



Legislative Assembly

Community Services (Complaints, Reviews And Monitoring) Amendment (Application) Bill Hansard

Extract

08/03/2001

Second Reading

Mr HAZZARD (Wakehurst) [11.44 a.m.]: I move:

That this bill be now read a second time.

This bill, the most significant amending bill to come before this Parliament, is desperately needed to enable the Community Services Commission to carry out its vital work in monitoring various community services in this State and, in particular, the main government agency in this area—the Department of Community Services [DOCS] and its various associated agencies. The Community Services Commission, which was established by the Community Services (Complaints, Reviews and Monitoring) Act 1993, was a New South Wales Coalition initiative. The commission was established because members of the community were making complaints to Coalition members of Parliament. People who had to deal with DOCS had no avenue within which to have those matters assessed. They could not establish whether they had been treated fairly and reasonably or whether there was due process in relation to their matters.

I remember having discussions with the Minister at the time, the Hon. John Hannaford. He expressed concern about this matter and established the Community Services Commission to independently monitor the Department of Community Services and its associated agencies, to give members of the community an opportunity to be heard, to determine the outcome of various matters and to make recommendations. In 1993 the Minister, the Hon. Jim Longley, said in his second reading speech:

This bill represents the most far-reaching reform and improvement to client and service provider relationships, complaint and grievance handling and service provision monitoring of any community service legislation in Australia.

He also said:

The commissioner will monitor the standard and quality of service provision of all services funded for the provision of community services.

Minister Longley then made this point:

It is therefore very important that every effort is made to assist clients with complaints and grievances quickly and to provide a powerful framework for service providers to enhance their abilities to provide such a responsiveness.

With the bipartisan support of all members of Parliament the Community Services Commission was born in April 1994. Since that time there have been two commissioners. The first was Roger West and currently the position is occupied by Robert Fitzgerald. Both gentlemen have a proud history in the area of community services. Both commissioners brought a wealth of knowledge and expertise to that position. Up until November last year both operated on the basis that they had certain powers, and that the commission could exercise those powers without any limitation and without fear or favour. In its role as an independent watchdog for community services in New South Wales, the commission inquired into alleged statutory breaches by the Department of Community Services and generally independently monitored services, investigated complaints and eventually reported to the Minister on important community services issues. In the commission's 1999-2000 annual report Commissioner Fitzgerald noted:

Consumers of community services have the right to be treated with respect and dignity.

That is a simple statement but the commissioner felt it necessary to repeat that statement in the annual report, which shows that, on occasions, there is a level of concern that consumers of community services are not treated with the respect and dignity to which they are entitled. In his annual report the commissioner identified priorities for the year ahead. In so doing he laid out for all to see the work that the Community Services Commission was going to undertake in the future. He said that in the next period the commission intended to:

Complete the major inquiry into substitute care service provision in NSW and to promote the inquiry's findings and recommendations

Monitoring developments with, and providing advice on, the *Children and Young Persons (Care and Protection) Act 1998*

Finalise and follow-up the group review of 15 Aboriginal children and young people in care and the reviews

of five children and young people from a funded service that has closed

Consumer education program on the rights of children and young people using community services.

Recently the commission produced a major report and some reviews. It also concluded a major inquiry into the performance and provision of substitute care in New South Wales, which affects approximately 8,000 children and young people. The annual report records its performance highlights and includes its work with children and young people. It noted that 67 per cent of finalised complaints, 81 per cent of complaint investigations and 73 per cent of complaints referred to services for investigation and the commission's oversight were about child protection and/or substitute care services. The commission's report noted in that context that its statutory functions were "to receive, assess, resolve and investigate complaints" and "to inquire into matters affecting service providers and persons eligible to receive community services". That is a very significant issue for the Community Services Commission. Complaints have risen quite significantly in the past 12 months. In 1998-99 complaints to the commission numbered 1,061. By last year that number had almost doubled to 1,850.

