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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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### Second Reading

**The Hon. HENRY TSANG** (Parliamentary Secretary) [10.07 p.m.], on behalf of the Hon. John Della Bosca: 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 amendments are not substantive in nature, but rather help to clarify existing provisions and streamline the Act's provisions. They will consequently 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.

#### Working With Children Check

I turn firstly to amendments which 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 baby sit 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 are 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 also contains 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, who take 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, that should be taken by the employer.

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 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.

Child Death Review Team

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 of New South Wales.

Children who live in border areas of New South Wales may die interstate. Think for example of children living in places like 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 the Team can 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 which 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 the necessity for separate financial reporting.

The Team's functions, powers, constitution and independence will remain unchanged.

#### Parliamentary child-related conduct declarations

Honourable 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, this 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 subject 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 of 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 it 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.

#### Minor Amendments

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. 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.

#### Conclusion

This bill contains a good package of amendments which 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 streamline the Commission's administrative functions.

I commend the bill to the House.

**The Hon. CATHERINE CUSACK** [11.08 p.m.]: The Commission for Children and Young People Amendment Bill 2007 has been described informally as a housekeeping bill that tidies legislation and takes up positive proposals from a number of sources, including Helen L'Orange, who conducted a thorough review. In relation to cross-

border communities the bill closes an important loophole that I identified some years ago has proved complex and problematic due to the innovative nature of the work of the Child Deaths Review Committee—which is leading Australia—and the issue of privacy, which is a perpetual thorn in all cross-border negotiations between States.

While it is a housekeeping bill, the issues the bill clarifies are very important. My colleague the member for Manly has spoken in detail about the changes and I endorse the diligence and the thoughtfulness of his approach. He has a passion for young people, great experience and a measured style, which is a wonderful asset for discussion on this topic. Indeed, the Commission for Children and Young People and its Commissioner Julian Calvert—whose presence in the House today I acknowledge—report direct to the Parliament and have access to what I believe is the strongest ever collection of members who wish to assist and promote their work. The Minister for Youth, Linda Burney, is a very high-profile Minister and the first ever Minister from an Aboriginal background.

I sit on the parliamentary committee that oversees the commission. The committee is chaired by Carmel Tebbutt, who, again, is unusually qualified for her role. The opportunity she offers the commission and the Parliament reflects her own child-centred choices. My colleague Steve Cansdell is also a member of the committee and is another passionate advocate for young people in trouble. Members may have read a feature article in last Sunday's *Sun-Herald* in which he revealed his childhood background in a State-run home for children who were orphaned or whose parents could not care for them. The article shows what a special person Steve is and how he wants to use his experiences in a positive way, particularly to give back to the younger generation. Reverend the Hon. Fred Nile, with a wealth of experience and strong advocacy, is the Deputy Chair of the committee, and the member for Macquarie Fields, Dr Andrew McDonald, is a well-known paediatrician who brings with him additional insights and expertise not previously available.

For me it is an honour to serve on such a strong committee. I hope that my observations have not taken up too much of the time of the House, but I believe that an unprecedented and extraordinary collection of parliamentary talent, goodwill and advocacy is working with the commission. It reflects the strong bipartisan interest that we all share in doing more for our young people. Such enthusiasm might seem like a mixed blessing for the commission with more being expected of it and a higher standard of discourse.

Earlier this evening, when I was listening to the remarks that were being made by my colleague Mike Baird, I realised that he is just as comfortable as I am in picking up the phone and talking to the commissioner. I suppose that if we were all doing that and we were all trying to help, it would make life more complex and increase the workload. However, we receive nothing but positive feedback and encouragement, and we appreciate the opportunity to learn and to play a small role in this important work.

It is in that context I thank the commission and the Government for seeking to address my concerns about the underreporting of deaths in cross-border communities. By way of personal background, I grew up in Yass, a cross-border community near the Australian Capital Territory border. Currently, I am a resident of the Far North Coast, another cross-border community. New South Wales has more borders than any other State and every border community is receiving tertiary level health services in other States. That means that the North Coast from Grafton up, as well as the northern sections of New England, especially Tenterfield and the north-west slopes, have access to teaching hospitals in Queensland, including specialist paediatric services. When talking about child deaths one would expect that level of service to be highly engaged in the care of young people, and for young persons who pass away to be located in such facilities.

