Child Protection Legislation Amendment Bill

Second Reading

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CHILD PROTECTION LEGISLATION AMENDMENT BILL

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Second Reading

The Hon. CARMEL TEBBUTT (Minister for Community Services, Minister for Ageing, Minister for Disability Services, Minister for Juvenile Justice, and Minister Assisting the Premier on Youth) [11.09 a.m.]: I move:

That this bill be now read a second time.

I seek leave to have my second reading speech incorporated in *Hansard*.

Leave granted.

The Carr Government has a proud record of protecting children—a record unequalled by any Government in the history of Australia.

The *Government introduced four key child protection Acts in 1998*:

- the *Children and Young Persons (Care and Protection) Act*;
- the *Commission for Children and Young People Act*;
- the *Child Protection (Prohibited Employment) Act*; and
- the *Crimes Legislation Amendment (Child Sexual Offences) Act, which inserted s11G of the Summary Offences Act.*

This Bill makes amendments to the schemes established under the last three of those Acts, as well as to the *Child Protection (Offenders Registration) Act 2000*.

The four Acts amended by this Bill are all based on the fundamental principle that the protection of children from abuse must be the paramount consideration.

All of these Acts link to provide a holistic scheme for better managing persons who pose a risk to child safety.

Part 7 of the *Commission for Children and Young People Act* operates to require all preferred applicants for paid child-related employment to be screened to determine their suitability to work with children.

In its first two years of operation, just under half a million preferred applicants for employment have been screened in NSW, and over 14,500 organisations have registered to screen their employees.

During this time 472 people have been subject to risk assessments, and 169 of these have subsequently been rejected for child-related employment.

The *Child Protection (Prohibited Employment) Act* makes it an offence for persons found guilty of serious sex offences to work in child related employment, whether or not a formal conviction is recorded against them.

The *Crimes Legislation Amendment (Child Sexual Offences) Act* inserted section 11G of the Summary Offences Act to make it an offence for convicted child sex offenders to loiter near schools or other places frequented by children.

23 charges have been laid under section 11G since 1999, with the average sentence being 12 months imprisonment and the maximum sentence being 2 years imprisonment.

The *Child Protection (Offenders Registration) Act 2000*, which has been in operation since October 2001, requires certain offenders against children to keep police informed of their name, address, employment, motor vehicle and travel details for a period of time after their release into the community.

This information is held on NSW Police's Child Protection Register.

As at 5 November, 636 offenders have registered with police, an initial compliance rate of over 95%.

The Register has been successfully used in a number of investigations.

In one matter, a 12 year old girl who was the victim of an attempted abduction reported that her alleged assailant was wearing overalls and carrying a construction hat.

This information was matched against the Register, which showed a person had registered as a construction worker.

This person was subsequently identified and charged.

I will now address the substantive provisions of the Bill.

The Bill ensures effect is given to the Government's original intent that all convictions for offences that attract the operation of the four Acts can be considered for the purposes of those Acts, irrespective of the sentence and the age of the conviction.

Section 579 of the *Crimes Act 1900* provides that a person who entered into a recognizance for any offence, and who did not breach that recognizance or receive a conviction for an offence punishable by imprisonment within 15 years of that recognizance, cannot have their conviction considered for any purpose.

Recognisances have now been replaced with good behaviour bonds.

Section 579 operates in addition to the spent conviction provisions of the Criminal Records Act, which prevent sexual and other offences from becoming spent.

This means some old convictions for extremely serious offences against children cannot be considered for employment screening or prohibited employment purposes.

It may also prevent some old convictions from being considered in determining reporting periods under the *Child Protection (Offenders Registration) Act*, although this has not been a problem to date.

This runs contrary to the intention of all of the Acts.

Accordingly, Schedules 1 [3], 2 [2], 3 [7] and 4 [2] amend the four Acts to exclude the operation of section 579 of the *Crimes Act*.

The Government has obtained Crown Solicitor's advice that the Acts, other than *the Commission for Children and Young People Act*, do not apply to offenders who are convicted of an offence where it is proven beyond reasonable doubt that they intended to sexually assault a child or commit any of the other offences that attract the operation of the Acts.

For example, a person who commits the offence of assault with intent to have homosexual intercourse with a child under 10 under section 78I of the *Crimes Act* is not required to register with police or prevented from working with children or loitering near places frequented by children.

These offenders pose a serious risk to child safety and should be covered by the legislation in the same manner as offenders who attempt, conspire or incite the commission of relevant offences.

The Crown Solicitor's advice also queries whether the definition of "relevant criminal record" in the *Commission for Children and Young People Act* extends to conspiracy and incitement offences, which are covered by the other three Acts.

