



Speech by  
**Mr DENVER  
BEANLAND**

**MEMBER FOR INDOOROOPILLY**

---

Hansard 11 April 2000

**CHILD PROTECTION AMENDMENT BILL**

**Mr BEANLAND** (Indooroopilly—LP) (3.23 p.m.) The Opposition supports the legislation before the Parliament. There are a few issues, however, that I need to raise in relation to this legislation. One of those involves the definition of "parent", which I will come to shortly.

On 10 November 1998—I repeat it was 10 November 1998—the Minister introduced the Child Protection Bill into this Chamber and said at that time—

"When I was appointed to the Family Services portfolio, I promised swift action to introduce this long overdue Bill."

I repeat the words "this long overdue Bill". It is well known that it was only a few days ago—three weeks or less—that the legislation actually became law. We have finally got it there after all that time. I understand that the Minister indicated that it would take a while—some months, in fact—to get people trained up in relation to the legislation. On my counting, it was over 16 months from the introduction of the Bill to its becoming law by proclamation and, in other words, being put into practice. It was proclaimed on 23 March of this year, not three weeks ago.

It is fair to say that it is a little bit disappointing to find that the rhetoric in the Minister's second-reading speech in Hansard in fact did not follow through. On 10 November 1998 the Minister indicated—

"Queensland's children have waited long enough for legislative reform to ensure protection from abuse. I am therefore pleased to introduce a Bill that will deliver this fundamental right to our children."

That is fair enough. At the same time, as I pointed out, it took 16 months from then for this to become law. Consequently, had it had the priority which the Minister indicated, one would have expected that it would have become law well before it did.

This Bill before us today does something more, however, than just make amendments to the form of the Child Protection Act; it also deals with interstate matters. It allows for a scheme for the transfer of child protection proceedings orders between Queensland and those other Australian States and Territories and New Zealand which have enacted a similar arrangement. I think it is fair to say that it is likely the Child Protection Act, passed last year and only recently proclaimed, goes back some years. In fact, I understand that the Community Services Ministerial Council, the CSMC, meeting of October 1996 was the one at which this really got under way, but even before that the legislation was in fact being discussed. Therefore, Ministers Lingard and previously Minister Woodgate no doubt would have had some input into this, as did Minister Wilson and now Minister Bligh.

The point is that, like the child protection legislation itself, this new legislation before us today dealing with interstate arrangements goes back over a number of Governments and a number of Ministers. Ministers and their representatives representing the community services Ministers of the Australian States, Territories and New Zealand agreed that reciprocal legislation and protocols aimed at resolving these cross-jurisdictional problems should be prepared and implemented. The model Bill prepared by Victoria through a national working group in consultation with the other States, Territories

and New Zealand was approved by the Community Services Ministers Council on 5 August 1999. Furthermore, the protocols came into effect on 1 November last year and contain the general principles which underpin the Bill. These protocols are—

"Decisions regarding the transfer of orders and proceedings should be made in accordance with each State's or Territory's case planning principles;

The interests of the child are paramount;

Delay is contrary to the interests of the child and should, where possible, be minimised;

Planning and interstate placement, whether the child or young person is subject to a child protection order or not, should include the thorough involvement of the receiving State prior to placement; and

A child protection order should generally be enforceable and effective pursuant to the child protection legislation of the State where the child resides."

I mentioned those because there are a number of things in the legislation about which people might be concerned at first blush. However, when they relate these things back to the principles which underpin the legislation, it is far easier to see why this course of action has been taken with the legislation. The principles that underpin the legislation are terribly important. In respect of those things about which people might be alarmed in the first instance, there is often a more rational reason behind why the course of action has been taken.

From the Minister's second-reading speech and other indications, it is expected that all jurisdictions will have implemented this legislation by the end of this calendar year. I am sure we will find that occurring over some months in the other States. I looked at this some time ago, and a great deal of water has passed under the bridge since then. I am not sure exactly of the state of play in the other States at present. Therefore, I will not make any further reference to the situation in the other States except to say that reference is made in the legislation to changes arising from the Forde inquiry recommendations.

A number of new initiatives are being taken in respect of the current Queensland legislation. One change relates to the functions of the chief executive officer. An obligation is placed on the chief executive officer to ensure that children in licensed residential facilities have access to advocacy services. I seek an indication from the Minister in relation to the cost of the service and where the advocates are to be located. Was this budgeted for in the current year's budget and, if so, where? I appreciate that, if advocates are going to be placed at a number of centres around Queensland, a cost will be incurred by the department. Therefore, we need an indication of what that cost will be. Recently, the Minister has come under criticism over a lack of funding in relation to the child protection legislation. It is all very well to put in place advocacy arrangements, but where is the funding in the Budget and where will these advocates be located? If there is no funding, in a few weeks' time we will hear another outburst from community organisations or advocate groups that there is no funding in place for this to occur.

