NSW Legislative Assembly Hansard

Children and Young Persons (Care and Protection) Amendment Bill

Extract from NSW Legislative Assembly Hansard and Papers Tuesday 8 November 2005.

Second Reading

Ms REBA MEAGHER (Cabramatta—Minister for Community Services, and Minister for Youth) [7.36 p.m.]: I move:

That this bill be now read a second time.

This bill proposes a number of miscellaneous amendments to the Children and Young Persons (Care and Protection) Act 1998. The amendments are generally of a procedural nature and do not represent any significant policy change. Nevertheless, they will benefit children and young people and those practitioners, individuals and agencies operating under the Act. I now turn to the individual amendments for the benefit of members. First, the bill seeks to amend section 109 of the Act in order to facilitate the conduct of Children's Court matters where, often, important witnesses may abscond.

The amendment will provide the Children's Court with the clear power to issue subpoenas to secure the attendance of witnesses and the production of documents to the Children's Court and the clear power to issue warrants. These powers match those used by the Local Courts and the amendment is intended to clear up any judicial uncertainty as to their application. As a result of these amendments, where a parent has absconded with a child or young person and the child or young person is the subject of care proceedings, it will be clear that a warrant can be issued to require the parent's appearance at court.

The warrant of apprehension will be able to be placed on the warrant index and executed anywhere in Australia under the Commonwealth's Service and Execution of Process Act 1992. Of course, these powers will be balanced by procedural fairness, and the bill will ensure that the court will also be able to grant bail to a person who is the subject of a warrant of apprehension. The bill also proposes some consequential amendments to ensure the scheme is workable. The bill will ensure that not just parents, but also other persons who are reasonably believed to have knowledge of the whereabouts of a child, can be brought before the court, and that the power to order removal of a child applies to the relevant premises that the child is ascertained to be in.

The bill will also amend section 149 of the Act in order to facilitate permanency planning. Section 149 currently provides that, where an authorised carer has had care of a child or young person for a continuous period of not less than two years—and where the Minister has parental responsibility—the carer may apply to the Children's Court for an order for sole parental responsibility. Under the legislation as it is currently framed, the carer is not required to present to the court a care plan or a permanency plan for the child or young person. The amendment seeks to require the carer to present such a plan. This will assist the court with the necessary information it needs before deciding to grant a carer the sole parental responsibility for a child.

The amendment will not place any further responsibility on the carer, as each authorised carer is supported by a designated agency, which will assist the carer in preparing the plan. In any case, all authorised carers who have care of a child pursuant to final orders will already have a care plan in place under section 80 of the Act. This existing plan could form the basis of the plan presented to the court. The next amendment, to section 175, will allow the list of specific medical treatments to be specified and updated in light of changing scientific practices and understanding. Section 175 will continue to provide for the control of the use of such treatments and they will continue to be classified as special medical treatments.

The bill also proposes that section 176 of the Act, concerning special medical examinations, be repealed. The intent of this provision was to facilitate fairly invasive tests, such as tests of a child suspected of having an infectious disease requiring isolation. However, with the advent of better testing procedures and antibiotics, the need for a special medical examination upon entry into out-of-home care has diminished. There are no known current examples of such invasive medical examinations by out-of-home care providers. It is now the case that retaining and proclaiming this section of the Act may be problematic for the forensic investigation of sexual abuse matters. If a child in need of care and protection does need to undergo a medical examination this continues to be provided for under section 173 of the Act.

In response to community concerns, the bill proposes a new section, section 218A, to clarify that children's services such as community-based and private children's services, are exempt from the State Records Act 1998. This follows from the expressed concern that such services may fall under the definition of a public office, due to the way in which services are licensed. The Government is about reducing red tape and this amendment will clarify that such services are exempt from the requirements of the State Records Act 1998. Children's services are already subject to stringent record-keeping requirements.

The additional requirements associated with being deemed a public office, and the need to lodge documents with the State Records Authority, would place unnecessary extra burdens on children's services leading to an increase in costs for no real benefit. The next amendment will allow the regulation-making power to rectify a slight anomaly in the wording of the definition under section 200 (2) (d) of the Act. Under the definition, services like child-minding services in shopping centres are exempt from licensing requirements, unless they are provided by a lessee of the shop rather than the owner. This was not the intention. However, it is not as simple as changing the definition in the Act—there is still a need for some monitoring of minimum quality standards, and this is best done by amendment to the regulation-making power.

The bill also proposes to standardise the test that is used by the director general and the Children's Court when seeking or issuing a warrant to search for and remove children and young people who are in need of care and protection. Section 233 currently provides that the director general may seek a warrant where there are reasonable grounds to believe that the child or young person is in need of care and protection. However, the court issues the warrant based on whether the child or young person is at immediate risk of serious harm. The amendment makes the test consistent. The proposed test is that a child or young person must be at risk of serious harm for the director general to seek a warrant and for the court to issue one.

The final amendment will enable regulations made under this Act to apply to subsequent or updated editions of standards or codes mentioned in those regulations where necessary. This will ensure that where a revised guideline is issued, for example Cancer Council shade guidelines, the revision may be incorporated into the relevant regulation without the need to amend the regulation. These amendments have been sought by community and other stakeholders and consulted on widely. They will enhance the operation of the Act for those practitioners, individuals and agencies who use the Act. More importantly, the amendments will further enable the Act to meet its primary objectives: the care and protection of, and provision of services to, children. I commend the bill to the House.