Speech by

Andrew Powell

MEMBER FOR GLASS HOUSE

Hansard Tuesday, 6 October 2009

EDUCATION LEGISLATION AMENDMENT BILL AND EDUCATION AND TRAINING LEGISLATION AMENDMENT BILL

Mr POWELL (Glass House—LNP) (4.32 pm): I rise this afternoon to contribute to the cognate debate of the education and training bills. The Glass House electorate has some truly fantastic schools, some fantastic teachers and certainly some truly outstanding students. Over the past six months I have had the immeasurable pleasure of visiting nearly all of the education establishments in my electorate. Unfortunately, not on all occasions have those visits been for positive reasons. I recall with some sadness the memorable service for the chaplain at Palmwoods State School. Fortunately, most of the visits to the schools have been very positive.

A particular highlight has been the numerous 'grill a pollie' visits I have had with the year 6 and year 7 classes. In that capacity I have visited Mount Mee State School, Conondale State School and also the Ananda Marga River School—an independent school located just north of Maleny. These visits provide me with a great opportunity to mix with the young kids. They certainly come up with some fantastic questions. Although I have not been a minister or a shadow minister, I liken these visits to question time. I certainly leave the classroom feeling rather exhausted, having answered questions ranging from my views on Traveston Dam right through to my income and what sort of hours I put in as a politician. These visits are great fun. They certainly provide me with a great opportunity to chat with the kids. Also, they provide with me an opportunity to identify some real future political talent. I am pretty confident that we should rest assured that our future is in very good hands if these kids end up leading our state in the coming years.

I have also had the opportunity to go to functions such as the Beerwah State High School fundraising hospitality dinner. This is a fantastic event that serves two purposes: to showcase the hospitality skills of the senior students and to raise funds for the students' graduation celebrations later in the year. I think the function is a fabulous mix of skills and celebration. I have also had the joy of presenting many athletic medallions to students from Elimbah State School and Conondale State School. As do many other members in this House, I also attend fairs in my electorate, including the Chevallum Strawbfest. As we all know, we are coming into the wonderful time where we attend graduation dinners for year 7 students and year 12 students.

When I attend these superb events and interact with the students and teachers throughout my electorate, I am staggered that this government continues to show such disrespect to the teaching profession. I support the teachers' call for higher pay and the government should, too. It should respond by making the highest interim offer possible under its own funding guidelines and that offer should be more than the four per cent it is currently offering this year. Teachers are at the front line of our future. Their commitment to the education of our children—our future generations—needs to be suitably recognised. Having had teachers in my immediate family, I know firsthand that many teachers continue to have to fork out for the necessary resources that they need for their classroom activities—resources that should be funded by the government. Teachers are professionals and should be seen as such. That recognition starts by being rewarded with professional rates of pay.

If that is not enough, the government continues to short-change primary schools as a whole. There has been no acknowledgement that the government is pilfering the funds so hard fought for by the AGPPA. Principals are still expecting to see as little as 20c in every dollar of the money they secured from the federal education minister. No wonder teachers have to delve into their own pockets to cover their own school expenses. The government talks about Queensland being a Smart State, but that will never truly eventuate until we focus our funding not on central office bureaucracies or fancy media-grabbing state-wide programs but on the schools and the teachers themselves. The government cannot continue to apply a one-size-fits-all approach to school programs. It needs to allow principals the financial flexibility to implement local solutions to the needs of their students.

I turn now to the specific aspects of the bills we are debating this afternoon. Firstly, I would like to comment on the amendment to the Education (General Provisions) Act 2006, which I understand enables the minister to provide or assist in providing a preparatory learning program at certain state and non-state schools for children aged at least 3½ and to prohibit a licensed child-care provider from using a term that indicates, or could reasonably be understood to indicate, that the licensee is purporting to offer education in the preparatory year of schooling. This is a very welcome amendment and I give my support to it. I think it is very important that we distinguish between education and child care. But I would have hoped that we could have potentially taken this amendment a bit further. I am very supportive of its intent to assist Indigenous communities, but I ask that the minister also enable certain non-state schools—independent schools in particular—to offer a pre-preparatory educational year.