Investigations of alleged statutory failings of the Department of Community Services [DOCS] have been considered by the commission—and by the public—to be an essential element of the commission's work. Therefore it is disappointing to see in recent weeks that the commissioner, Robert Fitzgerald, has said publicly that what has happened to the commission was "a completely unacceptable position". The commissioner was referring to the fact that in November last year the Government, through Minister Lo Po', sent a letter advising Commissioner Fitzgerald that he no longer had the power to investigate certain alleged breaches of statutory obligations by DOCS. In a public forum, through the media, the commissioner has shown his frustration, but his frustration is only part of the picture. Agencies, non-government agencies, and non-government organisations are also frustrated. The people who want to have their dealings with DOCS investigated are frustrated.

We are talking about the most difficult edge of the Community Service Commission's work, and it has been taken away from it. It has been taken away because in 1999 the Law Reform Commission made a series of recommendations as part of a review of the Community Services Commission. While there are some broad-ranging recommendations from the Law Reform Commission that the Opposition would like fully investigated by the Government, and the Opposition would like the opportunity to debate those issues, particular issues were raised in the review. One was that after six years of operation of the Community Services Commission, after its excellent work and its acceptance by the community, there was a technical problem in the way the commission was set up. That was known by the Carr Government for more than year through the Law Reform Commission report.

During 2000 the Carr Government and Minister Lo Po' had a series of unfortunate events. They were getting it wrong in a whole series of community services matters. The report into substitute care that was issued by the Community Services Commission was just one that highlighted the Government's failings. Unfortunately, it would appear that the Minister, in a rather cynical and trivial way, decided to inquire what the Crown Solicitor thought about this advice that the Government had had for more than a year from the Law Reform Commission. Apparently the Minister gleefully got legal advice that indicated that the commission was operating outside its technical jurisdiction when it tried to investigate the alleged breaches of DOCS' statutory duties. What did the Minister do? She did not go to Cabinet or to the Premier. She played silly games. She rushed into print with a letter telling the commission that she had advice that it had to cease its investigations.

From the information the Opposition has, it appears that the commission has stopped investigating some very serious matters. We do not have access to the precise information, but we believe that somewhere between five and 10 very serious investigations have been stopped. Those investigations include, I believe, the case of Jessica Gallacher. I remind the House that Jessica Gallacher was a little girl on the Central Coast who, on the Australia Day long weekend last year, was murdered—in the most horrific way with a sword—at the hands of a fellow who had taken up occupation with her mother.

Jessica Gallacher's aunt and grandparents alleged that they had tried to make complaints to the Corrmal office and the Gosford office of DOCS but they just disappeared into thin air. They had tried to warn that this little girl may be in dire circumstances. The little girl never benefited from those warnings and it would appear that DOCS failed to act. That is the allegation. The Community Services Commission was in a position to investigate that matter, and it was appropriately investigating it. But with the advent of the Minister's letter, I believe that was one of the five to 10 cases that disappeared out of the commission's files and was sent to the Ombudsman. Minister Lo Po' says the Ombudsman can do the job in the meantime. She has issued a statement to that effect. The fact is that the Community Services Commission has been operating for six years, investigating complaints in regard to DOCS and its dealings with children. It is the instrumentality with the expertise and talent to do the job.

The Minister has taken advantage of a technical loophole to curtail one of her main agency's activities. There is a very simple reason for that—the commission, by its essential obligation to protect children and to ensure that DOCS' relationship and other agencies' relationship with children is appropriate, has to be critical of the Government. It would not matter whether the Labor Party or any other party was in office, it has to be critical when criticism is deserved. This Minister cannot live with criticism. Rather than fixing the problem, rather than going to the Premier and saying, "This has to be fixed, the commission has to have the power, the community wants it to have the power," she has been happy for Cabinet not to discuss the issue and come up with a solution.

The Opposition will not stand for that. We stand as one with the community and non-government organisations such as the Council of Social Service of New South Wales and the Association of Child Welfare Agencies. We stand rock solid in our effort to get this legislation back to where the Coalition had it when we thought

it was operative and working. There can be no reasonable explanation other than a mealy-minded nastiness, a vindictiveness, by the Minister not to allow this legislation to pass through the House. I am shocked that the more reasoned people on the Government side surrounding Minister Lo Po' have not been able to bring her to task and have not been able to deal with this bill that we were able to get into Parliament very quickly. That is not a reflection on them. It is more a reflection on the absolute ineptitude and intransigence of this incompetent Minister. This bill should be passed by this House. The matter will also be debated in the upper House, because the Opposition is absolutely committed to getting this bill through Parliament.