



Speech by

Hon. K. LINGARD

MEMBER FOR BEAUDESERT

Hansard 11 September 2003

CHILD PROTECTION (INTERNATIONAL MEASURES) BILL

Second Reading

Resumed from 4 June 2003 (see p. 2551).

Hon. K. R. LINGARD (Beaudesert—NPA) (3.17 p.m.): The opposition will support the Child Protection (International Measures) Bill 2003. We note the intentions of the bill, which are stated as implementing the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children (the Child Protection Convention) in Queensland. As well, it is also to make amendments to the Child Protection Act 1999 to correct minor drafting errors, to clarify the intention of the act and to address anomalies, and to make amendments to the Juvenile Justice Act 1992 to correct minor drafting errors.

We accept that this bill forms part of a concerted approach by all Australian jurisdictions to the implementation of Australia's obligations under the Hague Convention. Certainly, the protection measures—which the Commonwealth has ratified—came into effect from 1 August 2003. We understand that this raises the possibility that it may form part of national scheme legislation. I note that the explanatory notes in the bill state that it does not constitute national scheme legislation. However, it seems to me that the Commonwealth would have constitutional power if it wanted to. I can always remember the effect on foreign adoption policies of outside conventions where each state had different policies, especially in the area of family law. I wonder whether there is an underlying aspect such as this in regard to this particular piece of legislation.

However, I note that it is stated that the current bill is substantially based on a model bill which has been developed to assist state and territory jurisdictions in implementing the convention but that adoption of the model bill is to be at the discretion of each state and territory. On the other hand, even though each state and territory will control the form of its own bill, the explanatory notes state that it is expected that there will be little variation in the substance of the various state and territory legislation.

It is important for the legislation to ensure children are protected when they move or travel overseas when child protection concerns arise or parenting orders apply. The convention will eliminate potential conflicts of jurisdiction and ensure cooperation between child protection authorities in different countries. We agree that this is particularly important at a time when the movement of children and their families across international borders is increasing, although I would not expect that there would be too many in Queensland. However, I do know that it is the anomalies that ministers and departments face when it comes to running these particular departments. The Child Protection Convention provides a framework for cooperation and sharing of information between countries and establishes rules about jurisdiction of authorities in relation to child protection and family law matters involving children across international borders.

While the number of child protection cases within the international dimension is not large, obviously they do absorb considerable time and resources of state and territory child protection agencies. That is due to the constant difficulties faced by those agencies in identifying the appropriate overseas counterpart for consultation and negotiation purposes to ascertain the best course for addressing the situation. Over many years many conservative people have had considerable concerns about child protection conventions, especially the power that they take away from parents. I note that the preamble of the protection convention states that the best interests of the child are to be the

primary consideration in making decisions. Many of us would believe that we understand what we mean by the best interests of the child but, when there is a conflict between the interests of the parent and the interests of the child, which interest must take precedence?

The objectives of the convention are as follows: to determine which country's authorities have jurisdiction to take protection measures in relation to a child or the child's property, and there is certainly no concern with that; to determine which law is to be applied by such authorities in exercising their jurisdiction; and to determine the law applicable to parental responsibility. Quite obviously, that to me is a simple statement and I know how I would interpret it, but the difficulty comes with the interpretation of that statement—to determine the law applicable to parental responsibility. Many parents who have concerns with their children in terms of administering discipline or administering rules to their children have said, 'Why do we have to come under part of these international conventions?' However, as I say, I have no concern with this legislation. The legislation also provides for the recognition and enforcement of protection measures in all contracting states. It also establishes such cooperation between authorities as may be necessary to achieve the purposes of the convention.

In terms of the child protection objectives, the main purpose of the new legislation is to recognise the importance of international cooperation for protecting children, the need to avoid conflict between legal systems of different countries about the jurisdiction, applicable law, recognition and enforcement of child protection measures, and the fact that a child's best interests are a primary consideration in relation to a measure for protecting the child's person or the child's property. There would not be many problems with children that this legislation would need to cover. However, even if there are only 10 to a dozen cases a year with international aspects, we have to accept that these numbers are increasing. Therefore, there is a need for this legislation. As I said, the opposition has no concerns in supporting it.