clearly states and recognises in clause 5 that the primary responsibility for the care and protection of children rests with the family. In this context I note that in some other jurisdictions the role of the family is given even more prominence. For example, the Northern Territory legislation states that the system should "maintain and develop family relationships which are in the best interests of the child". I think also that it is worth while quoting from the ACT legislation, which refers to the "need to strengthen and preserve the relationship between the child, their parents and other family members and ... the desirability of leaving the child in their own home". I think the principles in this Bill could have been drafted to be more pro-family, and perhaps in due course when this Bill has been in force for some time the Government will reconsider the wording of clause 5 to place added emphasis on the positive and paramount role of the family unit.

The Bill has to perform a delicate balancing act between protecting children in need of assistance on the one hand and on the other hand protecting the innocent against the improper use of sometimes quite draconian police powers that this Bill gives to certain people in

authority. I support the requirement that officers exercising various intrusive police powers must record in a registry held either by the Department of Families or the Queensland Police Service full details about the exercise of those powers and other actions taken by the officer. This should act as a brake on the improper or too frequent use of these powers and provide a database of critical information from which useful conclusions can be drawn in the future about how these provisions are operating.

One of the key elements in successfully tackling child abuse is obtaining information from ordinary citizens who are aware of such abuse or neglect or who reasonably and honestly believe that a child is at risk. Insofar as the Bill extinguishes the legal liability of citizens who, acting honestly, report incidents of possible child abuse, I believe that this object is advanced. However, even if that information turns out to be incorrect or, as the honourable member for Fitzroy said, non-malicious, it is better that a decent, honest but mistaken citizen not be prosecuted or be left open to civil action for what is an act we all would expect a good citizen should do. However, at the moment the Bill provides no sanction for a citizen who does not act honestly in making such allegations. The Scrutiny of Legislation Committee made the following comments on this omission—

"There does not appear to be any offence of making false accusations in the Bill. Furthermore, the most appropriate remedy for dishonest allegations, civil damages, while unaffected by clause 22 is made practically impossible by the very strict requirements of confidentiality imposed by Part 5 on all those who obtain information about the accusations."

The committee recommended that the Minister consider amending the Bill to provide means by which those who make accusations dishonestly may be exposed to civil liability and, in extreme cases, to criminal liability. In her response, the Minister said that false reports were rare and that imposing sanctions against dishonest accusers could dissuade honest notifiers. The Minister said that she would obtain information from other jurisdictions on what their legislation provided. She would now know that a number of other States and Territories have specific provisions dealing with the making of false complaints, including New South Wales, Tasmania and the Australian Capital Territory.

I think the number of times where an honest person might be dissuaded from reporting an incident of child abuse because a dishonest person has been prosecuted is nil or next to nil. There could be very few more embarrassing, disruptive and hurtful events than having police or welfare officers coming to one's home—or, as the honourable member for Fitzroy outlined in one very dramatic case, to a school—to investigate a

child abuse allegation. Anyone who wilfully and maliciously makes a false complaint with this sort of hurt in mind should be subject to action, and I hope the Minister will be moving an appropriate amendment during the Committee stage.

Still on the subject of notifying authorities of suspected child abuse, I state that the Bill provides protection from civil liability to persons who, acting honestly, notify the chief executive of a suspicion of harm to a child. This protection extends to protecting a person who by doing so breaches any code of professional ethics. This would pick up social workers and the like. At the moment, under the Health Act doctors are required to notify authorities of suspected abuse. However, this matter was raised by the Scrutiny of Legislation Committee. In this instance, I think most people would concur with the Minister, who said that on balance the rights of children to protection outweigh the rights of certain other individuals to confidentiality. As important as confidentiality is, I think we owe it to those who are most at risk and most vulnerable to waive ordinary codes designed to protect adults and give our children the protection they need. As the honourable member for Fitzroy and other honourable members indicated, this is a difficult issue, but one in respect of which I think the right call has been made in this Bill.

Another provision which requires some comment and careful consideration is clause 92, which allows information to be obtained from the Commissioner of Police or the Director-General of the Department of Transport which may be relevant to a recommendation about a person's suitability to be granted custody or guardianship of a child under a child protection order. Amongst other things, it enables the Commissioner of Police to provide relevant information from police records, including not just convictions but also charges which have not resulted in convictions.