Canberra provides tertiary level paediatric health services in the Southern Highlands from Goulburn down through the Monaro region to the Far South Coast. Riverina communities, including Wagga and Albury, tend to flow south to Melbourne, while communities in the far north west of the State in the Broken Hill region access tertiary health services in Adelaide. New South Wales has very few inflows from interstate, but half a million residents are dependent on high-level paediatric services in neighbouring capital cities. For that reason we have most to gain from an information sharing agreement that will close the significant gaps in data collection undertaken by the Child Death Review Team.

A child who is fatally injured or terminally ill very often passes away in another State, with death certificates being issued in that State. The effect of omitting those deaths from data—they are omitted at the moment—is quite profound. Deaths are significantly underreported in our regions, which means that the entire process of investigation and monitoring trends is a waste of time for our communities. For example, drownings are grossly underreported on the North Coast but, in my view, that area deserves close monitoring and attention. Indeed, that very issue alerted me to the problem. For two years in a row the Tweed statistical area reported zero deaths from drowning, and yet as a local I knew that was simply untrue.

The problem was revealed in discussions with the commissioner, who stoically withstood my making many representations on the issue. A further problem is that the Ombudsman relies on Child Death Review Team data to identify cases of reviewable deaths, including children or their siblings who were known to the Department of Community Services. In cross-border communities all those cases fall through the gaps. I believe that the number of reviewable deaths in our communities has been underreported as a result, and the Ombudsman, who as we know undertakes a thorough review of each and every case, has not investigated them. I believe that the situation

relating to reviewable deaths is more than unacceptable to our communities.

These legislative changes will greatly strengthen the integrity of the data and the overall process. I am heartened to see an outcome as a result of my representations. It has not been a simple matter; I had to overcome many hurdles to reach this point and I thank the commissioner and the Government for their persistence. I have said many times in the past that the commission is well served by an eminent panel of specialists who comprise the Child Death Review Team. The bill will alter the legislative basis for the team from a statutory authority to a body located administratively within the commission. I have been assured that this will make no practical difference to the independence of the team. However, it will streamline its arrangements. For example, its standing as a statutory authority means that it must comply with annual reporting requirements, including financial reports that read nought, nought and nought. The Opposition accepts that these new arrangements are commonsense arrangements.

The issue of background checks for carers related to children has also been clarified in this bill. It appears that an error occurred in the initial legislation. Background checks for all people working with children, including relatives, were to be conducted but they were left out of the bill. Background checks are particularly important when children are being placed in foster care. A failure to conduct a background check led directly to the death in 2003 of Mundine Orcher, a five-month-old boy. On Saturday 1 December 2007 the case was reported extensively on page 1 of the *Sydney Morning Herald*. In 2005 the Ombudsman referred to it in his child deaths review.

I have previously raised this matter in this House and in estimates committee hearings—a shocking case in which the Department of Community Services placed the child and his siblings with foster carers against the wishes of the mother. The male carer was a relative of the child's father. If the Department of Community Services had conducted a background check in accordance with its own procedure, the extensive violent history of the carer and the fact that he had served time in custody for violent offences and was wanted by police would have been picked up and the placement would not have been made. The police attended a domestic violence incident at the home after the children had been placed but failed to notify the Department of Community Services of the incident and the fact that children were in the house. The boy subsequently died of non-accidental injuries. According to the paediatrician who examined the child, these injuries, which were severe, were sustained over a long period.

