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Commission for Children and Young People Amendment Bill 2007

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COMMISSION FOR CHILDREN AND YOUNG PEOPLE AMENDMENT BILL 2007

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Bill introduced on motion by Ms Linda Burney.

Agreement in Principle

Ms LINDA BURNEY (Canterbury—Minister for Fair Trading, Minister for Youth, and Minister for Volunteering) [5.02 p.m.]: I move:

That this bill be now agreed to in principle.

The Commission for Children and Young People Amendment Bill 2007 will make several minor amendments to the Commission for Children and Young People Act 1998 and one to the Parliamentary Electorates and Elections Act 1912. The amendments are not substantive in nature but rather help to clarify existing provisions and streamline the Act's provisions. Consequently, they will allow the commission to do its work more effectively. I will now outline the amendments to the Commission for Children and Young People Act 1998. I turn firstly to amendments that will strengthen and streamline the working with children check.

The bill will mean that the working with children background check will apply regardless of whether people are employed to work only with children who are related to them. Last January the amalgamation of the commission's Act and the Child Protection (Prohibited Employment) Act 1998 took effect. The amalgamation resulted in a single set of definitions applying to both the prohibited employment and background check components of the working with children check. This had the unintended consequence that an employee was no longer required to have a background check if all the children with whom they work are related to them.

The result is that a small number of people are not currently subject to the working with children background check: commercial babysitters who babysit only for relatives, for example, or foster carers who are authorised to care only for relatives. Such people should be background checked irrespective of whether they are caring for relatives or not. This bill will resolve this problem by requiring that all people in primary child-related employment be subject to the background check. The question of whether they are related to the children will not arise. This bill corrects an anomaly that arose from the amalgamation of the two Acts and reinstates the original intention of the Parliament when passing the legislation.

The bill contains also two amendments that will help employers meet their requirements to report certain matters about employee behaviour to the commission. Under the Act employers are required to report to the commission if an employee has committed an act of violence against a child or has engaged in certain types of conduct. If an employer has investigated the employee's behaviour and has found that the employee has, or may have, behaved in a prescribed way or used violence against a child they report it to the commission, which takes it into account in background checking. This is referred to in the Act as a "relevant employment proceeding". However, some employers have been confused about when they are required to report the proceeding to the commission.

The bill includes a precise definition that will give employers clarity about when to report. The bill means that an employer will be required to report a relevant employment proceeding when the employer has determined that the conduct has or may have occurred, and what disciplinary action, if any, the employer should take. As well as providing clarity for employers, this amendment means that the employer may think more carefully about the effect and consequences of the conduct, and it may encourage them to revise their risk-management procedures. The bill makes an additional clarification about the nature of the proceedings.

The Act currently uses the term "disciplinary proceedings". However, in some employment settings this term or similar words are used with a narrower meaning. The Education Act is one example. This has led to some confusion for employers in these sectors: they are unsure when to report matters to the commission because they have two definitions to consider. For this reason the bill uses the inclusive term "proceedings (including disciplinary proceedings)" to remove any doubt by employers in these sectors. This bill makes one further change to strengthen the relevant employment proceedings provisions.

Currently the Act requires employers to notify the commission of the name and other identifying particulars of any employee against whom relevant employment proceedings have been completed. They are not required to provide any further information. Clearly, it is of limited value in assessing risk to children if the commission knows that a person has engaged in some prescribed behaviour towards a child, but it does not know what the person has done, how the child was harmed or the circumstances of the conduct. This bill will require employers who report relevant employment proceedings to provide sufficient details about the incident or incidents so they can usefully be considered in the background checking process.

The bill protects employers from liability if they fulfil this obligation in good faith. The changes to the Act, which came into effect last January, allow for a scheme to assist self-employed people in child-related employment. Under this scheme, to be established by regulation in 2008, self-employed people will be able to display a certificate verifying that they are not a prohibited person. When undertaking the independent review of the commission's legislation Ms Helen L'Orange, who recommended this scheme, proposed that people applying for such certificates should be charged a fee to cover costs. This is consistent with the practice in most government and professional certification schemes.

The commission's Act currently authorises charging a fee for any services or materials it supplies. However, legal advice has suggested that issuing the self-employed certificate is a regulatory function and should not be characterised as supplying services or materials. So the commission needs a new power to charge fees for certificates, which this bill will provide. Finally, in relation to the working with children check, the bill will update the commission's Act to reflect terminology changes in the Crimes Act. The working with children background check reviews relevant apprehended violence orders, which are defined to include interstate restraint orders. However, the Crimes Act has been amended, substituting the words "external protection orders" for "interstate restraint orders".

