



Child Protection Legislation Amendment Bill.

Second Reading

Dr REFSHAUGE (Marrickville—Deputy Premier, Minister for Education and Training, and Minister for Aboriginal Affairs) [7.32 p.m.]: I move:

That this bill be now read a second time.

The safety and wellbeing of children in New South Wales are of paramount importance to the Government. Since coming into office we have entrenched this principle in legislation. This Government has built a system that elevates the interests of children to the heart of government, and put in place a robust and unified system to protect children. The employment screening provisions and the oversight role of the Ombudsman are essential components of this system. There is no doubt that the interaction of adults and children is one of the most sensitive and complex policy areas that any government can face.

On the one hand, children are vulnerable and need strong protection. On the other hand, we must ensure that professionals working with children have the necessary authority and are able to work with children in a constructive way. It is also important that people working with children are themselves treated fairly. Past experience, including the Wood royal commission, has taught us some important lessons. First, we need to ensure that allegations of child abuse against employees are investigated in a timely and appropriate way, and that appropriate action is taken where an employee has not upheld community standards of behaviour.

We have given the Ombudsman the responsibility for overseeing these investigative systems through part 3A of the Ombudsman Act. Second, we need a system that thoroughly screens anyone seeking child-related employment. That is why we introduced a centralised employment screening system to be administered by the Commission for Children and Young People. We now have a system that we can be proud of and that is working to protect children in New South Wales. We have also learned a great deal about what works and what does not since this system was introduced. Most importantly, we need to distinguish between actions that are harmful and those that are necessary or reasonable for the effective care and management of children.

It is important to strike the right balance between protecting children and allowing professionals in child-related employment to carry out their duties without fear of unwarranted allegations of child abuse. This bill seeks to respond to the feedback from some professional groups that changes are necessary to achieve the right balance and improve how our system is working in practice. We must be very clear about what is or is not appropriate when dealing with children. This is particularly the case for teachers. Teachers have constant, often physical, contact with children throughout the course of every working day. Teachers also need to be able to discipline students for misbehaviour, and keep control of their classrooms so that all children are able to learn effectively.

The child protection system we have established was never intended to restrict teachers' ability to assert their authority in the school environment, or stop them from comforting distressed children. However, teachers have become unsure about what conduct is acceptable when carrying out their duties. Many teachers fear unwarranted allegations being made against them. In light of these concerns, the Premier asked the Director-General of the Cabinet Office, Roger Wilkins, to conduct a review into the impact of the child protection and employment screening legislation on teachers. The review found that:

The term "child abuse" raises strong emotions in the community, which in turn inhibits the effective implementation of the legislation.

The definition of "child abuse" does not describe clearly the type of behaviour that should be captured by the legislation and reported to the Ombudsman or the Commissioner for Children and Young People.

Teachers in particular have become increasingly confused about what actions are permissible in order to maintain effective classroom management and discipline.

The current legislation inappropriately captures some conduct, such as some very low-level physical contact by teachers. While this conduct may not always be appropriate, it should be dealt with by principals rather than being reported to the Ombudsman or the Commissioner for Children and Young People.

Finally, the Department of Education and Training needs to provide clearer guidance to principals and teachers on what behaviour is permissible to maintain, to ensure effective teaching.

The review called for some legislative changes and this bill implements those recommendations. Let me stress at the outset that these changes do not compromise the robust nature of our child protection system. They are designed to

balance the overriding principle of protecting children with the need to ensure that professionals working in child-related employment are not improperly hamstrung by the child protection system. They will make much clearer for teachers, and other people working with children, exactly what is expected of them.

This bill will strengthen the child protection regime because it adopts a more commonsense approach to the law, and encourages employers who are dealing with children to have in place responsive and robust systems for managing and investigating allegations made against their employees. The amendments introduce three significant changes to the current law. First, the bill removes the term "child abuse" from the Ombudsman Act and the Commission for Children and Young People Act. Child abuse is strongly associated with the activities of paedophiles. It is an emotionally charged term. Particularly where an allegation is not sustained, teachers and other employees should not be unfairly labelled. This bill replaces the term "child abuse" with "reportable conduct".

