Agreement in Principle

Ms LINDA BURNEY (Canterbury—Minister for the State Plan, and Minister for Community Services) [12.03 p.m.]: I move:

That this bill be now agreed to in principle.

Before I speak on the bill, I seek the indulgence of the House to recognise two wonderful young women who are in the gallery, Kalkani Choolburra and Lauren Breen from Randwick Girls High School. They have been undertaking work experience in my office and it has been a delight to have them here. The Children and Young Persons (Care and Protection) Amendment Bill 2010 will amend the Children and Young Persons (Care and Protection) Act 1998 to improve the regulatory framework for voluntary out of home care and clarify provisions that support general casework and court practice. The bill also will facilitate probity checking of those people who control, operate and/or manage a children's service. Some of the amendments included in the bill relate to provisions of the care Act, which were introduced to implement recommendations of the Special Commission of Inquiry into Child Protection Services undertaken by Justice Wood. All would agree that enacting Justice Wood's recommendations was a herculean task. Agencies involved in child protection have now had an opportunity to work with the post-Wood inquiry amendments. It has become clear that some clarification is required to ensure that child protection practice truly reflects the intentions of Justice Wood.

I will now outline the amendments in detail. I turn first to voluntary out of home care. Voluntary out of home care is out of home care that is arranged by a parent where there are no child protection concerns requiring Community Service intervention. The bill makes a number of amendments to improve the protections afforded to children and young people in voluntary out of home care. These changes are important, not least because many of these children have disabilities and so are particularly vulnerable. Clause 9 provides for new section 135C, which amends the definition of "voluntary out of home care" so that it applies to out of home care arranged by a parent of a child or young person, unless that care is provided by an individual acting in a private capacity, such as a family friend or relative. This means a child will benefit from the regulatory regime that governs voluntary out of home care when an organisation or body is involved in providing or arranging that care, unless the care arrangement is exempt from the out of home care regime under the Act or regulations—for example, where care is provided by a boarding school, children's service or hospital.

These arrangements are subject to other regulatory regimes. The Act currently only applies to care arranged between a parent and a designated agency or an agency registered by the Children's Guardian. The new definition will apply more broadly. The amendment to clause 9 of the bill defines "voluntary out of home care" with reference to the nature of the care provided, rather than the accreditation or registration status of the care provider, thereby ensuring that the definition extends to children in the care of organisations that are operating unlawfully. To support this amendment, the bill also includes new offence provisions which make it an offence for unaccredited or unregistered organisations to provide or arrange voluntary care so that any organisation which is operating unlawfully can be dealt with.

Clause 10 of the bill amends section 156 of the Care Act to enable the Children's Guardian to register those agencies that arrange voluntary out of home care. Currently, only those agencies that provide voluntary out of home care are required to register. A number of agencies broker voluntary care services, conduct assessments of the care needs of children and young people and their families and manage the intake of children and young people into the voluntary care system. This amendment ensures such agencies must register with the Children's Guardian and are subject to the Children's Guardian's statutory procedures for voluntary out of home care intake, assessment, interagency coordination and case planning.

The Government has obtained legal advice that the Act is unclear as to the calculation of the time a child or young person is permitted to spend in voluntary care before the designated agency supervision and case planning requirements must be met. The provisions of the Act currently count some periods as months and others as days and require the days in voluntary care to be calculated consecutively. If a child returns to their parents for any length of time, however short, the time frames for supervision and case planning are effectively reset. The current drafting undermines the intention of the reform, which was to ensure that children do not spend excessive amounts of time in care without appropriate supervision and case planning. Clause 12 of the bill inserts new subsections 156A (1) and (2) to address this concern. Clause 12 of the bill inserts new subsections 156A (1) and (2) to address this concern. The amendment ensures that the total number of days a child or young person spends in voluntary care during any 12-month period is considered in setting both supervision and case planning time frames.

The new subsection 156A (1) also enables the Children's Guardian to directly supervise longer-term voluntary care arrangements. Ageing, Disability and Home Care will provide such supervision for children and young people with disabilities where a registered agency chooses not to contract with a designated non-government agency to take on that role. However, there is no other government agency that can provide a supervision safety

net for children and young people in longer-term voluntary care who do not have disabilities. This amendment will ensure that these children and young people have guaranteed access to care supervision by an appropriately qualified body.