I note also that the Explanatory Notes state that no additional funding requirements arise from the Bill and that the new jurisdiction of the Childrens Court relating to interstate transfers will have minimal impact on the operating costs of the court. I accept that that is the case in relation to the interstate transfer arrangements, but that is different from the point I just made in relation to advocacy services. I believe a cost will be associated with those services. The Explanatory Notes state that no additional funding will be involved. However, I do not believe that will be the case. I seek an indication of how that will operate without additional funding. I have no argument with respect to the reciprocal arrangements. As I said, they will have a minimal impact.

The Bill also takes up Forde inquiry recommendation No. 17, which will place an obligation upon the chief executive officer to regularly inspect licensed residential care facilities to ensure that adequate standards of care are met. Again, no additional funding is provided for under the legislation. I would have thought that this would involve some costs. I expect that some checks are now being carried out via administrative arrangements as distinct from checks with a basis in legislation. This legislation will impose regular checks. On what basis will the regular inspections be conducted? The word "regularly" can mean a lot of things to a lot of people. It can mean each week, each month, yearly, triennially or whatever. Perhaps they will be done once every 10 years. Who knows? I am sure that is not what it means, but one could argue that that is what is meant by "regularly". We need an indication from the Minister of exactly what the term "regularly" means, because it means very little by itself. As I said, I presume this is already occurring administratively and that this legislation will give these checks a legislative basis. But the question is: how often and when do they occur currently and how often and when will they occur under the legislative basis which the Minister is setting up in this legislation?

In speaking about definitions, I note that the definition of "parent" also comes up in the legislation. I note that the Minister will be moving some amendments to the current Act in respect of that definition. The Bill states that a "parent" of a child means each of the following persons—

"(a) the child's guardian"—

and that is fair enough; also, a new subsection is added—

"(b) a person with custody of the child"—

something I think would normally come within the ambit of a carer—

"(c) if the child is in the person's custody or guardianship under this Act— anyone else who would be the child's guardian if the child were not in the person's custody or guardianship under this Act."

The difficulty the Minister has is that in the current Act there is a loophole with respect to the second aspect of this amendment, that is, a person with the custody of the child—in other words, a carer. I understand there is a need to rectify this matter. But I think we are reaching the situation where we are widening and distorting the term "parent" to include other than a natural or adoptive parent. However, in respect of this definition of a person with custody of a child, that is, a carer, I trust that the Minister will not confuse us further. I think there is already some confusion in the charter of rights in relation to children in care, which applies simply to those children under the control or custody or, to use the term of the current Act, children who are in need of protection who are in the custody or under the guardianship of the chief executive. There is already confusion in the community at large.

People have come to me privately and at public meetings and said that the charter of rights for children relates to members of the public. Of course, it does not. It applies simply to the department and children in the care of the chief executive officer of the department. More confusion will be added by having a definition of "parent" within this legislation, which really is a carer and not a parent in the normal sense of the word. I understand that it is probably expedient for the Minister to broaden the definition in this way, but I would have hoped that the Minister might have looked at it in an alternative light by putting in an additional definition of "carer" to pick up this matter. A "parent" and a "carer" could have come under the ambit of the legislation. As I said, it may be expedient to do it in this way, but I believe it will cause confusion. I was looking at whether it would be worth while moving an amendment. However, I will instead ask the Minister at some time in the future to look at the definition of "parent", because this will cause confusion in the community at large. We will have people thinking that a parent is other than a parent in the normal sense of the word, whereas in fact the definition picks up carers.

**Madam DEPUTY SPEAKER** (Ms Nelson-Carr): Order! I interrupt the member for Indooroopilly to introduce students from Kawungan State School who are in the gallery this afternoon.

**Mr BEANLAND:** We welcome the children to the gallery during the discussion on this very important piece of legislation that we are debating today.

**Mr Schwarten:** We're not all as boring as him!

**Mr BEANLAND:** It is terribly important. It is easy to see how the Government treats such a very important piece of legislation. Of course, the member for Rockhampton in particular treats this piece of legislation with jest. It is very important legislation and very important points are being made. Clearly, we need to pay attention to this legislation. As I said, I was discussing the definition of "parent" within the legislation itself.

There are other areas of concern within this amending legislation, and one of those relates to judicial review, which has also been highlighted by the Scrutiny of Legislation Committee in the Alert Digest. I can understand why the Minister has instituted such short time frames on this matter because, as I highlighted earlier, under the principles of this legislation there is a need to reduce the delays that occur in relation to children. If one allows the full time frames for judicial review that apply in other legislation, then the situation involving children would be held up for an inordinate amount of time. The Opposition and I appreciate why there is a need to reduce those time frames and to speed up this whole process of some 10 days and having three days in which to give notice. I think that is reasonable in the circumstances. Normally it would be, but if we do not speed up the time frames, as the point has been made previously within the principles, then children are going to be held in limbo for perhaps weeks or months on end. I do not think that is good enough.

