



Speech by

**Hon. ANNA BLIGH**

**MEMBER FOR SOUTH BRISBANE**

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Hansard 22 June 2000

**CHILDREN SERVICES TRIBUNAL BILL; COMMISSION FOR CHILDREN AND YOUNG PEOPLE BILL**

**Hon. A. M. BLIGH** (South Brisbane—ALP) (Minister for Families, Youth and Community Care and Minister for Disability Services) (11.52 a.m.): I move—

"That the Bills be now read a second time."

I am pleased to introduce the Commission for Children and Young People Bill—the commission Bill—and the Children Services Tribunal Bill, which I will refer to as the tribunal Bill, which represent the next phase of reform of the child protection system in this State. These Bills complement the Child Protection Act 1999 and are further evidence of this Government's strong commitment to the protection of Queensland's children and young people.

When I was appointed to the Family Services portfolio, I asked John Briton to review the Children's Commission and Children's Services Appeals Tribunals Act 1996 to identify and make recommendations to overcome the shortcomings of that Act. These Bills implement the recommendations of that review as well as the relevant recommendations of the Forde inquiry into abuse of children in Queensland institutions.

The current Children's Commission was established in 1996. However, the Briton review and the Forde inquiry highlighted numerous deficiencies in the current legislation. These include—

the commission's limited scope which only extends to services provided by Families, Youth and Community Care Queensland;

the omission of investigative powers to allow the commission to undertake its function in relation to complaints;

the omission of a role for the commission to advocate on behalf of children;

the commission's lack of perceived independence through its attachment to Families, Youth and Community Care Queensland for administrative support;

the limited scope of the commission's official visitors; and

the lack of clear procedures and powers to assist the tribunal in hearing reviews.

The commission Bill and the tribunal Bill rectify these deficiencies and much more. I am proud to introduce today's Bills which set a new benchmark for best practice in legislation seeking to promote and protect the rights, interests and wellbeing of children and young people. The commission Bill provides Queensland's children and young people with a powerful and independent advocate—a proactive one-stop shop designed to meet the needs of all children and young people with particular emphasis on those who are considered most vulnerable.

The commission will be transferred to the Premier's portfolio to strengthen its independence. While I have a particular responsibility for the promotion of the interests of children and young people, this Government recognises that their rights, interests and wellbeing are matters which should be considered by all departments and non-Government organisations that deliver services to them in one form or another. The arm's length independence afforded by the Premier's portfolio will also ensure that the voice of our younger citizens will be heard at the highest level of Government.

The commission Bill places strong emphasis on accountability in the exercise of authority through adherence to natural justice principles and the establishment of review mechanisms. It further recognises that children have a right to information and to participate in planning and decision making about their lives. The commission Bill provides the commission with a number of ways to meet the needs of children and young people in Queensland, with particular emphasis on children and young people who are vulnerable or at risk. These include—

- advocacy;
- a statewide community visitor program;
- a formal complaints mechanism;
- a requirement for the commission to work with service providers to enhance children and young people's participation in decision making;
- an educative role in ensuring children and young people are aware of support services; and
- a comprehensive research function.

The commission will have the ability to advocate for all children and young people in Queensland. In carrying out this function, the commission will be able to seek assistance from advocacy organisations, service providers and other organisations that may be appropriate to meet the needs of a particular child or young person.

In carrying out its advocacy and other functions, the commissioner must give priority to the needs and interests of the most vulnerable children in our society, that is, those children—

- who are in, or may enter, out-of-home care or detention;
- for whom there is no appropriate person to act on their behalf;
- who are not able to protect their rights, interests or wellbeing; or
- who are disadvantaged because of a disability, geographic isolation, homelessness or poverty.

Any child or young person is entitled to express their concerns or grievances to the commission.

The Bill expressly states that the commissioner must—

- consult with children and young people in a way that promotes their participation in decision making by the commissioner, for example, by the establishment of youth advisory committees;
- listen to, and seriously consider, the concerns, views and wishes of children and young people;
- adopt work practices that ensure the commission is accessible to children and young people; and

be sensitive to the ethnic or cultural identity and values of children and young people, including, in particular, Aboriginal and Torres Strait Islander children.

In accordance with recommendations of the Forde inquiry, the commission's community visitor program has expanded and will include visits to children and young people residing in—

- authorised mental health services;
- Government and non-Government funded residential facilities including those for children and young people with a disability; and
- youth detention centres.