Just to complete the disastrous circumstances of the case, we now find that insufficient evidence has been able to be collected in order to lay charges against any person involved in this tragic death. I believe that these background checks are essential. It is of great concern to me that although the bill requires these checks, schedule 1 exempts relatives from being considered as prohibited persons. In other words, background checks, which are run to establish the background of a person, are vital. The bill defines "relative" and provides that though a relative has a negative background check and is designated as a prohibited person, the provisions will not apply if that person is defined as a relative. Proposed section 33PA states in part:

**Child-related employment to which Division does not apply**

(1) This Division does not apply to the employment of a person in child-related employment if:

(a) all the children with whom the person is required to have contact in that employment are related to the person, or

(b) all the children with whom the person is required to have contact in that employment are related to the employer and the person is related to the employer.

(3) In this section:

**relative** of a person means the spouse, parent, child, grandparent, grandchild, uncle, aunt, brother, sister, niece or nephew of the person, whether the relationship is of the whole or the half-blood and whether the relationship is natural or depends on the adoption of a person.

I am particularly concerned about this part of the definition:

**spouse** of a person includes any person who is living with that other person as that other person's partner on a bona fide domestic basis.

That is an incredibly broad definition of "relative". A background check might establish that someone falls into the category of a prohibited person, for example, someone who has just been released from jail for committing a violent or sexual assault on a child. If that person moves into a house with a partner, even though he or she is not married to the partner and is not related to any children in the house, under this definition of "spouse" the prohibited status of that person is nullified. In other words, this bill does not fully close the loopholes. I believe the problem is compounded particularly in the Aboriginal community because under part 2 of the Children and Young Persons (Care and Protection) Act 1998, which deals with Aboriginal and Torres Strait Islander Council principles,

the Department of Community Services is required to go to great lengths to make kinship care arrangements for Aboriginal children.

Item 13 of this part of the Act lists the specific order for placement, and in a very well-meaning way requires extensive consultation with Aboriginal communities and families in those arrangements. The Act lays out step by step all the different types of family arrangements and leaves very little opportunity for the department to manoeuvre around those principles. The problem is that the safety and needs of the child, which govern the care arrangements for all non-Aboriginal children, are not the overriding considerations for Aboriginal children. Cultural considerations appear to be given more priority than child safety for Aboriginal children.

This double-standard approach to care arrangements for Aboriginal children was dramatically highlighted last year when three Aboriginal brothers aged two years, four years and six years were removed from a foster family after having formed strong bonds with the parents over a two-year period, were thriving physically and emotionally, and the Department of Community Services had encouraged long-term care planning because of the success of the placement. The children were removed because alternative foster parents were identified where the male partner was Aboriginal, although the mother was not.

These young brothers were ripped by the Government from a loving, safe and supportive home even though there is a long waiting list of foster parents for Aboriginal children. The removal of these three brothers was at the expense of placing other Aboriginal children in the care of foster parents. The Foster Care Association was left incredulous that the established bonds and the needs and progress of the children were secondary to cultural considerations. The Administrative Appeals Tribunal's ruling on the matter was, as strange as it seems, that the Act is very clear on that point.

The reason for the decision is found in division 2 of the Children and Young Persons (Care and Protection) Act. Given that the interests and wellbeing of these Aboriginal children effectively were downgraded by ideology, I urge the House to consider also the effect of the exemption clause for prohibited persons being foster parents. My conclusion is that Aboriginal children in New South Wales receive a lesser standard of protection compared with white children. The situation is very complex and disturbing: it is an issue the Department of Community Services and the Lemna Government seem incapable of talking about. I understand it is difficult, but it is the key factor in too many deaths of Aboriginal children. As difficult and as sensitive as the issues are, we must discuss the problem and try to find an intelligent, commonsense solution. I do not believe the solution is to have a blanket exemption for people who would otherwise be prohibited persons. That is just an excuse to turn a blind eye to a serious problem. I cannot imagine a problem being more serious than young Aboriginal children dying.

A final contentious issue the bill deals with relates to background checking of individuals who nominate for election to the New South Wales Parliament—which was introduced following the controversy surrounding the arrest of a Lemna Government Minister, Milton Orkopoulos. Of course, that was prior also to other controversies involving the then member for Macquarie Fields; the member for Blacktown, Paul Gibson, earlier this year; and Phil Koperberg for the second time this year in a matter we are still trying to deal with. I remind members of the comments of Barry O'Farrell at the time the original legislation was passed through the Parliament. He said:

Regrettably, once again we see gesture politics from the Lemna Government. This is probably the best indication that this Government is a continuation of the former Government.

