Speech by

KERRY SHINE

MEMBER FOR TOOWOOMBA NORTH

Hansard 18 October 2001

COMMONWEALTH POWERS (FAMILY LAW—CHILDREN) AMENDMENT BILL

Mr SHINE (Toowoomba North—ALP) (12.18 p.m.): I am pleased to learn that on this occasion the National Party opposition will be supporting this bill. The history of the National Party when in government was that it was not so supportive of referring these sorts of powers to the Commonwealth, and I will touch on that briefly shortly. However, I now want to make a few comments about the bill.

As I understand it, with respect to family law matters, the bill's intention is the referral of some more power to the Commonwealth. That power is the conferring of jurisdiction regarding custody, guardianship and access matters involving children subject to a child welfare law where the relevant state minister consents. It is also relevant to the maintenance of such children and declarations of parentage for Commonwealth purposes. The state's power in relation to child welfare laws remains intact, as does the exclusive power of the state to make adoption laws.

The current situation is unsatisfactory because, after protective action is taken by the Department of Families to ensure the safety of a child and a parent is located and is assessed as being able and willing to care properly for that child, the Child Protection Act 1999 does not enable child protection orders to be made in favour of the parent as statutory intervention is only authorised when a child does not have a parent able and willing to protect the child. Furthermore, the Family Court cannot make orders in relation to children who are in the care of a person under a state child welfare law unless certain circumstances apply. Legal Aid Queensland generally refuses to grant aid to persons whose children are subject to child protection orders or proceedings who wish to apply to the Family Court for parenting orders.

The objective of the bill is to amend the Commonwealth Powers (Family Law—Children) Act 1990 to refer to the Commonwealth certain powers relating to children who are subject to child welfare orders under state legislation and ex-nuptial children. As I understand it, this bill attends to a gap in the practical application of the reforming legislation brought in by the Goss government in 1990. This followed years of foot dragging by the Bjelke-Petersen government because of its irrational fear of transferring power to Canberra. In those days, at least, it was more concerned with state's rights than children's rights.

The effect of the 1990 groundbreaking reform by the Goss government was to enable the custody of all children to be determined in the Family Court, whether they were born inside or outside marriage. That act finally put to an end the ludicrous situation where the custody of ex-nuptial children was determined in the Supreme Court while the custody of children of a marriage was determined in the Family Court. The idea was also to overcome confusion in the application of the law. In his second reading speech, the then minister, Mr Milliner, quoted then Chief Justice of the High Court, Sir Harry Gibbs. In a 1986 case, Sir Harry Gibbs said—

> This matter provides another example of the lamentable results that can ensue when the limits of the respective jurisdictions of State and Federal courts are not clearly defined.

Minister Milliner then went on to say—

> This Bill will ease this lamentable situation and ensure that the Family Law Court can deal with all family law issues involving children. It will ensure that threshold constitutional demarcation disputes will not arise and that the rights of the children of a household are resolved by one court and by the application of one body of law in a consistent and rational manner.

Finally, as this bill deals with the topic of family law, I will make passing reference to a discussion that has been taking place in the public arena, particularly in my area of Toowoomba, following an address

by Archbishop Pell on 22 August this year. He spoke about the changing place of family in our society. In an article in the *Courier-Mail* of 23 August 2001, Archbishop Pell said—

> The family in Australia once enjoyed a privileged place at law and in social and economic policy. Nothing epitomised this more than the 1907 landmark judgment of Henry Bournes Higgins, president of the newly established Commonwealth Court of Conciliation and Arbitration, in the case that established the basic wage, to support a working man, his dependent wife and three children "in frugal comfort".

That is better known as the Harvester case.

Archbishop Pell went on to say that over recent decades the family institution has come under great threat with the increasing breakdown in marriages. He raised for public discussion suggestions about what might be done about that. I for one am not convinced that his suggestions to solve the problem are necessarily appropriate, but I do support the raising of the topic in the public arena. I encourage further discussion on that matter to address the problem of the breakdown of the family in the twenty-first century. I commend the bill to the House.