Community visitors will be required to provide support to children and young people at these facilities and advocate on their behalf by giving voice to and facilitating the resolution of their concerns and grievances.

The commission Bill will allow community visitors to enter and inspect the facility, talk to a child or young person who wishes to speak to the visitor and access documents held at the facility which relate to the residents or the operations of the facility. The Forde inquiry recommended that the Children's Commission be given authority to investigate and resolve complaints about the provision of services to children and young people.

Under the commission Bill, the commission will be able to receive formal complaints about services provided to children and young people who are under certain orders of, or subject to intervention by, the Department of Families, Youth and Community Care. This will include complaints about services provided to these children by State Government departments, local government, as well as non-Government organisations in receipt of Government funding. The complaint handling function proposed for the commission seeks to establish a non-adversarial and collaborative means of resolving complaints about the delivery of services to vulnerable categories of children and young people who are clients of the Department of Families, Youth and Community Care. In seeking to resolve a complaint, the Commission for Children and Young People will have a number of mechanisms for dealing with the complaint available to it, including advocacy, mediation and formal investigation. The complaint handling provisions of the Bill are designed to facilitate a child or young person's access to existing

resources as well as provide timely and appropriate services where no other appropriate entity is available to deal with the complaint.

The provisions of the Bill rectify a significant flaw in the current Act by putting beyond doubt the capacity of the commissioner to access necessary documents and records when investigating complaints. The new role for the commission, which has attracted a good deal of public interest, is that of employment screening for child-related employment. Queensland's children and young people are entitled to be cared for in a way that protects them from harm or the likely risk of harm. In addition, parents are entitled to expect that persons who provide services to, and activities for, their children in child-related employment are persons suitable for working with children. Employment screening assists in ensuring the suitability of persons working in child-related employment.

In December last year, I held a meeting with peak youth recreational and sporting bodies to discuss the issue of employment screening in relation to child-related employment. Following from that meeting, the Children's Commissioner chaired a working party comprised of industry representatives to assist in the development of an appropriate model for inclusion in the commission Bill. The feedback from the working party and the public during the public consultation on the Bills has substantially informed the employment screening function in the commission Bill.

The Bill provides for employment screening of persons working in certain child-related employment as well as persons carrying on certain child-related businesses. Paid employees, self-employed individuals and volunteers are regulated under the Bill. The Bill provides for persons who propose to employ another person, on a paid or voluntary basis, in child-related employment to apply to the commissioner for a suitability notice stating whether the person is suitable for child-related employment. A person who proposes to carry on or continue carrying on a regulated business is also required to apply to the commissioner for a suitability notice. The Bill sets out how the commissioner is to decide the application in accordance with principles of natural justice and provides opportunities for the person to make submissions about their criminal history or their suitability for child-related employment. The commission Bill includes review rights for persons issued with negative notices, including a right of review to the Children Services Tribunal.

The Bill also provides protection for the privacy of people who have been screened through heavy penalties for breaches of confidentiality or providing false information. In addition, the commission will develop protocols about access to, and storage and destruction of, confidential information.

A positive notice is valid for two years from the date of issue unless it is cancelled earlier, for example, following the reconsideration of a person's suitability due to a change in the person's criminal history. A current positive notice is portable across child-related employment.

The Bill prescribes penalties for employers who do not obtain suitability notices for their employees. The Bill does not require persons working in child-related employment on a one-off or sporadic and infrequent basis to undergo a criminal history check. However, an employer may still apply to the commissioner for a suitability notice for these people.

The penalty provisions only apply if the employer proposes to continue to employ a person who does not have a current suitability notice and who has carried out work at least—

- once a week over the course of one month; or
- once a fortnight over the course of two months; or
- once a month over the course of six months.

Persons already employed or engaged in child-related employment prior to the commencement of the screening laws will not be required to undergo a criminal history check. The Bill, however, allows an employer to apply for a suitability notice where the employer knows or reasonably suspects that a current employee has a criminal history that may make the employee unsuitable for child-related employment.

There are significant penalties for persons deemed unsuitable by the commission who subsequently apply for or start or continue in child-related employment. The Bill creates offences for anyone deemed not suitable for child-related employment by the commissioner to seek or accept a position in child-related employment. Penalties increase to a maximum of five years' imprisonment where the person has been convicted of a physical or sexual offence against a child.