I think the amendments that are proposed here are reasonable and practical in the situation. They highlight an issue which has been picked up by the Scrutiny of Legislation Committee. Nevertheless, the legislation is designed to minimise the impact on children. I think that the parties who are going to be affected by this will be required to ensure that they are available to be contacted in three days, which, I think, is the shortest period. To allow for a longer period would result in the time frame simply blowing out. If that happened, children could possibly be held for weeks on end without knowing their fate, which is simply not good enough.

There is the provision of 10 days in which an applicant has notice to file an appeal and then there is the period previous to that of three days. The only problems will occur in that three-day period in which to notify the person. That may be a little short in some cases. Nevertheless, in the interests of the children we have to speed up the process. It is to be hoped that not too many people will be disadvantaged. The people who are involved in this process would be aware and will make themselves known so that they can be easily served by the department with these notices that need to be served in that short time so the process is not held up. I would hope that the department will try to contact these people beforehand to improve the processes involved.

The next amendment relates to the mandatory requirement placed on persons who are employed in a residential care facility. The chief executive is required to report suspected abuse or neglect of children in custody or guardianship. I want to talk about this because it is a particularly important area that we are dealing with currently in relation to child abuse. There is a definition of "child in residential care" and "responsible person". This is a most sensitive area. Unfortunately, so much emphasis has been placed on child abuse that we seem to have reached hysteric proportions in the community. It is an important area; there is no question about that. Of course, there have been changes to the Criminal Code as well as the child protection legislation to ensure that the correct emphasis is being given to it. Having said all that, many innocent parents believe they could get caught up in the situations that currently occur.

I am particularly concerned about foster carers who take in many of these children and who could find themselves in a situation where one "reasonably suspects"—I think that is the terminology used in this legislation. I hope that every effort will be made to ensure that it is not automatically assumed that foster carers or people caring for children in an institution have abused a child in their care when a child has a bruise, cut, scratch or something else. It is these situations where it is not clear that I am concerned about. Of course, if somebody goes out and tortures a child or abuses a child physically, it is fairly obvious. We can see that physical abuse; it is very clear and very plain. However, we see many instances when that is not very clear. These days, we have to be careful of that.

Although I introduced legislation, which was ultimately passed, amending the Criminal Code to toughen up all these provisions and the Minister has introduced this child protection legislation, extra care has to be taken to ensure that we do not automatically assume that there is child abuse in the case of children cared for by foster carers or other people. Whilst in some cases there might be abuse, in other cases there will not be, and those people deserve action to be taken so that people do not jump to conclusions.

What does the terminology "reasonably suspects" mean? It can mean a number of things. I know there are various legal definitions called for within this area. I would say that that term does not require a great deal of test. Therefore, every effort must be made to ensure that these people are given a fair go and that their voice is also heard. Of course, if it turns out that there has been child abuse, I am sure everyone in this Chamber would believe that those people ought to have the book thrown at them.

We have seen more instances of paedophilia in recent times in terms of people coming before the courts and criminal charges being laid under the Criminal Code. There are a number of reasons for that. Not only is there greater awareness of it, but the penalties today have been toughened up. There is greater awareness of that and there are new offences in the Criminal Code. The offence of torture itself was not there a few years ago. That is one which, from recollection, I introduced. That is a new offence about which we hear a lot in the community at large. We are going to see a lot of other issues come up under the Minister's child protection legislation. It is certainly coming to the fore much more than it did previously.

Nevertheless, parents and carers are becoming more and more nervous and apprehensive about the child abuse mentality which has been generated, and that is what we want to avoid. We should make sure that where child abuse actually occurs, action is taken. However, we have to ensure that conclusions are not jumped to in the first instance so that those people who have control over children—parents, etc.—can have care exercised and that it is reasonable where the decisions are made in relation to charges being laid or other action is being taken.

I know that the department does take children off carers where it suspects that there might be abuse involved without criminal charges being laid. I am well aware of that. Carers in those situations feel very let down and they feel that their word has not been taken against that of a child. In regard to the child's allegations, no doubt Family Services officers go through the issues very carefully. That having been done, just as much care and effort needs to be put into the other side—the carer—because in many of these cases it is not very clear what the situation was, and there are two sides to the story.

The Minister has again made the claim that the Bill delivers on the Government's commitment to implementing the recommendations of the Forde commission of inquiry. This is simply not true in a

number of areas. It is certainly not true relative to the Minister's \$103m, because that has not been forthcoming. There certainly have been additional funds forthcoming, but not \$103m. The Minister has been receiving some flak about that from none other than the union itself. It has been indicating that it is unhappy, particularly in relation to the implementation of the new legislation and what it is going to mean in relation to requirements on officers of the department. There are certain legal requirements upon those officers. Of course, they are going to have to monitor the legislation and make sure that those requirements of the legislation are fulfilled.