By that he meant the Carr Government. He continued:

Labor has been in power for 12 years and over those years we have seen continual gesture politics. When the Government is in trouble with the media it puts something out in the expectation that the public will believe it will solve the problem. This legislation would not have stopped the former Minister [Orkopoulos] taking his place in Parliament in 1999 and 2003.

This legislation we are amending tonight by way of housekeeping would not have stopped any of those who have since experienced crises concerning domestic violence allegations from becoming members of this Parliament, even though precisely that type of predicament was the trigger for this legislation. I recall that after the election it was stated that all members of Parliament now have undergone this background check. I point out to my lower House colleagues that half the members of the Legislative Council have not undergone that background check—those who will stand at the next State election. I am confident I will survive a background check, but it is incorrect to say that I and my other 20 colleagues who did not stand at the last State election have actually been through that process.

The legislation relating to background checks for candidates is confusing and seems to go nowhere. The implications of failing the background test still are unclear. I appreciate that administering the legislation is a big headache for the commission and, obviously, the politics require that process, but I am not sure it will achieve anything but additional workload on the commission. I was fortunate to be one of the few members lucky enough to receive a copy of the Legislation Review Committee Digest before the bill was debated. Many matters already had passed through the Parliament before the committee was able to release its report. I hasten to add that that is

no reflection on the committee but on the welter of legislation that fell on the Parliament straight after the Federal election. The Legislation Review Committee, in describing the changes to the Parliamentary Electorates and Elections Act arising from this legislation, stated that the Act:

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. The commission may have to seek information from the police or a court to determine whether a particular [apprehended violence] order was taken out to protect a child. 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.

The bill will achieve those technicalities. I have no idea what the bill will achieve in practice because it is not at all clear where these reports are going and how the legislation is being tested. This legislation does not appear to have been tested since the last State election. Given the way politics works in New South Wales, no doubt this legislation will be tested at some future stage. I will be most interested to see the result. The Opposition does not oppose the bill. Again I thank the commissioner and the commission for their work.

**Mr IAN COHEN** [10.27 p.m.]: The Commission for Children and Young People Amendment Bill 2007 seeks to make some amendments to the principal Act and also one amendment to the Parliamentary Electorates and Elections Act. By clarifying certain provisions the bill will allow the effective functioning of the commission. The bill seeks also to clarify requirements for employers to report to the commission certain matters regarding employees. This includes providing additional details to the commission in regard to employees concerning incidents that have led to proceedings. The Greens support this provision. It makes sense that when the commission is to assess risk to children it should have access to information regarding the nature of harm to children.

The bill clarifies also relevant employment proceedings and makes some adjustments via a clarifying provision in relation to apprehended violence orders to be consistent with new terminology in the Crimes Act. The legislation provides for a working with children background check to be applied regardless of whether people are employed to work with children who are related to them. I am advised that this could apply to situations where foster carers or babysitters care only for extended family members. I understand it was an anomaly that this provision did not apply in such cases, and it is certainly reasonable for the amendment to address that issue.

The bill makes changes to allow for cross-border reporting in order for the Child Death Review Team to be able to report on deaths of New South Wales resident children whose deaths occurred in other States or Territories. This should allow for better reporting and cooperation between States in regard to child deaths, which always are tragic and should be treated with as much transparency as possible. Some miscellaneous amendments in the bill seek to clarify the legal status of the Child Death Review Team and the commission. The bill seeks also to amend the Parliamentary Electorates and Elections Act by giving wider powers to the commission to request the police and courts to provide copies of documents needed to audit child death-related conduct declarations.