What causes me particular concern is the ability to provide not just criminal history information but information from police records including records of interview and formal police statements. The Explanatory Notes refer to situations where a person is charged but not convicted. I find it very difficult to understand why material should be handed over when the person in question has not even been convicted. Such a person is innocent until proven guilty, and while I concede that the sentiments motivating this clause are good I am not convinced that grave injustices might not occur. The Scrutiny of Legislation Committee points out—

"The accused has a right to silence. If that right is exercised, the evidence in the hands of the police will not include the accused's version of the facts. Other evidence may not have been seen by the accused so that it will not have been tested in court. The motives of those who make statements and accusations will not have

been opened to questioning by the accused or their legal representatives. The police may not even be aware of the perhaps questionable motives of those who have made the allegations."

While I totally support an all-out effort to combat child abuse and generally agree with provisions that curtail the rights of adults in order to protect children, I think that this is one area in which the line has to be drawn. We are not talking about a person who is convicted of an offence or, as the committee points out, may even have had a chance to contest allegations. It could well be that the matter did not even get to court because it became clear that there was no evidence to back up what could have been a false accusation.

So I say to the Minister that, while I understand that difficult balancing acts must be performed, this is one instance where the drafters of the Bill, I believe, have gone a little too far. The Minister has said that her department has a duty to consider all relevant information, but I suggest to her that reliance could be placed on totally irrelevant information.

This Bill entrenches the child placement principle and has been designed to ensure that it is much more culturally sensitive than was previously the case. It is clear that there is an overrepresentation of indigenous children in the child protection system, brought about by a range of very tragic circumstances, including poverty, alcoholism, isolation and unemployment. While it is essential that young children in these circumstances are protected, it is also important that they are not isolated from their communities. The lessons from the stolen children generation are all too clear in each of our minds to ever allow such injustices to occur again.

I therefore support the general thrust of the Bill and the requirement that decisions about indigenous children must take into account the child's need to maintain their cultural identity. But I do say to the Minister that it would be reverse racism if loving non-indigenous parents were to be deprived of the opportunity to give love, attention and a good upbringing to indigenous children in need. It would be a double tragedy if we entrenched the latest social engineering theory in legislation and did not have either the legislative discretion or bureaucratic commonsense to realise that love and attention crosses the race barrier.

I would appreciate it if, in her reply, the Minister could touch on the ability of non-indigenous adults to care for indigenous children in need in certain circumstances. In raising this, as I said, I am generally supportive of the child placement principle, but I do not want to see a situation arise in which abused children of whatever colour are not given every opportunity to receive love and attention—no matter the race, religion or colour of the adults who are offering it.

There are many other aspects of this Bill that could be discussed, but I wish to conclude by giving it my overall support. As a father of two young boys, I approach this Bill with the clear understanding that every effort must be made to strengthen families and support those who go through hard times, because nothing can replace the love and bonding that a functioning family provides. To a large degree this Bill reflects the growing realisation of social workers and others that a more proactive and pro-family approach is essential. Often when families are in crisis brought about by cash problems, the mental or physical breakdown of a parent or some other issue, matters get out of hand and the authorities are called in. If at all possible, the State should intervene to help the family, mend the damage and keep it functioning for the overall benefit of all concerned.

As we get older we appreciate more the problems that beset our fellow citizens and we understand how some families begin to break down, sometimes with tragic consequences. On the other hand, all of us are unfortunately becoming more and more aware of the horrific instances of physical and sexual abuse of children by adults in general, and certain carers in particular. We need to have legislation in place which gives the police and relevant officers the power and ability to intervene swiftly to protect young children in mortal danger. In achieving these sometimes conflicting goals, a lot of balancing has to take place. Overall, I am happy to acknowledge that this Bill has got that balancing act right.

There are some instances in this Bill where I think the Minister and her advisers have gone too far in one direction or the other, and I have concerns with a number of the provisions, as I have outlined. Perhaps the Minister may wish to reflect on some of the concerns that I have put to her and to the House. However, anyone reading this Bill would have to recognise that it is a big improvement on the Children's Services Act. People would also appreciate that this is a most complex area and we will never get unanimity of views on the whole gamut of issues that arise and which are covered by this Bill.

Despite some perhaps provocative comments which I made to the House and to the Minister which, of course, were born of and encouraged by some of the remarks that she and other members in this place have made, I am very pleased to support the thrust of the Bill and many of its specific provisions. I look forward to hearing some of the debate at the Committee stage and particularly the Minister's reply to the arguments that have been put to her.

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