I would like to use two examples to illustrate my point. The first is Nambour Christian College, which is the school my children attended during the introduction of the prep year. At that time, the school was already offering a prep year on a trial basis. It also offered a pre-prep year, or a kindergarten year. Unfortunately, with the introduction of the prep year, the school was left with one of two choices: either to convert that pre-preparatory year to a C&K kindergarten or to apply for a child-care licence. Being an independent school, the school did not want to sign over the authority of its program to C&K. So it was left with no other choice than to go down the child-care path. That was an extremely tortuous and rigorous process and in the time that was left to the school, it meant that a lot of changes had to occur that impacted negatively on the teaching staff as well as the students who were already enrolled in that pre-preparatory year.

This process has also had a negative impact on the Caboolture Montessori School and other Montessori schools through the state. As the minister may know, the Montessori schools operate on cycles. Ideally, their first cycle would commence at the age of 3½. The schools operate on very strict guidelines. In fact, the guidelines that they impose upon themselves are stricter than we see currently under the Child Care Act. It is a mandatory requirement of such schools to only accept children at that age who are toilet trained and who, more importantly, can demonstrate some level of interaction with both adults and their peers.

They have a very well-established curriculum that includes elements in four main areas such as practical life, sensorial, language and mathematics. Considerable emphasis is also placed on creative arts, music, science, geography and cultural studies, and the acquisition of one's own first culture as the child's central development drive in this first cycle of development.

I understand that when the move to the prep year was occurring Independent Schools Queensland and the schools themselves did write to the then minister, Minister Welford. I draw the minister's attention to some comments made by Dr John Roulston, the Executive Director of Independent Schools Queensland. In a letter to the minister he wrote—

I bring to your attention legislative provisions in Western Australia whereby care provided to a child enrolled at a school who has reached three years of age and where the care is provided in the course of the child's participation in an educational program under the Educational Act is exempted from the child care regulation. The relevant extract from the act is attached.

I would like to refer to that extract from the Western Australian Children and Community Services Act 2004. I am happy to table these if so required. Clause 198 of that act talks about the meaning of a child-care service. It states—

(1) A 'child care service' is a service for the casual, part-time or day-to-day care of a child or children under 13 years of age, or such other age as may be prescribed for the purposes of this subsection, that is provided—

(a) for payment or reward. Whether directly or indirectly through payment or reward for some other service;

(b) as a benefit of employment, or

(c) as an ancillary service to a commercial or recreational activity.

It goes on to state that the term 'child-care service' does not include, specifically under subsection (e)—

care provided to a child enrolled at a school if

(i) the child has reached 3 years of age; and

(ii) the care is provided in the course of the child's participation in an educational programme under the School Education Act 1999.

I understand that this information was provided to then Minister Welford, who responded to Dr Roulston along these lines—

At our meeting at Parliament House on 28 March 2006, you referred to this issue and outlined an approach being taken in Western Australia. I examined that approach and came to the view that the circumstances between the two states are sufficiently different as to warrant a different situation in Queensland.

The Schools Education Act 1999 (WA) provides that a child can receive two years of non-compulsory education at schools. The first year of non-compulsory education is in a kindergarten program and the second year is in a pre-primary program.

Unlike Western Australia, Queensland's education legislation does not specifically provide for education programs to be provided by schools to children as young as three. Primary schooling in Queensland will begin with the preparatory year.

The Children and Community Services Act 2004 (WA) regulates child care. This Act provides that care provided to a child enrolled at a school is not considered to be child care, for the purposes of that Act, if the child has reached three years of age and the care is provided in the course of the child's participation in an education program under the Schools Education Act 1999. Because of the different situation prevailing in Queensland, I have reservations about following this strategy.

My department and the Department of Communities have resolved to work together to explore the interaction between the regulatory regimes for child care and education. This work will attempt to identify strategies that may ameliorate the present compliance issues identified by Montessori and Steiner schools—

might I add other independent schools as well—

and reduce the administrative burden where providers operate co-located school and child care services.

Time has certainly moved on to the point where today we now see that this legislation is addressing the fact that in certain schools, albeit Indigenous schools and I applaud that, we are now offering a second year of non-compulsory preparatory education. We have also seen that the Minister for Education has responsibility not only for education legislation but also for child-care legislation. I think the time has come to address this misnomer in our legislation. Unfortunately it appears that this has not been the case. I note that the independent schools were not consulted regarding this part of the amendment bill. There is a suggestion that a minor tweaking could potentially lead to a wider beneficial outcome. I refer to a recent email from David Robertson, who is the Director, Strategic and Government Relations of Independent Schools Queensland. He acknowledges that he has looked at the Education and Training Legislation Amendment Bill and states—

In theory, it does open up a possible model whereby Montessori and Steiner schools could provide an educational program to 3 and a half year olds as part of the school provision rather than under the regulation of the Child Care Act.

