



Speech by

Hon. R. WELFORD

MEMBER FOR EVERTON

Hansard 18 October 2001

COMMONWEALTH POWERS (FAMILY LAW—CHILDREN) AMENDMENT BILL

Hon. R. J. WELFORD (Everton—ALP) (Attorney-General and Minister for Justice) (12.27 p.m.), in reply: I thank honourable members for their contributions on and support for this amending bill. In addition to the comments that I made in my second reading speech, members have outlined the purpose of the bill.

More than 10 years ago, the parliament passed the original act which conferred on the Commonwealth the power to allow matters in relation to custody, access, guardianship and maintenance of children to be dealt with by the Family Court. At the time, that conferral of power did not include power for the Family Court to give consideration to those matters in respect of children who were subject to a care order of a state court. They were then known as care and control orders. This legislation, of course, allows the Family Court now to be empowered under Commonwealth law to deal with issues of parentage and also to extend the consideration of what is called parentage rather than custody these days—guardianship, access and maintenance—to children who are subject to an order for care under a state court.

The member for Southern Downs raised the issue of forum shopping. It is a legitimate question to raise. Although the state Supreme Court's inherent jurisdiction in all matters relating to children is retained, the practical reality is that in all of those matters in respect of which power has already been conferred people are usually already in the Family Court resolving matters of property or the settlement of their matrimonial relationships and so it is nearly always likely that they will deal with other matters relating to children at the same time.

If parties to such a relationship have children who are ex-nuptial, those children can also be dealt with at the same time in the Family Court. That was the problem that was rectified previously. What we are saying now is that, if in relation to those matters there are children in care, contrary to the provision as it previously stood where the Family Court could not entertain any submissions in relation to those children, the Commonwealth will now be able to empower the Family Court to entertain submissions in relation to children in care with the consent of the state minister.

The avoidance of forum shopping can to that extent be addressed by the state minister exercising the discretion to consent or withhold consent as to whether the matter can be heard in the Family Court. If it was not already resolved by the issues of practicality, that will certainly enable the state minister to supervise the issue and presumably address the concern that the member has raised by the exercise of consent. Again, it is a short point which we are considering in amending the existing law. It is eminently sensible that all issues relating to children which are subject to proceedings already in the Family Court are able to be dealt with. For that purpose, I thank members for their support and commend the bill to the House.