Schedules 1 [1] and [2], 2 [1], 3 [5] and 4 [1] amend the four Acts to ensure they all apply similarly to relevant attempt, intent, conspiracy and incitement offences.

Transitional arrangements are necessary for the *Child Protection (Offenders Registration) Act* as, unlike the other Acts, it does not have full retrospective operation.

Schedule 1 [9] of the Bill extends registration obligations to all those under correctional supervision for intent offences at 15 October 2001, and those sentenced for intent offences after that date.

Necessary transitional arrangements have also been made for the *Child Protection (Prohibited Employment) Act*.

Schedule 1 [4] to [6] of the Bill provides additional flexibility to the offender reporting requirements under the *Child Protection (Offenders Registration) Act*.

Police have asked that they be able to take registration information at locations other than Police Stations, if they are satisfied with that arrangement.

Schedule 1 [7] of the Bill will enable three officers responsible for the Register, to give certificate evidence in proceedings for failure to report to police, or for giving false information to police, under the *Child Protection (Offenders Registration) Act*.

Certificate evidence provisions are common and the amendment will limit the circumstances in which police are required to attend court, although the defence will still be able to cross-examine relevant police if it wishes to call them.

Clauses 3 to 6 of Schedule 2 to the Bill make changes to the application process for persons seeking an exemption from the *Child Protection (Prohibited Employment) Act*.

The Commission for Children and Young People will be provided with the power to grant exemptions in those cases where it does not consider the applicant poses a risk to the safety of children.

This will streamline the application process by preventing needless delays caused by the current requirement to institute proceedings in the Industrial Relations Commission or the Administrative Appeals Tribunal where the Commission, which is a party to those proceedings, does not oppose the application.

These bodies may still hear applications that have not been granted by the Commission and applicants can still choose to have their matter heard before either of those two bodies.

Clauses [1] and [2] of Schedule 3 enable the Commission to access the information it needs to assess whether a prohibited person continues to pose a risk to child safety.

The Commission already has information access powers for the purposes of relevant Industrial Relations Commission or Administrative Decisions Tribunal hearings.

Schedule 3 contains a number of amendments to the employment screening provisions of the *Commission for Children and Young People Act*.

NSW Police has received legal advice that the complaint and employee management provisions of Part 8A and 9 of the Police Act 1990, which are unique to police, may not fall within the definition of "relevant disciplinary proceedings" under the *Commission for Children and Young People Act*.

Schedule 3 [6] of the Bill amends the Act's definition of relevant disciplinary proceedings to remove any doubt that the Act applies to Police.

This approach is supported by NSW Police and the Police Association of New South Wales.

Schedule 3 [4] is a minor amendment to clarify that the holders of remunerated positions fall within the definition of employment.

Whilst the courts takes a broad definitional approach to employment arrangements in beneficial legislation such as the *Commission for Children and Young People Act*, the amendment will ensure that there can be no question that holders of certain statutory offices are employees for the purposes of the Act.

Employment screening has been phased, with screening to date having been confined to relevant criminal record and disciplinary information.

The *Commission for Children and Young People Act* also makes provision for relevant apprehended violence orders to be considered for screening purposes and enables the Commission to collect and maintain a database of such orders.

Relevant apprehended violence orders are confined to final orders made by a court under Part 15A of the *Crimes Act*, where the application for the order is made by a police officer or other public official for the protection of a child.

Whilst the Commissioner of Police is empowered to provide the Commission for Children and Young People with relevant criminal record information under section 38 of the *Commission for Children and Young People Act*, the Crown Solicitor has advised that the Act does not empower the Commissioner of Police to provide the Commission with relevant AVO information.

Clauses [9] and [11] of Schedule 3 to the Bill enable AVO information to be provided to the Commission and for this information to be used in screening, as has always been intended.

There is no specified time limit in the *Commission for Children and Young People Act* for employment screening checks to be completed.

Consequently neither employers nor employees have any certainty that they have met their statutory obligations under the Act.

Schedule 3 [8] of the Bill ensures that employers will have fulfilled their obligations upon receipt of the screening result from an Approved Screening Agency.

The Bill improves the operation of, and consistency between, four key child protection Acts.

It will clarify and strengthen the mechanisms for checking the background of people seeking to work with children in NSW.

This Bill demonstrates the Carr Government's strong stance on child protection and its ongoing commitment to improving the safety and welfare of children.

I commend the Bill to the House.