However, the legislation is very specifically targeted at Indigenous pre-school provision (as outlined in the Explanatory notes)—it is really about formalising what has been happening in the Cape area for many years whereby state schools have been running Indigenous pre-schools.

There is one particular clause which probably prevents at this stage, a Montessori school seeking to use the provisions in the Bill—namely, a prescribed school is defined that one that 'immediately before commencement of this section was providing a program'.

David Robertson reads this to mean that the new provisions will only apply to where schools are already providing this particular service rather than a system whereby schools can apply to provide it into the future. Perhaps there is opportunity to look at this, if not now then in the very near future, to broaden that slightly one step further to allow independent schools such as Montessori or, as I mentioned previously schools like Nambour Christian College, that have accredited educational programs that they could offer to 3½-year-olds. We might be able to expand this legislation to apply to them as well. These schools certainly offer meaningful education and also a positive start to the educational career of these students.

Moving to the Education Legislation Amendment Bill, I focus on the point that it makes a technical amendment to the University of Queensland Act 1998 to extend the expiry date for two university statutes by one year to 1 September 2010. From the outset I support the concerns raised by the Scrutiny of Legislation Committee's *Legislation Alert* and the shadow minister. It is worth highlighting a couple of those concerns again. Being a member of the Scrutiny of Legislation Committee, we did identify—largely due, thanks again, to Julie Copley, our research director—some concerns around the clear meaning of clause 40 in particular and called on some specific advice from Emeritus Professor Dennis Pearce, Special Counsel for DLA Phillips Fox. In short, his answer was—

(a) The legal effect of the expiry of the UQ Statutes is that, in the absence of validating legislation, no action can lawfully be taken under those Statutes after 1 September 2009. The effect of the expiry is that the statutes are no longer in force.

(b) We have substantial doubts whether the proposed section 72 to be inserted in the UQ Act will have the effect set out in the explanatory notes of restoring UQ to the position that existed prior to 1 September. We think that the position is more complex than the section recognises. We suggest that greater detail should be spelled out of the effect of the negation of the expiry of the Statutes in respect of:

- action taken under those statutes after they have expired; and
- the rules made under the Fees Statute establishing the fees scheme.

That is an important point. We are talking about statutes that relate to the fees structure of the school. Professor Pearce states—

We have two concerns about this. First, what is the effect on actions taken between 1 September 2009 and the commencement of the Act? Second, what is the effect of the expiry of the Fees Statute on 1 September on the scheme of fees contained in the rules made under the Statute?

This is quite a considerable issue and in raising this we hope it does not lead to legal action, which is why we are raising it with the minister today. Professor Pearce continues—

The facts here are that the Statutes have expired. The fiction that section 72 creates is that they have not. However, this does not mean that on 1 September 2009 the Statutes did not expire. On that day they ceased to have effect because of operation of section 54 of the Statutory Instruments Act. While at some time in the future section 72 will say that the expiry is to be taken legally not to have occurred, the fact that the Statutes did expire cannot be denied.

He goes on to state—

In short, what we are suggesting is that the simple device of stating that the Statutes are to be taken not to have expired may well not be sufficient to restore the UQ to its original position. We think that additional provisions need to spell out explicitly what the effect of the deeming provision is to be in regard to actions taken in the interim period between the expiry and its retrospective cancellation.

Professor Pearce continues—

We are even more concerned about the effect of the expiry of the Fees Statute on the fees scheme contained in the rules made under that Statute. The Fees Statute is the source of the power to make the rules establishing the scheme. When the Statute ceases to be in existence, so do the rules made under it. This means that from 1 September 2009 the scheme no longer exists. It is dependent upon rules that are made by the Senate. We think that there is real doubt whether the revival of the Statute carries with it the revival of the rules previously made under the Statute.

I understand that the committee has invited the minister to comment on the concerns raised in the *Legislation Alert*, but obviously, given that we are debating this today, the time frames will not permit such a response to be received. Like others, including the shadow minister, I am keen to hear the minister address these concerns in his reply speech and in any amendments that he may put before the House during consideration of the clauses. I thank the House for the opportunity to raise some matters in relation to the education and training bills. I commend them to the House.