All children should be able to live without fear in a secure environment and be given the opportunity to maximise their full potential and performance. The New South Wales Commission for Children and Young People plays a role in that regard. With respect to child protection more broadly, much has been stated in the media lately about child protection as a result of the deaths of a number of young children in quite horrific circumstances. The Greens support significantly better resourcing of agencies such as the Department of Community Services as well as better cooperation between agencies in relation to child abuse, neglect and exploitation. I too examined the Legislation Review Digest, which states:

This Bill will require employers to provide sufficient details about the reportable incident so that they can be considered in the background checking process such as information on what the person has done, how the child was harmed or the circumstances of the conduct.

The Committee notes that the current legislation already requires employers to notify the commission of the name and other identifying particulars of an employee against whom relevant employment proceedings have been completed, and given the public interest in protecting children, the Committee is of the view that, on balance, the proposed section 39 (2) of Schedule 1 [9] does not unduly trespass on the right to privacy.

The Greens support the bill.

**Reverend the Hon. FRED NILE** [10.31 p.m.]: The Christian Democratic Party supports the Commission for Children and Young People Amendment Bill 2007. Like the Hon. Catherine Cusack, I am a member of the parliamentary committee that oversees the work of the Commission for Children and Young People. It is a privilege to be a member of the committee, which is chaired by Ms Carmel Tebbutt. She does a very good job. Recently the parliamentary committee held a hearing attended by the Commissioner for Children and Young People, Gillian Calvert, who is in attendance tonight in the President's Gallery and is following this debate. I acknowledge her presence and appreciate her important role.



The bill has four important aspects. It strengthens the background checking provisions of the Commission for Children and Young People Act and protects children in a number of ways, but particularly by reinstating provisions for background checking a small number of people who are employed to care for relatives. Relatives were excluded when the Crimes Act and the Commission for Children and Young People Act were amalgamated in January 2007. The bill also provides for cross-border reporting so that the Child Death Review Team will be able to report on deaths of children who are residents of New South Wales and whose deaths occur in jurisdictions other than New South Wales.

The bill provides for other miscellaneous amendments to clarify the legal status of the Child Death Review Team. Previously the review team was classified as a statutory corporation, but in the interests of greater efficiency and cooperation the bill provides for it to become a committee of the commission. The bill also amends the Parliamentary Electorates and Elections Act 1912 to confer on the commission wider powers to request the police and a court to provide copies of documents that are necessary to audit child-related conduct declarations. I understand that the new system has worked satisfactorily. I was re-elected as a member of the parliamentary committee and was instrumental in achieving those reforms. The Christian Democratic Party is pleased to support the bill.

**The Hon. MARIE FICARRA** [10.35 p.m.]: The Coalition supports the bill. The Hon. Catherine Cusack has already dealt with the bill in detail. I too acknowledge the good work of the New South Wales Commissioner for Children and Young People, Gillian Calvert. I had the opportunity to meet her recently and was struck by her very happy disposition. I have no doubt that reflects the good work she does. I also congratulate the parliamentary Committee on Children and Young People on its work. In my past local government career I was very pleased to have been associated with Dr Clarence Gluskie, one of the former Governors of Rotary International and the foundation president of the Hope for the Children Foundation. It was great to be associated with his parenting programs and all the work he has done in preventing child abuse. He is a psychiatrist and a great humanitarian. He has organised many child abuse congresses and has discussed different forms of abuse to which children may be subjected. There is no finer work than the protection of our children.

The bill amends the Commission for Children and Young People Act 1998 with regard to background checking of applicants for employment and the functions and status of the Child Death Review Team, and it amends the Parliamentary Electorates and Elections Act 1912 with regard to the auditing of child-related conduct declarations. The bill also will assist in streamlining the commission's administrative functions. In relation to the working with children check, the bill will update the commission's Act to reflect terminology changes in the Crime Act.

Importantly, the bill will allow the commission, through its Child Death Review Team, to investigate the deaths of New South Wales children that occur outside the State. As the Hon. Catherine Cusack has already stated, the bill will apply to children who have lived in border areas of New South Wales, such as Queanbeyan, the Tweed, Albury and Broken Hill, as well as other more distant child deaths. Reciprocal arrangements will exist with other similar interstate jurisdictions. The team is required to report all deaths of people under the age of 18 years in New South Wales. The bill will allow the team to provide information for research undertaken by other teams that is aimed at preventing or reducing child deaths in other jurisdictions.