The Hon. PATRICIA FORSYTHE [11.09 a.m.]: The Opposition, of course, does not oppose the Child Protection Legislation Amendment Bill. The purpose of the bill is to address loopholes and anomalies in the Child Protection (Offenders Registration) Act 2000, which itself supplanted the Child Protection (Prohibited Employment) Act 1998. I take exception to some of the comments made by the honourable member for Wyong, who moved the bill on behalf of the Government, in a second reading speech which I presume is similar to that which the Minister incorporated in this place. The speech begins:

The Carr Government has a proud record of protecting children, a record unequalled by any government in the history of Australia.

It then states that in 1998 the Government introduced four key child protection Acts. That may be one spin that could be placed on the events of 1998, but we must keep in mind that in 1998 this legislation was the end result of revelations that emerged during the Wood royal commission into the police service and, in particular, the focus of that royal commission into child assaults, paedophilia and many other issues that arose from the evidence. What did become clear, as I recall, from the Wood royal commission was the lack of clarity in government policy and the lack of clarity in definitions between the Department of Health, the Department of Community Services, the Department of Education and Training, and other key government agencies with an interest in, a role in, and a policy direction on behalf of children—and indeed, of course, the police service itself—of child assault and various issues in relation to, and arising out of, evidence that came out the time.

The Government was embarrassed into introducing the Children and Young Persons (Care and Protection) Act, the Commission for Children and Young People Act, the Child Protection (Prohibited Employment) Act and the Crimes Legislation Amendment (Child Sexual Offences) Act. The Government also made some changes to the Summary Offences Act. For the Government to suggest that it is a proud record ignores the Government's lack of clarity of policy and the clear gaps in legislation. I believe that needs to be considered. Having seen the 1998 legislation it is fair to say that as the Government was embarking on what was, in many cases, new ground, in some ways it was quite different from past legislation. The Government did not get it quite right and on a number of occasions it has had to come back and address anomalies in the legislation. That is again the situation with this legislation. Previous legislation required persons convicted of serious offences involving children to register with the police, prohibited people convicted of serious sex offences from working in child-related employment, and established a screening process.

This bill closes a legal loophole so that all relevant convictions, including those spent under the Crimes Act 1900, are considered for the purposes of the above Acts; clarifies that incitement and conspiracy to commit sexual offences are included for screening purposes; provides for closure of screening once an employer has been notified of a screening result; includes police as any other employees for screening; allows the Commissioner of Police to disclose information, including apprehended violence orders, for employment screening to the Commission for Children and Young People; and makes miscellaneous amendments, including information that can be provided at other than police stations, and enables police to give certificate evidence under the Child Protection (Offenders Registration) Act 2001.

It is interesting that this legislation is being debated in the House this week because this week it has become clear to the community of New South Wales that all the Government's claims about child protection have been found wanting. This week hopelessly inadequate sentences have been imposed on two men convicted of aggravated indecent assault of three young girls. One man was given only 18 months weekend detention for molesting two girls aged nine and 12 over a two-year period, while the second man was released on a 12-month good behaviour bond for indecently assaulting a 12-year-old girl. This highlights the fact that for all that the Government has said it has done about protecting children, when it comes to interpretation by the courts there is still a long way to go. This week the Coalition has made it very clear what it would do in cases such as these because we believe that for those families, for those children, the sentences were hopelessly inadequate.

We believe that when sex offenders are released from gaol there should be a 25 kilometre buffer zone between paedophiles and their victims. We would certainly go further than the Government has gone. We have pledged to introduce a compulsory minimum sentence of five years for aggravated indecent assault on children under 16 years. We do not believe that the laws at the moment provide adequate protection. For all that the Government has said regarding offender registration legislation, when it comes to the protection of children we have not gone far enough. The protection of children must be one of the absolute priorities of any government. We often say, as we do in debate on many bills, that a society is judged by how it protects those who are least able to protect themselves. No group is potentially more vulnerable than young children who rely on the force of law to provide that protection and the force of law appropriately interpreted and acted upon by the courts. For the broad provisions of the bill we have no difficulty with what is being sought today.

Reverend the Hon. FRED NILE [11.16 a.m.]: The Christian Democratic Party is pleased to support this very important bill, which follows up the earlier legislation that the Government has introduced over a period of time to protect children in New South Wales. As honourable members know, four child protection Acts have been passed by this House: The Children and Young Persons (Care and Protection) Act, the Commission for Children and Young People Act, the Child Protection (Prohibited Employment) Act, and the Crimes Legislation Amendment (Child Sexual

Offences) Act. I believe all of those bills have been very positive and very valuable in protecting children in this State.

