



NSW Legislative Council Hansard

Commission for Children and Young People Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 29 November 2005.

Second Reading

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [5.42 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Government is committed to protecting the most important resource in our society—our children.

In 1998, the Government established an independent Commission to represent the interests of children and young people.

The Commission for Children and Young People has since provided invaluable services to promote the safety, welfare and well-being of children and young people in New South Wales.

Over 200,000 background checks are conducted each year to assist employers to build workplaces that are safe for children.

Western Australia and the ACT have followed our example, and overseas, England also has modelled their reform on the NSW Commission.

This Bill follows the statutory 5-year review of the legislation underpinning the Commission.

It implements the review's recommendations, and further strengthens the system we have in NSW.

The review was conducted by Ms Helen L'Orange.

I thank her for her efforts.

384 submissions to the review were received including 255 from children and young people. The changes the review has recommended are largely directed at the child protection provisions. They are not however intended to overshadow the Commission's important focus on advocating for the wellbeing of children and encouraging their participation:

It's just that the review found no need to recommend any changes to the Commission's education, research and advocacy functions.

Let me now turn to the main provisions of the Bill.

AMALGAMATING THE ACTS

In line with the review, the Bill amalgamates the two current Acts that underpin the Commission, which provides consistency and clarity for employers about their obligations.

In keeping with the integration of the legislation, a single set of Commission guidelines will cover background checking and employment prohibition.

The Bill also uses uniform terminology and importantly, a single, more precise, definition of child-related employment.

LEGISLATIVE BASE FOR OUR APPROACH

Again in line with the review, the Bill sets out the Commission's function of promoting child-safe and child-friendly organisations.

This will highlight its importance and encourage employers to adopt it.

The Commission currently undertakes this role through promoting and providing training on policies, procedures and methods for identifying risks, assuring quality, encouraging an open and participative workplace culture, and encouraging children to report behaviour that worries them.

Organisations which adopt the Commission's recommended strategies thereby improve their risk management practices and become safer places for children.

TIGHTENING THE BAN ON PROHIBITED PEOPLE

This Bill also strengthens the regime for prohibited employment and responds to community concerns about adults convicted of serious violence against children being prevented from working with children.

Currently, serious sex offenders, kidnappers and child murderers are banned from working with children.

This Bill will now also ensure that those who have been convicted as an adult of intentionally causing grievous bodily harm to a child will also be prohibited from working in child-related employment.

This is an important safeguard for children.

Of course, there is no intention to cover situations such as fights between young people, or harm caused by accident or negligence.

The Bill will also tighten the circumstances in which prohibited persons can apply for a review of their status.

The Bill will ensure that persons who have been convicted of the most serious crimes against children and are therefore automatically prohibited from working with children will not be able to seek a review of their status as prohibited.

The Government stands by this position and makes no apology for it—the protection of the children in our society is paramount.

Serious crimes includes people convicted of murdering a child under the age of 18, producing child pornography or sexual intercourse with a child under the age of 16 - or under 18 where the adult is in a special role, like a teacher or sports coach.

Of course, it does not include sexual intercourse between young people of a similar age, offences committed as a juvenile, or old offences such as carnal knowledge where the parties were of similar age and no force or intimidation was used.

This Bill also will provide an added protection to parents so that they can take steps to ensure the safety of their child.

I am referring here to cases where self-employed persons provide services to children, such as private tutors, music teachers and coaches.

This Bill will require self-employed people to display a certificate that that they are not prohibited. Parents have a right to know.

Where self employed people do not have a registered place of business, they will be required to show the certificate to parents and clients on request.

STRENGTHENING BACKGROUND CHECKING

I now move on to the Bill's provisions about the system of background checks, where an employer requests a check on someone they are planning to employ.

As I indicated earlier, the Commission and other agencies perform over 200,000 checks per year on behalf of employers.

Background checking is not limited to an applicant's criminal record but includes looking at other aspects of the applicant's background and, equally importantly, checking the nature of the job and the workplace, as poor work design and inadequate supervision can place children at risk too.

Emerging research is demonstrating the necessity of looking at these types of workplace situational factors. The Bill also simplifies background checking for some employers.

Where employees do similar work for a number of employers, only a single background check will be required;

this provision will be particularly helpful in those industries which rely on casual and temporary staff to work with children.

For example, at present a casual teacher or child care worker has to be checked by every employer they work for, which is a burden both for the employee and the employers.

This Bill now allows "employer-related bodies" to undertake checks on behalf of all those employers so that people will only need to be checked once if they are doing similar work for similar employers.

It also removes the need for an employer to re-check a casual employee if they have employed, and checked, that person in a similar position within the previous year.

Both these measures reduce the cost to NSW without affecting the protection of children.

The Bill makes provision for information about a prospective employee to be provided to interstate bodies undertaking child related background checks, provided those bodies have been approved by the Minister.

As other states and territories progressively learn from the NSW experience and introduce their own background checking systems for child-related employment, this will facilitate the sharing of relevant information while safeguarding its confidentiality.

Because of the current wording of the Act, it has not been clear whether some specific convictions of a sexual nature, like filming a child for indecent purposes, were to be taken into account in the Working With Children Check.

The Bill makes it clear that they will be.

The current Act requires employers to notify the Commission when they have investigated some complaints about staff behaviour, but it has not always been clear when this requirement comes into effect.

This Bill provides certainty to employers about when their obligations arise.

It has also not been clear that if an employer has wrongly notified the Commission about such a proceeding, they can withdraw or delete the notification.

The Bill makes provision for the employer or the Commission to do so.

There has been some uncertainty about whether using a work computer to download child pornography constitutes conduct that an employer is required to report to the Commission.

The Bill clarifies that it is.

Unauthorised disclosure of information acquired during the course of background checking is, naturally, an offence; however, the Bill clarifies that disclosure is permitted with the consent of the person concerned or if Commission staff make a "risk of harm" report to the Department of Community Services, again making it plain that protection of children is our over-riding concern.

COMPLIANCE MEASURES

I will now turn to the Bill's compliance measures.

The Commission's approach to its Working With Children provisions over the last five years has primarily been through education and encouragement.

Employers recruiting people for paid or unpaid child-related employment have now had time to learn about their child protection obligations.

The employers of NSW have overwhelmingly understood the need to protect children in their workplaces, and have incorporated this into their everyday human resource practices.

However, it does appear that a small number of employers have deliberately decided not to request background checks—which may mean that children are at greater risk in those workplaces.

Strengthening the penalty provisions in the legislation will add force to its obligations and promote the child protection objectives of the Act.

This Bill will give the Commission increased powers to audit compliance with the Act, particularly by asking

employers to provide documentary evidence that they are meeting their child protection obligations. Employers who are found not to be complying will be issued with a notice to comply. If they still refuse to comply, they could be prosecuted.

Just the prospect of receiving such a notice may well encourage compliance.

This stronger compliance system is further demonstration of the Government's commitment to protecting children.

The Bill also extends the current voluntary accreditation scheme to programs as well as individual counsellors.

This will assist Courts and others with their referral options as they will be able to rely on its quality in the same way they currently can with individual counsellors who are accredited.

CONCLUSION

Let me conclude with a mention of the on-going work which the Government intends to do to further reform this area following the introduction of the Bill.

We will be consulting with those groups impacted by the review's recommendations for extending background checking to further improve our system in NSW.

They need to be part of this decision so we will be seeking their views.

This Bill will strengthen the protections for our children, and I commend the Bill to the House.