The amending provisions of the bill will strengthen and streamline the working with children check. This check will apply regardless of whether people are employed to work only with children who are related to them. This will rectify a previous anomaly whereby a person who is working with children who are related to them were exempt from background checks—for example, babysitters who babysit only for relatives 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. The bill will help employers to meet requirements to report certain matters about employee behaviour to the commission—for example, acts of violence against children, or engaging in adverse types of behaviour with children.

There will be increased clarity regarding the timing of that type of vital reporting for further disciplinary proceedings. Employers will be required to provide sufficient details regarding their employees and related incidents against a child or children. Such details will be taken into account in background checking processes—details such as what the person has done, how the child was harmed, and the circumstances of the misconduct. This amending provision may mean that the employer thinks more carefully about the effect and consequences of conduct. Hopefully it will encourage employers to revise their risk management procedures.

The bill protects employers from liability if they fulfil their obligations in good faith. The changes to the Act that came into effect last January allow for the scheme to assist self-employed people in child-related employment. Under the scheme that will be established by regulation in 2008, self-employed people will be able to display a certificate verifying that they are not a prohibited person. The Coalition is aware that charging for certificates is consistent with the practice of other government and professional certification schemes. However, we are concerned that charging fees for the issuing of certificates to self-employed people may become a disincentive for employers to conduct background checks. There will be a continuing need to keep this compliance aspect under review.

The Government will need to devote more funds to ensuring that employers are aware of the changes to the Act; otherwise the objectives of this legislation will fall short. Undoubtedly, the commission will publicise changes to legislation on its website but, as we all know, public awareness campaigns are needed and employer groups need to be involved in informing their members of their obligations. For example, there is insufficient awareness in the community that certificates should be sighted by those employing someone to work with children. Another matter of concern for the Coalition is the disturbing fact that the commission has not yet used its powers granted by the 2005 legislation relating to audits of employer compliance. We believe that is due to inadequate funding for such processes. Clearly, the Coalition would like the Government to respond positively to that aspect.

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. Such provisions were used for the first time at the New South Wales State election in March. 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 bill gives the commission the power to obtain such information from the police or the court system should it be needed. 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 made in good faith in the execution of that Act or any other Act.

There can be no greater responsibility for us as legislators than the protection and welfare of our children and young persons. Much has been done in the past to put systems in place for reporting child abuse—physical, sexual, emotional and social. Unfortunately, recent stark incidents have involved unnecessary and tragic child deaths, and many instances of abuse and neglect are occurring as we speak in the House. We must strive to improve the systems we have in place to protect our communities, and especially our children, who are most vulnerable. We hope the bill will assist us with this vital responsibility. The Coalition does not oppose the bill.

**The Hon. HENRY TSANG** (Parliamentary Secretary) [10.41 p.m.], in reply: I thank honourable members for their contributions to the debate on the Commission for Children and Young People Amendment Bill 2007. As part of the New South Wales Labor Government's commitment to protecting children it established the Commission for Children and Young People in 1998. The New South Wales Commission for Children and Young People is an independent organisation that works with others to make New South Wales a better place for children and young people. As part of this aim the commission undertakes research, the working with children check, and community education and training. The bill will clarify provisions in the Commission for Children and Young People Act 1998 for the working with children check for people in child-related employment. The bill will also make other amendments to provisions of the Commission for Children and Young People Act, and one amendment to the Parliamentary Electorates and Elections Act 1912. I commend the bill to the House.

**Question—That this bill be now read a second time—put and resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

**Leave granted to proceed to the third reading of the bill forthwith.**

### Third Reading

**Motion by the Hon. Henry Tsang agreed to:**

That this bill be now read a third time.

**Bill read a third time and returned to the Legislative Assembly without amendment.**

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