



Child Protection Legislation Amendment Bill.

Second Reading

The Hon. CARMEL TEBBUTT (Minister for Community Services, Minister for Ageing, Minister for Disability Services, and Minister for Youth) [3.13 p.m.]: I move:

That this bill be now read a second time.

I refer to the second reading speech given by the Minister in the other House, which details clearly the policy justifications for the bill, and I do not intend to repeat them. However, I will make additional comments to address some of the concerns raised since the bill passed through the other place. The Government is well aware of concerns voiced by stakeholders. The Government has continued to negotiate those concerns in good faith and is satisfied that they have now been addressed adequately. The Government will introduce amendments in this House aimed at clarifying the scope of the bill. The proposed amendments deal with the concerns of stakeholders and provide clarity and certainty to both employers and employees. More specifically, the proposed amendments will further clarify what conduct will constitute reportable conduct under the bill. Schedules 1 and 2 make amendments that provide that reportable conduct will not extend to the use of physical force that is trivial or negligible, but only if it is being investigated and the results of the investigation recorded.

This new provision is not a derogation of the reasonableness test outlined in section 33 (1) (a), which still stands in its own right. The additional provision gives greater clarity to what is required to be reported. The terms "trivial" and "negligible" are to be afforded their common, everyday meaning. The test is not a technical one. However, it is important to note that what is trivial or negligible if done once is considered more seriously if done repeatedly. It is not intended that patterns of inappropriate conduct towards children be excluded by this exemption. Under these provisions agencies are still required to respond to complaints that involve physical force that are trivial and negligible and, if necessary, take action. This is good management practice. If employers do not investigate these matters and record the results of investigations, this provision is not available to them. Recording the results of investigation usually would include details of the complaint, a record of the allegation and the results. This provision does not give agencies permission to ignore complaints or fail to take appropriate action.

The Government is aware of varying standards of internal disciplinary systems to deal with complaints against employees. It is important that agencies using this new exemption are well informed about child protection, and have systems in place to handle and respond to child protection concerns that involve employees. Accordingly, the Government proposes that the new exemption will apply only to agencies to which part 3A of the Ombudsman Act 1974 applies, for example, government and non-government schools, and child care centres. If it emerges that employers are hiding behind the provisions in the bill, the Government will continue further measures to broaden external scrutiny. Concerns have also been expressed about acts of restraint and the need to clarify when they are reasonable. It is intended that the exemptions will apply to acts of physical restraint that are reasonable for the purposes of discipline, management or care of children. By way of example, acts of physical restraint will be considered reasonable and therefore non-reportable when they are not excessive having regard to the circumstances and their authorisation.

Whether an act of restraint will be considered excessive will depend on the circumstances and the authority of the person to use restraint. Take the following instance: a youth worker is managing a young person who is angry and distressed; the young person is about to endanger himself by running onto a busy road; and the youth worker grabs the young person to restrain him. In that instance, the youth worker's conduct is reasonable for the purposes of managing and caring for the young person. If, however, in restraining the young person the youth worker crash tackles the young person, applies excessive force for far longer than is required and the young person sustains injuries, clearly, the conduct is not reasonable and should be reported. The Government is aware that the bill raises a number of difficult issues, and has given certain assurances in that regard.

The Government stands by those assurances and makes a number of commitments. The Ombudsman's Office has assured the Government that it will seek the views of the relevant education unions during its review of the current class or kind determinations and as further determinations in the sector are developed. The Government remains committed to the active use of class or kind determinations and the independent standing of codes of conduct for professional standards as matters that must be conceded by an employer when determining whether alleged conduct is reasonable in the circumstances. The Government will negotiate administrative guidelines with the education sector to clarify arrangements for employee access to information during the investigation of an allegation or reportable conduct.

The Commissioner for Children and Young People has undertaken to write to employers who have made a notification under the existing legislation, inviting them to withdraw a notification if it would not have been reportable under the new

definitions. If it emerges that employers are not withdrawing notifications as they should, the Government will consider further measures to address inequitable treatment of affected employees. The Government is to establish arrangements for confirming with the Ombudsman the withdrawal of notifications, such that any affected employees will be able to represent themselves in employment interviews as having not been reported. None of those issues should delay the progress of the bill. Child protection in an employment setting can be a difficult area of law. The Government has acted in good faith and has struck an appropriate balance between child protection and employees' concerns. I urge the House to support the Government's amendments, and I commend the bill to the House.

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