



NSW Legislative Council Hansard

Children and Young Persons (Care and Protection) Amendment (Parent Responsibility Contracts) Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 27 September 2006.

Second Reading

The Hon. JOHN DELLA BOSCA (Minister for Finance, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, and Vice-President of the Executive Council) [11.11 a.m.], on behalf of the Hon. Tony Kelly: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Children and Young Persons (Care and Protection) Amendment (Parent Responsibility Contracts) Bill 2006 is part of the New South Wales Government respect and responsibility plan. This plan aims to keep people safe, tackle antisocial behaviour and build harmonious communities. It also adds a new focus on reinforcing the efforts of parents to teach respect and responsibility, and supporting a more inclusive society. Stable nurturing families are of critical importance for children and young people and their development into valuable members of the community. It is within these families that children and young people learn respect for the core values of our society and assume responsibility for their social behaviour. While the majority of parents naturally take their parenting responsibilities seriously, there are increasing numbers of reports of risk of harm made to the Department of Community Services each year.

Those children and young people who are at risk of harm, because of the behaviour or poor parenting skills of parents or primary caregivers, are also at risk of becoming adolescents and adults who have not been effectively taught social skills. This includes a sense of personal responsibility; commitment to the community and respect for others. In turn they are not capable of teaching social values to their children. To break this cycle of neglect and abuse, and to support parents and primary caregivers who need help raising their children, I am pleased to introduce this bill to the House.

The bill amends the Children and Young Persons (Care and Protection) Act 1998 and creates a legislative base for parent responsibility contracts. The aim of the contracts scheme is to encourage parents to improve their parenting skills and accept greater responsibility for their children. This in turn will minimise children and young people in need of care and protection. This scheme will also complement the early intervention program the Department of Community Services is implementing across the State, as a further preventative strategy to support families before they enter the child protection system. Once a child or young person has been assessed by the Department of Community Services as being in need of care and protection, the bill offers the department a form of action as an alternative to bringing the matter before the Children's Court. However, the bill does not exclude Children's Court action or removal of the child if it is deemed that the child is at immediate risk.

The bill will enable the Department of Community Services to develop, in collaboration with the primary caregiver for the child or young person, a parent responsibility contract. This will occur in those instances where the department is of the view that the lack of parenting skills or poor behaviour of one or more of the primary caregivers for the child or young person can be modified within a period of six months so as to adequately reduce the risk of harm to the child or young person. A parent responsibility contract is an agreement between primary caregivers and the Department of Community Services aimed at targeting specific problems where there is a specific and tangible response. Once agreed to and signed, the contract will be registered in the Children's Court. Primary caregivers will be able to obtain independent legal advice before entering a parent responsibility contract.

The bill proposes that a parent responsibility contract may require a primary caregiver to attend and participate in programs to address such issues as mental health, parenting skills, addiction, anger management and violence prevention and behavioural issues. A parent responsibility contract may also contain the primary caregiver's commitment to undertake activities such as alcohol or drug testing, or to take their child to child care or speech pathology. The steps to be taken might be small and incremental but this does not minimise their importance.

A parent responsibility contract will contain realistic goals and achievable targets and it will not set up the primary caregiver to fail. There is nothing to be gained and everything to be lost if the contract is misused. The possibility of the parent being held liable in civil courts for damages arising from breach of contract has been expressly excluded, so that this arrangement cannot be used as a back door to punitively punish parents

instead of helping them to help themselves. Rather, a parent responsibility contract will give the primary caregiver the opportunity to accept support and to improve their ability to adequately parent their children. The desired outcome is to turn around the likelihood of the child or young person being in need of care and protection.

The targets the primary caregiver are to meet, their implementation, who will be involved, and how progress will be monitored and time frames met will all be set out clearly in the parent responsibility contract. A parent responsibility contract will not make provision for a re-allocation of parental responsibility or the placement of the child or young person in out-of-home care. The aim of the parent responsibility contract scheme is to set agreed targets and achievable outcomes to support parents, meet their obligations to their children to keep children safe and keep families together. The parent responsibility contract scheme will draw from existing resources and services. The bill strengthens the interagency approach to working with families, as primary caregivers will be linked with appropriate support services who will work together collaboratively.

From the outset, primary care givers will be aware that a breach of one of the terms of the parent responsibility contract they are party to is a serious matter. The bill will authorise the director general to file a contract breach notice in the Children's Court, which initiates an application for care orders in respect of the child or young person concerned. Once a contract breach notice is duly filed in the Children's Court, the presumption will be that the child or young person is in need of care and protection. It will be a matter for the parents to rebut the presumption that the child is in need of care and protection. However, given that the primary care giver voluntarily recognises that assistance is needed and the Department of Community Services [DOCS] has assessed the child as being in need of care and protection, litigation is a redundant step. When a fundamental term of the contract has been breached the filing of a contract breach notice simply operates as a form of bringing a care application. It is not intended that the director general will file any further affidavits or evidence.

However, the bill requires that a copy of the parent responsibility contract be filed with the contract breach notice. Nothing in the bill would prevent a primary care giver from challenging the validity of proceedings on the basis that the director general did not duly file the contract breach notice that purportedly commenced proceedings. However, this is unlikely to occur given that the bill makes clear that a parent responsibility contract must specify the circumstances in which a breach of a term of the contract will authorise the director general to file a contract breach notice, and that the contract breach notice will outline each provision of the parent responsibility contract breached and the manner in which it has been breached. When there is no, or insufficient, contrary evidence the Children's Court can proceed to make any order that is currently available to the court that it considers necessary to benefit the child. Once outside the co-operative situation of the contract the court plays a critical role in judicially assessing what, if any, future steps need to be taken.

Even though the bill provides avenues for alternative ways in which DOCS can work with parents, it does nothing to diminish the role of the court. To support the parent responsibility scheme, the bill strengthens the care orders available to the Children's Court. The bill proposes that section 73 be expanded to enable the court to accept undertakings not only from persons who currently have parental responsibility, as is presently the case, but also from any person responsible for the child or young person. This may include a birth parent who may no longer have parental responsibility, or primary care givers who are primarily responsible for the care and control of the child or young person. The bill proposes that the Children's Court be given the power under section 75 of the Act to order a primary care giver to attend therapeutic or treatment programs.

It is hoped that through the treatment of his or her own problems, the primary care giver will be better able to meet his or her parenting responsibilities. The bill also makes a minor miscellaneous amendment to section 38 of the Act to clarify the circumstances in which the Children's Court may make consent orders for the purposes of giving effect to a care plan without the need for a care application under part 2 of chapter 5 of the Act. This amendment seeks to address uncertainty arising from the current wording of section 38 (3) by making clear that the power of the Children's Court to make consent orders is subject to its judicial powers to make orders under part 2 of chapter 5 of the Act. Evidence and research from other jurisdictions, particularly the United Kingdom, show that parent responsibility laws similar to this proposed scheme can have successful outcomes for children and families.

The Government is committed to supporting and helping parents in their role. We are of the view that the primary responsibility for educating children in the values of respect and responsibility remains with parents and families. The bill seeks to reinforce that responsibility by providing both a support and deterrent mechanism to parents and care givers. I believe that in the drafting of this legislation the Government reflects community standards and is leading the way on this most important issue. I thank all those who have been involved in the development and construction of the bill. I also acknowledge the input of government departments and agencies that were consulted on the drafting of the bill. I commend the bill to the House.