Agreement in Principle

Ms VERITY FIRTH (Balmain—Minister for Education and Training) [4.11 p.m.]: I move:

That this bill be now agreed to in principle.

It is the right of every child in New South Wales to have an education, and access to the lifelong benefits and opportunities that education brings. For this reason, education has been compulsory in New South Wales since 1880. Parents have the legal duty to enrol their child in a school, or to enlist them for home schooling, and to see that they attend regularly. A very small minority of children do not attend regularly. These children miss out on the quality education that is provided by New South Wales schools. They are at risk of lifelong social disadvantage as a consequence—a disadvantage that can be passed on to the next generation. Currently, for cases of persistent non-attendance, the only remedy offered by the Education Act is prosecution of the child's parents in court, with a monetary fine up to $1,100.

Yet a family's failure to have a child educated can be caused by a wide variety of factors. It may arise from mental illness, from drug and alcohol addiction, from social isolation, from parental disabilities, from the absence of parenting skills or from other causes of family disruption. When attempting to deal with these cases, it is vital to have a system that is flexible enough to address the real underlying causes of the problem. This bill will introduce such a system. Our aim is not to obtain a fine or have a parent convicted and punished. Our aim is to ensure that all children are receiving the education to which they are entitled.

In the New South Wales education system the first attempts to address a child's failure to attend school are made by the school. The principal and other school staff will work with the family to identify and resolve the reasons for poor attendance. Non-government schools are required by the conditions of their registration to take a similar approach. This is often successful. Where attendance does not improve, further assistance can be called upon by government schools from regional or State office staff or from a non-government school's welfare and pastoral support structure.

Currently, if this does not work, non-attendance matters are formally referred for prosecution in accordance with the Act. At present, all the courts can do under the Act is impose a fine. This system dates back to at least 1917 when a fine of five shillings was imposed for a first offence, and 40 shillings for a subsequent offence. A fine may work in getting some parents to meet their obligations under the Act. A recent examination of a sample of cases subject to prosecution shows that in around 50 per cent of cases, attendance improves in the three months following a conviction. But that still means that in 50 per cent of cases, it did not improve.

If our aim is to have children attending school, the imposition of a fine may in some cases just add additional stress to a family that is already struggling. The Rees Government has been committed to finding a better way to deal with these matters. We have been working to develop a much broader suite of options for the Department of Education and Training to deal with non-attendance matters before it is necessary to involve the court. And for those cases that do proceed to court, we have been working to develop greater options for magistrates—options that are better directed at our goal of improving attendance than the traditional fine.

I turn now to the provisions of the bill. Firstly, the bill will allow the Minister for Education and Training to approve an alternative education program for children who are unable for social, cultural or other reasons to participate effectively in formal school education. This will enable a child who has been living on the streets, say, to participate in a program such as Oasis, run by the Salvation Army. The Oasis program helps get homeless children "off the streets, off drugs and alcohol and away from abuse and violence". While partly an educational program, it also offers other services and family support. It is not a traditional school environment, but programs like this can play a role in reintegrating such a child back into engagement with compulsory education and training. Such a program would be able to be recognised as an alternative way of meeting the compulsory education requirements of the Act, at least for an interim period. The ultimate aim, where practicable, would be for the child to resume his or her school education.

Secondly, one of the difficulties the Department of Education and Training can face when dealing with the failure to enrol a child in a school is in identifying and locating that child and proving that she or he is of compulsory school age. Proposed section 22A of the bill addresses this problem by allowing the director general to request relevant information from a range of persons and institutions, including both government and non-government schools, other government agencies, and any non-government organisation in receipt of government funding. Concerned individuals would also be able to give information to the department about a child who they suspect is not receiving an education.

To give an example, if a community nurse becomes aware that a child of compulsory school age is not enrolled in school, the nurse can notify the Department of Education and Training and, as a result of the bill, will not be in breach of professional ethics by doing so provided he or she has acted in good faith. The department wants to

ensure that a person who performs an important civic duty by reporting a non-enrolment is not placed at risk of harm by doing so. Accordingly, the bill also provides that the identity of any person who provides information under the section will not be disclosed.