This bill is related mainly to closing some of the loopholes that have been identified through the operation of the legislation, particularly the Crimes Legislation Amendment (Child Sexual Offences) Act. We are very pleased that during the time the legislation has been in effect—in fact in the first two years of operation—just under half a million preferred applicants for employment have been screened in New South Wales and over 14,500 organisations have registered to screen their employees. As I am on the list of accredited Uniting Church ministers, I received the forms that had to be completed because it is regarded by various denominations—not just the Uniting Church—that clergymen or ministers often come into contact with children. Even if they are not youth workers or specialised child workers they should also be screened. I am pleased that that showed the system is working in that area as well.

During the screening of those organisations 472 people have been subjected to risk assessments and 169 of these have subsequently been rejected for child-related employment. Since 1999, 23 charges have been laid under section 11G of the Summary Offences Act, which makes it an offence for convicted child sex offenders to loiter near schools or other places frequented by children. Those 23 charges have resulted in an average sentence of 12 months imprisonment, the maximum sentence being two years imprisonment. We are pleased with that positive result.

As a result of the Child Protection (Offenders Registration Act), as of 5 November, 636 offenders have registered with police—an initial compliance rate of more than 95 per cent. That register has been successfully used in a number of investigations. In one case a 12-year-old girl who was the victim of an attempted abduction reported that her alleged assailant was wearing overalls and carrying a construction hat. This information was matched against the register with a person who had registered as a construction worker. That person was subsequently identified and charged. The bill will tighten the legislation and close the loophole so that all relevant convictions, including those that are spent, are able to be included in an individual's criminal record check.

The bill widens the application of the criminal record check to include offences of intent, incitement and conspiracy to commit relevant offences. The bill provides for closure of screening once an employer has been notified of a screening result. The bill specifies that disciplinary proceedings taken against police officers will be treated in the same way as those taken against all other employees. I am sure all honourable members were shocked to read the report of the two young girls who were murdered in the United Kingdom and that as a result of investigations a police officer involved in the case was then charged with an offence involving child pornography. No area of employment should be exempt—not clergymen, police, members of Parliament or public servants. The bill must be strictly applied without fear or favour.

People who have the intent to sexually abuse children are usually very cunning and also very patient. Sometimes they spend years, in a role that gives them access to children, developing a relationship. I believe that some people have deliberately joined the church for the specific purpose of abusing children, sometimes years later. Therefore, these provisions must be strictly enforced to ensure that offenders do not escape detention. Prevention is always the best policy. I congratulate the Government and the Minister on this legislation.

The Hon. IAN COHEN [11.22 a.m.]: On behalf of the Greens I support the Child Protection Legislation Amendment Bill. In July 2000 the Working with Children Check process was established under the Child Protection (Prohibited Employment Act) 1998 and the Commission for Children and Young People Act 1998. This legislation went through as a package along with the introduction of the new Children and Young Persons (Care and Protection) Act. It signalled a new era and focus on child protection issues. Since the operation of the Working with Children Check several anomalies and loopholes have been identified in the law. The bill seeks to close these loopholes and overcome the anomalies.

The Greens take this opportunity to ask the Government its time line with regard to proclaiming the outstanding sections and parts of the Children and Young Persons (Care and Protection) Act—particularly those relating to children in out-of-home care—the oversight role of the Children's Guardian and the provisions relating to kinship care. An entire parliamentary term has passed since the Act was introduced and important parts of it remained unproclaimed. I hope that the Minister in reply can assist on that matter. Other than those concerns, the Greens are pleased to support the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.24 a.m.]: The Australian Democrats are committed to preventing child sexual abuse which, we believe, is far more widespread than is generally recognised. I have received a number of calls from people seeking a royal commission to follow on from the Wood royal commission. Indeed, that commission commenced inquiring into police corruption but ended up dealing with paedophilia. Police corruption was of immense interest at the time because of numerous rollovers, but the commission was then diverted to an inquiry into paedophilia.

Reverend the Hon. Fred Nile: That was the only way we could get an inquiry into paedophilia.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The inquiry into police corruption was not completed because the focus was then on paedophilia. It is unfortunate that people tend to remember the final Wood royal commission recommendations dealing with paedophilia rather than those dealing with police corruption. Indeed, a more thorough investigation into paedophilia should be commenced separately. I note the interjection from Reverend the Hon. Fred Nile that it was the only way he could get an inquiry into paedophilia. It is unfortunate if that is the case because the lives of many children have been blighted by paedophilia, although I acknowledge that it is difficult for people who have child sexual abuse tendencies to be treated. Therefore, children remain at risk from unidentified paedophiles

who continue to work with children. The initiative to introduce long-term checks is very wise.