Moreover, section 156A (2) will require a designated agency or the Children's Guardian to ensure that a case plan is prepared where they supervise care, rather than requiring them to prepare the plan, as is currently the case. This will ensure necessary flexibility in arranging case management services and enable the agency that provides the greatest amount of care for the child to play a proper role in case planning. A designated agency or the Children's Guardian must participate in case planning and endorse any case plan, rather than take over all aspects of the planning process. The Children's Guardian's statutory procedures provide the framework for agencies involved in the care of children to work together in case planning.

The Act currently regards a child to be at risk of significant harm where there is any breach of the time frames for care supervision and completion of the case plan. However, there will be some cases where a technical breach is unavoidable; for example, where a child or young person enters a new care arrangement after the 180-day mark, where it will inevitably take some time for the new agency to complete a new case plan or to adapt a pre-existing case plan. The technical breaches caused by a change in the child's care arrangements should not result in a mandatory report to the Child Protection Helpline. This will cause unnecessary distress to parents, discourage agencies from taking on children and young people where a critical time frame is imminent or has passed, and will create unnecessary work for helpline staff.

New section 156A (3) allows the Children's Guardian to filter out technical breaches, with only substantive breaches to be passed on as mandatory reports. The Children's Guardian will operate in a manner similar to a Child Wellbeing Unit, with the director-general determining the classes of breach that must be reported to the helpline.

The Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009 introduced section 172A of the Act, which made it an offence for parents to enter into a voluntary out of home care arrangement with a non-designated agency that had not registered with the Children's Guardian. The Government did not proclaim section 172A as the Children's Guardian and carer and child welfare organisations all strongly argued that the Act should regulate the organisations that arrange or provide voluntary care, not parents. As a temporary measure the Government introduced clause 40D of the Children and Young Persons (Care and Protection) Regulation 2000, which established an offence for non-designated or unregistered agencies that provide or arrange voluntary care.

Clause 12 of the bill incorporates a strengthened offence provision into the new section 156B and increases the maximum penalty for unlawfully providing or arranging care to $22,000, consistent with the penalty regime for organisations that unlawfully arrange statutory or supported care. The standard service agreements of New South Wales and Commonwealth agencies that fund or arrange voluntary care in New South Wales are also being amended to ensure organisations that operate unlawfully are ineligible for government funding.

Clauses 13 to 16 of the bill amend the Act to ensure that all voluntary out of home carers are protected from criminal or civil prosecution for physically restraining a child or young person to prevent them from seriously injuring themselves or others. This immunity currently applies only to parents and authorised carers who provide statutory or supported care. People who provide voluntary care should be entitled to the same protections. The Children's Guardian has raised concerns about whether her office has the power to monitor the manner in which voluntary care agencies comply with their legal obligations. Clause 20 of the bill amends section 181 of the Act to put this matter beyond doubt. Further, clause 21 amends section 185 to ensure that the Children's Guardian can access voluntary out of home care agency information about the safety, welfare and wellbeing of children and young people in voluntary care.

I now turn to the proposed amendments which relate to general matters and court procedures. The first is section 45, the calculation of a 72-hour time frame. Justice Wood increased the period within which an emergency care application must be submitted to the courts after the removal of a child or young person from 24 to 72 hours. This was to ensure that the evidence put before the court in an application was as complete as possible so that the best decision can be made by the court. Other benefits which flow from this amendment are that parents or those with parental responsibility have a more complete picture of the reasons for taking the child into care; the amendment discourages rushed decision making; and it allows more time for parents to be located, served and for them to arrange legal representation, which should, in turn, limit the frequency of adjourning matters. However, there has been some uncertainty about the application of the time frame and, accordingly, this bill will clarify that the 72-hour time frame refers to three working days. Clauses 6 and 7 of the bill ensure that the time frame is interpreted and applied consistently by both the Local Court and the Children's Court.