I commend the Minister in relation to responsibility for body piercing and tattooing remaining under the Children's Services Act and the fact that the Minister is going to further investigate those sections as far as children are concerned. As with a number of similar activities, one has to tread very carefully. I am sure children who are involved with body piercing and tattooing are not aware of the ramifications of that course of action. I am not just talking about the actual piercing but the health and hygiene aspects which have received some publicity in recent times. Nevertheless, that section will remain in the Children's Services Act and was not removed, as was originally intended, with other sections of the Children's Services Act when the Child Protection Act was brought in.

I believe there is pressure across the nation to have this legislation proclaimed so that all jurisdictions bring in this legislation at the same time. We look forward to that happening not too far down the track this calendar year. This legislation has been model legislation which has now been accepted by all States and Territories and New Zealand. Therefore, action needs to be taken simultaneously across the jurisdictions in order for it to have effect across each of those jurisdictions at the same time.

I want to raise an issue that has been getting a fair amount of press of late, particularly in the daily press, and it relates to the naming of parents and how that may in fact identify children. We all know the current situation. Details cannot be published in the media that might assist in the identification of children. The press has been undertaking a campaign in relation to this. There may be one or two areas which the Minister might care to spend some more time looking at. I accept that that is the situation generally. We do not want children being mentioned or matters being mentioned that would identify children. Nevertheless, there are some very gruesome incidents occurring in the community where people—parents, carers, de factos and others—are clearly torturing children. It is unfortunate that some of those cases cannot receive the media attention which I believe they deserve to see that justice is not only being done but being seen to be done.

I understand that it is very difficult and that there are problems. I suggest to the Minister that if a great deal more effort was put into it with some of the leading lawyers in the department or the Justice Department they might be able to come up with a way of overcoming this problem so that some aspects may be able to receive an airing in the media without identifying the children involved. More attention needs to be given to that issue. There are ways in which that can be done. As I say, in relation to the problem we are now experiencing with child abuse, torture and some of the other very gruesome incidents, it is very unfortunate that those people involved—I am talking about the parents, the carers or whoever it might be—are not in fact receiving the coverage that people in other circumstances receive in the media and are therefore, to some extent, protected from the media. It is something that needs a fresh approach. Perhaps there are other ways of tackling it without identifying the children involved.

I have raised previously the need for the Minister to look at children, particularly young girls, who are currently prostituting themselves in the streets. Their parents are powerless. It seems that the department is not prepared to do anything. This situation is not going to be helped by the recently passed prostitution legislation that continues to outlaw street prostitution. However, street prostitution by young children continues. I again draw the Minister's attention to that area.

With the enormous powers the Minister has under various pieces of legislation, it seems to me that the Government ought to be able to take some action through the department in relation to these children instead of the present situation where the parents are powerless but the department is not prepared to take any action. At the moment, although the parents themselves are powerless to do anything the Minister is not prepared to take any other action or introduce legislation to enable the parents themselves to take action. This is an ongoing problem for parents and sends the wrong signals to parents.

In many of these instances, because of the role of the department parents currently feel helpless. The department is certainly gathering more powers in a number of areas, but parents are not gaining any additional powers. In fact, I have even had people in my own street come to me and say that children are now going home and saying to their parents, "You can't touch me. I can do what I like." That is, of course, a lot of nonsense. There have to be parameters of behaviour set down. We need to ensure that children are aware of the consequences of their actions in relation to anti-social behaviour.

The sooner that children appreciate the consequences of their anti-social behaviour and parents appreciate that they have the ability to sit down and talk to their children rationally and set down those parameters of behaviour and discipline and indicate very clearly to those children what their responsibilities are and that they ought to have respect not only for themselves but for their parents and the community at large the better society will be. Children have to recognise their very clear obligations. Parents need to realise that they do have the power to set those parameters of behaviour. They should do so up front and vigorously and make sure that their children adhere to the parameters they set by sitting down and rationalising with them and reasoning with them as to what the situation is.

Unfortunately, parents are caught up with talk of children's rights. I point out that the charter of rights is not set down in the terms of a United Nation's charter of rights. It is a charter of rights which relates purely to children within the care of the department. The Government has set out a number of rights, but it is not a reproduction of the United Nation's charter of rights involving children. Far from it. It does not relate to children who do not come within the ambit of the chief executive officer, that is, those children who come under the control of their parents and guardians. There is a great deal of confusion among parents on this issue and they certainly have no confidence about what course of action they can and cannot take in many of these situations. The Minister should be aware that there is a great deal of work to be done in this area to very simply spell out what the current situation is.

---