This Government supports the right of parents to take an active interest in their children's activities. To this end, parents who are volunteers assisting with school-based services and activities will be exempt from the screening requirements. In addition, parent volunteers with children involved in activities and services provided by churches, clubs or associations will also be exempt from screening if their child is involved in the activity or receiving the service.

The Children Services Tribunal Bill 2000 will establish a tribunal to replace the Children's Services Appeals Tribunals which currently operate under the Children's Commissioner and Children's

Services Appeals Tribunals Act 1996. Like the Commission for Children and Young People Bill 2000, this Bill was developed following relevant recommendations of the Forde inquiry and the Briton review and public consultation on an exposure draft of the Bill. In accordance with the recommendations of the Forde inquiry and the Briton review, the Bill establishes the tribunal as a separate entity to the commission to provide it with complete independence.

The current jurisdiction of the Children's Services Appeals Tribunal is retained under this Bill. The tribunal will continue to have jurisdiction to review on the merits the same administrative decisions which are currently appealable to the existing tribunals. These decisions are—

certain case plan decisions in relation to children in care, and licensing and approval decisions about residential care services and foster carers made under the Child Protection Act 1999;

decisions about the fitness of persons to adopt children under the Adoption of Children Act 1964; and

decisions about the licensing of child-care centres under the Child Care Act 1991.

In addition, the commission Bill will authorise the tribunal to hear applications for a review of a decision of the Commissioner for Children and Young People to issue a notice that a person is not suitable for child-related employment.

The current Act does not detail the principles underlying the exercise of the tribunals' jurisdiction or the powers or procedures the tribunal may use in informing itself of relevant matters. In practice, this has led to an overreliance on an adversarial approach that has tended to lock the parties into conflict rather than ensuring a focus on making the best possible decision and in the best interests of the child about whom the decision was made.

The tribunal Bill clearly states that in reviews involving a child, the best interests of that child is the paramount consideration. It details a range of powers and procedures which the tribunal may use in ensuring it has all relevant material before it without being required to rely solely on the evidence produced by the parties at a hearing. These "inquisitorial" powers are balanced in the Bill by requirements that the tribunal adhere to the rules of procedural fairness and ensure that the parties have reasonable opportunities to present their cases and be heard. The Bill requires the tribunal to ensure the parties understand the procedures and rulings of the tribunal and to ensure its proceedings are conducted in a manner which is culturally sensitive and is responsive to the needs of the parties.

The current Act makes no reference to children and young people, who are frequently the subject of decisions appealed to the tribunals and does not provide any mechanisms to enable them to participate in appeals or to protect their interests during proceedings. This is not consistent with the principles of involvement of children and young people in decision making about their care established in the Child Protection Act 1999.

The tribunal Bill addresses this failure. It sets out principles which require the tribunal to take into account the child's views and wishes and to give children and young people the information and assistance necessary for them to exercise their entitlement to participate. It also provides a number of specific means by which children and young people may participate in the decision-making processes of the tribunal. These provisions—

require the tribunal to give notice of a review application to all persons entitled to apply for review of a decision, including children;

require the tribunal to give notices, serve documents and explain procedures and decisions to children and young people in a manner appropriate to their age and maturity;

enable legal representation of young people who have the capacity to give instructions;

enable the tribunal to appoint a separate representative to act in the best interests of a child whether or not the child is a party;

enable access to review by children and young people who cannot act for themselves by enabling persons to apply for review on the child or young person's behalf with the permission of the president;

empower the tribunal to make confidentiality orders protecting the disclosure of documents or evidence to a party if the release of the information is likely to cause harm to a child or young person;

provide special procedures for the taking of evidence from children and young people which recognises their vulnerability and protects them from further harm; and

enables the tribunal to appoint an independent inquirer to inquire into matters relating to the child's or young person's interests and welfare.

The inclusion of clearly articulated principles, powers and procedures will ensure an independent merits review process which is fair to the parties, expeditious and responsive to the needs of children and young people about whom the decisions are made.

Over 26% of Queensland's citizens are children and young people. The more individuals, organisations and Governments support children, young people and their families, the greater each child's potential to achieve a fulfilling and responsible adulthood and the more prosperous and healthier communities we build.

I am very proud to introduce these Bills. They will enhance, promote and protect the rights, interests and wellbeing of all children and young people in Queensland. The comprehensive new powers mean Queensland once again leads the nation in child protection reform. I commend the Bills to the House.

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