I am particularly cognisant that public holidays may result in an unreasonably long delay between the removal of a child or young person and an application being filed with the Children's Court. This is most likely to occur during the Christmas and Easter holiday periods. The bill addresses this issue by requiring the director-general to file an application no later than five days after a child has been taken into care, even in periods of extended

public holidays such as Christmas and Easter. Naturally, if the fifth day is not a working day the application will have to be made on the next working day.

The bill introduces two important new law reforms that will improve the interface between the child protection jurisdiction and other courts and tribunals. Clause 1 of the bill will enable child protection reports to be admissible in child welfare proceedings before other courts and tribunals such as the Family Court, the Supreme Court, the Administrative Decisions Tribunal, the Victim's Compensation Tribunal and the Coroner's Court. Allowing these reports to be considered by courts in cases involving children will provide important contextual information to enable the courts to better determine what is in the best interests of a child or young person and to make fairer decisions.

The amendment includes an important proviso: that child protection reports will only be admissible in legal proceedings, provided that the identity of the reporter who makes the risk of harm report is not disclosed. The continued protection of the reporter will not put in jeopardy people's willingness to report children and young persons at risk of significant harm. Clauses 2 to 4 of the bill will amend section 29 (6) to include a definition of "serious offence". Section 29 protects the identity of those who make reports about a child or young person whom they believe to be at risk of significant harm. Currently, under section 29 (4A), Community Services may disclose to police the identity of a person who makes such a report if the identity of the reporter or information which may identify the person is required in connection with an investigation of a serious offence alleged to have been committed against a child or young person.

However, the Act is currently silent on what constitutes a serious offence. The insertion of a definition will help to clarify for both Community Services and for law enforcement agencies the types of offences that constitute a serious offence under the Act and justify the limited lifting of the protection of anonymity. The amendment will ensure that the provision is applied consistently and that reporters' identities are not disclosed unnecessarily. The amendment will instil confidence in Community Services and the police when these requests are made. The definition contained in the bill includes "serious indictable offences" as defined in the New South Wales Crimes Act and "reportable conduct" as defined in the Commission for Children and Young People Act 1998.

Serious indictable offences are those indictable offences punishable by imprisonment for life or for a term of five years or more; for example murder, kidnapping and sexual assault. Reportable conduct includes a range of serious offences against children and young people, such as sex and child pornography offences; offences or misconduct involving child abuse material; child-related personal violence offences such as intentionally wounding a child; voyeurism and related offences; any assault, ill-treatment or neglect of a child; and any behaviour that causes psychological harm to a child.

Section 38 sets out the process for registering a care plan, which is developed through alternative dispute resolution, and with the consent of all parties. It provides that where such a plan involves allocation of parental responsibility or aspects of parental responsibility to someone other than a parent of the child, this must be by way of an order of the court. It also provides that the Children's Court may make other orders to support the agreed care plan. There is currently some confusion about the technical requirements where the court makes orders to support a care plan. Clause 5 amends section 38 to make clear that where the court makes orders to reallocate parental responsibility or to support a care plan registered under section 38 a care application is not required; and that the court is not required to be satisfied that the child is in need of care and protection. However, the court must be satisfied that the proposed plan will not contravene the principles of the Act, that the parties understand the provisions of the plan and have freely entered into it, and in the case of persons other than the director general that they have received independent legal advice. The proposed amendment reflects the approach currently taken by the court and will clarify the requirements and align the Act with current practice.

Clause 23 of the bill seeks to clarify that the power to take photographs, film, video, audio and other recordings when a Community Services officer or a police officer enters or inspects a premise as provided by section 241 of the Care Act also applies when a Community Services officer or a police officer enters a premise to remove a child or young person they believe is in need of care and protection. This power is very important in gathering the best evidence to allow the court to make a proper decision about what should happen to the child or young person. The proposed amendment will clarify that the director general's delegated officer or a police officer is authorised to take photographs, films or other recordings when they enter premises to remove a child whom they suspect on reasonable grounds is in need of care and protection.