These provisions have also been moved to the Crimes (Domestic Violence) Act 2007. References to interstate restraint orders and the Crimes Act are therefore now out of date. This bill will update this terminology to mirror the Crimes (Domestic Violence) Act 2007. I turn now to the provisions that concern the Child Death Review Team. Honourable members will be aware of the significant achievements of the New South Wales Child Death Review Team. The commission's Act establishes the Child Death Review Team for the purpose of preventing and reducing the deaths of children in New South Wales. The team is required to report on all deaths of people under the age of 18 years in New South Wales.

Currently the team is unable to report on deaths of children that occur outside New South Wales. Children who live in border areas of New South Wales may die interstate. Think, for example, of children living in places such as Queanbeyan, the Tweed, Albury and Broken Hill. As a result of illness or injury, children in these areas may die in an ambulance or in the nearest hospital, which could be interstate. They could be the victim of a road accident or drowning just across the border. Information about these deaths may well be useful in preventing future deaths of New South Wales' children, but at present the team does not have the power to study them. There are now Child Death Review Teams in most Australian jurisdictions.

This bill will amend the Act to allow reciprocal arrangements between New South Wales and other Australian jurisdictions so that the team will be able to access information about the deaths of New South Wales' children who die elsewhere in Australia. It will also allow the team to provide information for research undertaken by other teams aimed at preventing or reducing child deaths in their jurisdictions. However, the bill requires that any interstate teams using information from New South Wales will have to maintain the same stringent confidentiality standards as the New South Wales team.

The bill also contains a further amendment to the legal status of the Child Death Review Team to simplify administrative requirements and save resources that could be better spent elsewhere. The Child Death Review Team is currently constituted as a corporation. This means that the team is required to maintain financial records and to prepare and have audited financial statements. However, the team has no funds and employs no staff. Its research, administration, publication, dissemination and support functions are undertaken and paid for by the commission.

All Child Death Review Team related finances have been included in the commission's audited financial statements since the commission's creation in 1999. Producing and auditing financial statements that contain no finances is a poor use of resources. It is unnecessary to require the team to maintain financial records. This bill will constitute the team as a committee of the commission rather than as a corporation, alleviating it of the necessity for separate financial reporting. The team's functions, powers, constitution and independence will remain unchanged.

In relation to parliamentary child-related conduct declarations, members may recall that the March 2007 general election was the first time candidates for this Parliament were required to make public declarations about whether they had committed certain forms of conduct with the potential to harm children. The Parliamentary Electorates and Elections Act 1912 confers on the commission the function of auditing child-related conduct declarations made by candidates elected to the New South Wales Parliament at a general election or by-election. However,

the Act does not confer on the commission all the powers it may need to undertake the audits. For example, candidates are required to declare whether they have ever been the subjects of an apprehended violence order taken out to protect a child.

The commission may have to seek information from the police or a court to determine whether a particular order was taken out to protect a child. An order taken out to protect an adult is not relevant to the declaration. At present the commission does not have the power to require the police or a court to provide the necessary information, so it is possible that the commission would be unable to verify whether a candidate's declaration was complete. I hasten to reassure the House that such a power was not needed in the audit for the 2007 general election. However, it may well be needed in future elections. It would be prudent for us to give the commission the power to obtain such information should it be needed.

The bill amends the Parliamentary Electorates and Elections Act 1912 by empowering the commission to request the police and courts to provide copies of documents the commission needs to complete an audit and to require agencies to comply. Should it be necessary for other agencies to provide documents, provision is made for these powers to be extended to them by regulation. Finally, the bill contains two minor amendments of an administrative nature. In 2006 the commission's status changed from a government department to a statutory body. Consequently, the commission should be subject to the Annual Reports (Statutory Bodies) Act 1984 rather than the Annual Reports (Departments) Act 1985. The commission's Act still refers to the Annual Reports (Departments) Act. The bill updates this provision so that the commission is governed, appropriately, by the provisions of the Annual Reports (Statutory Bodies) Act 1984.

The commission's Act provides the commissioner, commission staff, members of the Child Death Review Team, and other commission committees with protection from personal liability for certain acts and omissions. However, this section of the Act refers at times to "acts and omissions" and at other times only to "acts". The intention was clearly to provide protection consistently and this awkward wording is an oversight. The bill corrects this oversight by providing that protection from personal liability is available for anything done or omitted in good faith in the execution of that Act or any other Act.

This bill contains a good package of amendments that will assist employers by clarifying their working with children check responsibilities. It will enable the Child Death Review Team to extend its excellent research even further, and help to streamline the commission's administrative functions. I commend the bill to the House.

Debate adjourned on motion by Mr Russell Turner and set down as an order of the day for a future day.

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