Once the department is satisfied that a given child is not in regular attendance, proposed section 22C of the bill gives the department the power to convene a conference of persons and agencies with a potential role in improving a child's attendance. The conference could include the child's parents or caregivers, school executive, other government agencies such as NSW Health or the Department of Community Services, and individual members of the community who may be able to assist in improving attendance. For example, if the student is of Aboriginal background, the department may seek out a member of the local Aboriginal community, such as an elder, who may be willing to play a role in assisting with the child's attendance. The purpose of the conference will be to discuss the reasons why the child is not at school and to develop strategies to improve attendance.

The conference may identify services that are required, including, for example, parenting or adult literacy classes; drug or alcohol counselling; mental health services, including counselling for depression; respite for a family if the child has a disability; community nursing or other healthcare services; housing, financial support or other welfare services; and contact with Aboriginal or other cultural support services. The Department of Education and Training could also make undertakings such as to arrange for the child to have a school uniform or a breakfast program, or transport to school if he or she has a disability. The undertakings made in the conference will be formulated into an individual attendance plan for the child in question. It is hoped that the majority of non-attendance matters will be resolved through this new, pre-court mediation process.

However, if these measures are not successful, the bill allows the Department of Education and Training to apply to the Children's Court for a compulsory schooling order as a next step. Unlike a prosecution, the application for a compulsory schooling order is not a criminal procedure. However, it is a warning that if the order is not followed and attendance does not improve, prosecution may be considered as the next step. A compulsory schooling order may contain a requirement to follow through on the actions voluntarily agreed to in the previously mentioned conference, or it may contain new actions deemed by the court to be able to assist in the goal of getting the child to attend school.

For example, if it is acknowledged that a parental drug addiction is contributing to the failure to ensure the child attends school, a requirement that the parent attend a rehabilitation program may be included as an element of the compulsory schooling order. A compulsory schooling order adds the weight of the justice system to the requirement to follow through on these actions. The point of introducing these new steps—the parents' conference and attendance plan, and the compulsory schooling order—is to attempt to resolve cases of persistent non-attendance without having to proceed to prosecution. However, for serious cases that cannot be resolved through these mechanisms, the bill retains the option of legal action. Where parents continue to fail to see that their children are enrolled and attending school, the matter may be taken to a Local Court.

The bill retains the option of a monetary penalty. Magistrates will be able to issue a maximum fine of $2,550 for parents for their first offence, rising to a maximum fine of $11,000 for subsequent offences. This increased maximum penalty is proportional and consistent with serious penalties under the Children Care and Protection Act 1998 for child neglect or acting so as to cause a child significant psychological harm. Magistrates opting for a monetary penalty will be able to choose a suitable fine within this range, appropriate to the amount that would serve as a deterrent, given the particular circumstances of the family in question. However, under this bill, for the first time magistrates will also have alternative penalty options available to them in lieu of a fine, if circumstances warrant.

The bill provides at proposed section 23 (5) that instead of imposing a fine on a person the court may make a community service order upon the parent. It will also be possible for the court to take a range of alternative sentencing options, such as imposing a good behaviour bond or deferring sentencing pending the completion of a rehabilitation program. It is anticipated that in many cases these options will be more suitable to the ultimate goal of the child returning to regular attendance than the traditional fine. Sometimes, despite the parents' best efforts, they are unable to compel their children to receive compulsory schooling. For example, the children may simply refuse their parents' best efforts to send them to school or may even pretend to go to school but never actually attend.