Second, the types of matters that must be reported to the Ombudsman and the Commission for Children and Young People will be amended and clarified. The current definition is not specific enough to identify all the types of behaviour that may or may not warrant investigation in a child protection context. It also makes it hard to adopt a commonsense approach to less serious matters. Under our proposed changes, "reportable conduct" will be defined as:

(a) any sexual offence, or sexual misconduct committed against, with or in the presence of a child (including a child pornography offence), or

(b) any assault, ill-treatment or neglect of a child, or

(c) behaviour that causes psychological harm to the child,

whether or not, in any case, with the consent of the child.

The definition goes on to state that "reportable conduct" does not extend to:

(a) conduct that is reasonable for the purposes of the discipline, management or care of a child or children having regard to the age, health, maturity or other characteristics of the child or children and to any relevant codes of conduct or professional standards, or

(b) conduct exempted by the Ombudsman, or by the Working With Children Check Guidelines.

Limiting what must be reported according to a test of reasonableness acknowledges that a certain level of physical contact with children is necessary in many child-focused professions. This is particularly the case in teaching, where there is high volume interaction with children every day. Adopting an approach based on reasonableness allows for a commonsense approach by employers to this legislation, taking into account all the relevant circumstances. For example, how firmly a teacher needs to hold a child's arm to restrain them from hitting another child, or walking into danger, would depend on the age and size of the child. There is a big difference in the firmness of the grip needed to restrain a 15-year-old and that required to restrain a 6-year-old.

Any relevant codes of conduct or professional standards will also help to determine what is reasonable. This would include the code of conduct that is in place for all Department of Education and Training employees. Importantly, the Ombudsman will retain his role overseeing the entire system to ensure that employers are making judgments about what is reasonable in good faith. In the interests of providing a clear message, this bill also contains a note that provides specific examples of actions that do not constitute reportable conduct and need not be reported to the Ombudsman or the Commission for Children and Young People. Let me emphasise this point. This legislation does not prevent a teacher from raising his or her voice in order to gain the attention of students, or from reasonably disciplining a student for inappropriate behaviour.

Isolated incidents, such as a teacher shouting, while not always appropriate conduct, do not need to be reported to the Ombudsman or the Commission for Children and Young People. The Government's amendments now before the House are designed to clarify and strengthen that point. The final change introduced by this legislation is to give greater prominence to measures that allow for more flexible implementation of the reporting requirements. These allow implementation to respond to the very different circumstances of employees in different industries and workplaces. This is essential if the legislation is to work sensibly. The Ombudsman has the power to exempt certain types of matters from reporting requirements through a class or kind determination. He makes such a determination when he is satisfied that an employer has achieved a high standard of investigative practice. The effect is that the names of the employees involved will not be reported to the Ombudsman.

The Ombudsman has already made class or kind determinations with the Department of Education and Training and the Catholic Commission for Employment Relations regarding certain low-level matters. This does not mean that these low-level matters are not investigated by the department or the Catholic Commission. Rather, the Ombudsman is satisfied that these two education employers will carry out all the appropriate investigations and, if necessary, any disciplinary action required. It is appropriate that other employers work with the Ombudsman to settle class or kind determinations to remove additional less serious allegations from reporting requirements. The director-general's review made recommendations to improve communication to teachers and principals, including redrafting the relevant guidelines prepared by the Department of Education and Training.

These recommendations have been accepted by the Government and will be implemented. The Department of Education and Training will also provide principals with training, support and guidance to help them conduct

investigations in an efficient, speedy and discreet manner. The changes to the legislation contained in this bill will allow for a commonsense implementation of these child protection laws. They allow for greater flexibility and judgment in individual cases, without losing the hard lessons we learned in the Wood Royal Commission. These amendments should leave no doubt in teachers' minds that they are able to exercise effective classroom management and discipline, and develop positive student-teacher relationships necessary for effective teaching. I commend the bill to the House.

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