Another aspect that is important—and this has certainly been of concern to the Teachers Federation—is that once an allegation of paedophilia is made against someone, it is almost impossible for them to get rid of that allegation. Indeed, sexual abuse allegations generally are a problem for schoolteachers as an occupational group in particular. It is significant that there are very few male primary school teachers, particularly in view of the number of single-parent families. Children need a male role model, but the bill does not address this problem. Perhaps an inquiry into paedophilia might consider, in cases of flimsy and malicious allegations from adolescents, ways to ensure that the person against whom allegations have been made can continue to work.

Perhaps that person could be counselled or excluded from working with children. I acknowledge that the assessment of people in this area is difficult. The bill goes some way towards giving people a clean bill of health, but only by way of retrospective checks, not as to the allegations. The bill should receive support because it goes some way towards addressing this difficult area. However, I am disappointed that the Government has not addressed the concerns of the Teachers Federation. It may become necessary later to deal with paedophilia in broader detail. I would be interested to hear the Government's attitude to that.

The Hon. CARMEL TEBBUTT (Minister for Community Services, Minister for Ageing, Minister for Disability Services, Minister for Juvenile Justice, and Minister Assisting the Premier on Youth) [11.28 a.m.], in reply: I thank the Hon. Patricia Forsythe, who led for the Opposition, Reverend the Hon. Fred Nile and the Hon. Dr Arthur Chesterfield-Evans for their contributions. I thank in particular the Opposition and crossbench members for their support for the bill. It is essential that child protection matters receive bipartisan support and it is gratifying that we have been able to achieve that result. I should like to respond to a number of matters raised in the debate.

First, I refer to the comments of the Hon. Patricia Forsythe. She was correct in saying that this amending legislation is a result of the Wood royal commission, which disclosed inadequacies in the laws and systems to protect children in New South Wales. However, I should remind the House that if the Opposition had had its way we would not have had the benefit of the Wood royal commission because the Opposition opposed its establishment. It is one thing for the Hon. Patricia Forsythe to give us a history lesson about how the Wood royal commission disclosed inadequacies in our systems and laws in New South Wales, but I point out that the Wood royal commission was supported by Labor in Opposition; it was not supported by the Coalition.

The member for Baulkham Hills in the lower House referred to consultation on the amendments to the Child Protection (Offenders Registration) Act. While the Child Protection Registration Implementation Committee ceased meeting after the successful implementation of the Act, there was widespread consultation among affected agencies on the amendments put forward in the bill. For example, the need for evidentiary certificates was identified after consultation between NSW Police and the Local Courts administration. The Ministry for Police, which is co-ordinating the national working party on offender registration, has also raised the amendments to the Child Protection (Offenders Registration) Act with other Australian jurisdictions.

The Hon. Ian Cohen raised an issue about the Children's Guardian and progress on proclamation of chapters 8 and 10 of the Children and Young Persons (Care and Protection) Act. I have responded to this issue on a number of occasions, but I am happy once again to advise the House that I have said publicly on many occasions that I am committed to ensuring that children in out-of-home care have case plans, that these case plans are monitored and appropriately supported, that there are standards that service providers must meet and that that is monitored. Nonetheless, as I have also indicated, issues relating to chapters 8 and 10 have been identified by a range of people, including non-government organisations, the Department of Community Services and the Children's Guardian herself. These issues require further discussion and consultation.

Shortly after I took responsibility for Community Services I gave a commitment that I would establish a ministerial committee to provide me with further advice on a range of issues in the portfolio, and I have announced that committee this week. The ministerial advisory committee will be chaired by Leonie Manz, and will comprise representatives of a range of organisations involved in child and family services issues, including Nigel Spence from the Association of Child Welfare Agencies, Alan Kirkland from the Council of Social Service of New South Wales, and Children's Commissioner Robert Fitzgerald, as well as a range of other people. The first task I have asked that committee to do is to provide me with advice on progress with proclamation of chapters 8 and 10. I look forward to receiving the advice from that committee.

The committee is broadly representative and has the ability to co-opt other people with expertise in other areas in order to provide me with the fullest advice possible. There is also a representative of the Department of Community Services on the committee, and I believe that that is the best way to proceed. There has been a history in Community Services of often implementing good change without necessarily thinking through the full ramifications of that change, and I am determined that that will not happen with chapters 8 and 10. I believe that this committee will provide me with valuable advice as to how we can move forward on that issue. In conclusion, this bill is just one of the many ways the Carr Government is working to make New South Wales a safer place for children and young people. I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

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