The first steps in remedying such a situation will remain engagement at the school level, followed by the convening of a conference with relevant agencies and persons, and the development of an attendance plan. If this is not successful, proposed section 22D (3) of the bill provides that where a child is over 12 years and the Children's Court is satisfied that the child is either living independently or the parents are not able to control the child, the Children's Court may direct a compulsory schooling order at the child in place of his or her parents. Like compulsory schooling orders for parents, this will not be a conviction but it adds the weight of the court to the actions agreed to in the attendance plan. Where a compulsory schooling order is not successful and the child is over the age of 15 years, the department retains the option of taking court action.

For children in this category between 15 and 17 years, a modest fine of up to one penalty unit, or $110, will be available for failing to comply with a compulsory schooling order. The court can proceed to a conviction and

criminal record for the child and can also order the child to participate in specified programs instead of a fine. This is a balanced approach that recognises, as the law does generally, an increasing capacity for children to exercise adult-like judgement and responsibility as they approach the age of 18 years. There are a number of ancillary provisions in the bill that I will address briefly. Parents and children are able to rely upon a broad range of defences for non-attendance set out in proposed section 23. These include the fact that the child was sick.

Unfortunately a very small number of parents claim that their children are sick as a means of keeping them home or excusing their non-attendance. While it will not normally be necessary, proposed section 23 (7) allows a school principal who has reasonable doubt as to the cause of a persistent absence to require a medical certificate confirming that the child is not fit to attend school. This bill also resolves an anomaly relating to attendance at non-government schools. In the past 10 years there have been no prosecutions of parents whose children are enrolled in non-government schools. This is because although all principals are required to keep a record of daily attendances, there is no requirement for non-government schools to notify the department of unsatisfactory absences.

This bill will close that gap, creating a level playing field in relation to the parental responsibilities of children enrolled in all schools. Information about persistent non-attendance in non-government schools would be passed on to the education department for consideration of appropriate action in accordance with the new system. I also point out that, under the system proposed in the bill, it would still be possible in extreme cases for the education department to move directly to prosecution without first making an application for a compulsory schooling order to the Children's Court. These would be cases where a dramatically worsening threat to the child's educational development is evident. It is expected that this will be a rare occasion but the necessity of this power being available in potentially tragic situations is clear.

This bill also adds an important statement to the objects of the Education Act. The bill will amend the Act explicitly to require the education department to provide opportunities for Aboriginal families, kinship groups, representative organisations and communities to participate in significant decisions relating to the education of Aboriginal children. This will be particularly pertinent in the application of the reforms set out in the bill but it will apply also to all significant decisions made under the Act in the future. The Rees Government's Aboriginal Education and Training Strategy 2009-2012 already commits the education department to work in partnership with the New South Wales Aboriginal Education Consultative Group, as the peak community advisory body on Aboriginal education and to engage the Aboriginal community in a meaningful way in policy development and decision making. It is appropriate that this principle be enshrined in the Education Act.

The bill is complementary to the changes passed earlier this year to child protection legislation as part of the Government's Keep Them Safe Action Plan. The process reflects the importance the Government has placed on active collaboration between public agencies and families to improve outcomes for children. The bill also responds to the recommendation of Justice Wood to introduce "measures to ensure greater attendance at school". It builds on the Government's decision to introduce 25 additional home school liaison officers and 15 Aboriginal student liaison officers across the State. The bill is also consistent with the change to the requirements of mandatory reporting following the Wood inquiry report. Failure of parents to comply with their compulsory schooling obligations is now one of the circumstances to be considered in determining whether a child is at risk of significant harm under the Children and Young Persons (Care and Protection) Act 1998.

Together these reforms will allow a significant enhancement of our capacity to ensure that all children of compulsory school age receive the education they deserve. In conclusion, the vast majority of parents are enthusiastic supporters of their children's participation in education. For the very small number that do not comply with the compulsory schooling requirements of the Education Act, the reforms set out in the bill provide greater flexibility in managing their cases. The bill will allow actions taken to remedy non-attendance to be tailored for the particular case and targeted at our ultimate goal—the child's return to a regular pattern of attendance. I commend the bill to the House.