There is little doubt that this was the intention of this provision. However, section 241 may be read as limiting that power to situations in which a police officer or another authorised person enters premises for the purpose of inspecting those premises for compliance with standards set for children's services only. The proposed amendment will ensure that this important evidence gathering tool is also available when a child is removed in circumstances in which the director general or the police suspect on reasonable grounds that the child is in need of care and protection.

Clause 24 of the bill seeks to prevent forum shopping between the Children's Court and the Administrative Decisions Tribunal on the reviewability of permanency plans for a children or young persons. The amendment makes clear that the adequacy of a permanency plan to support long-term care orders is a matter solely for the

Children's Court, removing the possibility of seeking an additional review of a permanency plan by the Administrative Decisions Tribunal. The decision in *PR v Department of Community Services* highlighted a potential for direct conflict between the jurisdictions in respect to intervening and determining the adequacy of a permanency plan. The intention of the amendment is to circumvent any further conflict or confusion by making clear that a permanency plan, including whether a plan adequately addresses the permanency planning for a child is a matter only for judicial consideration by the Children's Court in making an order to reallocate parental responsibility.

Clause 25 of the bill will amend section 245I of the Care Act to include the Family Court as a prescribed Commonwealth body. This will exclude the Family Court from the information exchange scheme provided for under chapter 16A of the Act. Chapter 16A is predominantly aimed at the exchange of information between State bodies. The omission of the Family Court from this section, which includes inter alia the Federal Court and the Federal Magistrates Court, is an oversight in the Care Act. The proposed amendment of this section to include the Family Court will correct this oversight. The exchange of information between Community Services and the Family Court will continue under section 248—a process which has been agreed by the Family Court and Community Services.

There is currently some confusion over the eligibility of certain carers to financial assistance under section 161 of the Care Act. Clause 17 of the bill will clarify that carers of children and young people who have parental responsibility pursuant to an order of the Children's Court and also those who are providing care under an emergency care and protection order are eligible for financial assistance.

Finally, I turn to clause 22 of the bill, which relates to children's services and probity checking. This amendment is aimed at enabling the director general to undertake probity checks on a person involved in the control and management of a licensee or proposed licensee, a person in the control and management of the majority shareholder corporation of a licensee or proposed licensee or a person who is or is proposed to be an authorised supervisor for a children's service. The Special Commission of Inquiry recommendation to amend the Commission for Children and Young People Act 1998 to require background checks for children's services licensees and authorised supervisors of children's services had the unintended consequence of removing the broad probity checking regulation-making power in the Care Act for Community Services. This amendment will address this drafting error by restoring the probity checking regulation making power. Such probity checks will capture an applicant's entire criminal record and allow consideration of the applicant's previous compliance with any child-related legislation; for example, to include any formal actions taken under the Children and Young Persons (Care and Protection) Act 1998 and the Commission for Children and Young People Act 1998. Previous compliance with the Children's Services Regulation 2004 will also be considered, including any decision to refuse an approval under the licensing scheme.

I thank all of those who provided input into the development and drafting of this bill. As members can see, it is complex. Consultations occurred across government agencies and with the sector, particularly in relation to clarifying the interpretation of the timeframes under section 45. The amendments to the voluntary out-of-home care regime have been recommended by the Children's Guardian, which has regulatory oversight of the voluntary out-of-home care sector.

I also extend the Government's thanks to National Disability Services NSW, the Association of Children's Welfare Agencies, Carers NSW and the Federal Departments of Health and Ageing and Families, Housing, Community Services and Indigenous Affairs, which have all contributed to the voluntary out-of-home care reforms in this bill. Family Advocacy and People With Disability also support these reforms and are working with the Children's Guardian to ensure the guardian's oversight systems effectively promote the rights and best interests of children and young people with disabilities and their families.

In conclusion, the bill clarifies some very significant powers under the Children and Young Persons (Care and Protection) Act 1998 and it will, I believe, allow for more consistent interpretation and application of the relevant provisions. Of course, this will make the task of the courts and child protection practitioners clearer. However, most importantly, it will ensure the legislation more effectively achieves it primary objective—that is, the protection of children and young people in New South Wales. I commend the bill to the House.