



## Children and Young Persons (Care and Protection)

### Amendment (Child Abuse or Neglect) Bill.

#### Second Reading

**The Hon. JOHN RYAN** [11.29 a.m.]: I move:

That this bill be now read a second time.

On behalf of the Opposition I introduce the Children and Young Persons (Care and Protection) Amendment (Child Abuse or Neglect) Bill, whose purpose is to enable the New South Wales courts to impose a custodial sentence on people convicted of serious incidents of child abuse and neglect. It hardly needs to be said that child abuse is an extremely serious matter, and that those who commit crimes against children need to be given a strong message as a deterrent against others doing the same thing, and as a denunciation of their action. Most people would take it for granted that a person who commits a criminal act of negligence that puts a child's life in danger or at serious risk of physical or psychological harm will face a gaol penalty. But, sadly, that is not the case in New South Wales.

Currently the harshest penalty available for serious acts of neglect and abuse in New South Wales is a maximum fine of \$22,000. That amount is not much more than the current maximum fine of \$11,000 for an act of cruelty to an animal under the Prevention of Cruelty to Animals Act. Additionally there is a maximum six-month gaol penalty for a serious act of cruelty to an animal but there is no gaol penalty for an act of abuse or neglect against children. Other Government legislation before the House is aimed at doubling the fine for an act of cruelty against an animal from \$11,000 to \$22,000. That means that this State will have harsher penalties for acts of cruelty to animals than for similar offences against children. It is ludicrous that the offence of tying up a horse in a paddock and starving it almost to the point of death attracts a heavier penalty than a similar offence against a child, such as abandoning it in a car to dehydrate in the hot sun. In the case of cruelty to the horse the offender faces a possibility of six months in gaol and a fine of \$22,000, while the offender who harms a child is free of any threat of a goal sentence and stands to pay a monetary fine that is no more severe.

It is almost as if the State has gone back to the future. One of the western world's first successful prosecutions for child abuse and neglect took place in New York in 1875. It involved a 10-year-old girl, Ellen McCormack, who was found tied to a bed like an animal, neglected and brutally beaten by her foster parents. The offenders in that matter were prosecuted under laws for cruelty to animals because at the time there was no penalty for the neglect and abuse of children. In August this year, magistrate Alan Railton attempted to impose a 12-month gaol term on a 30-year-old man after it was proved that he had recklessly endangered the life of his four-week-old baby son by abandoning him in a yard. The offender compounded his offence by refusing to assist police in locating the baby so that they could rescue it. Fortunately the baby was found unharmed. The man was charged and convicted of neglecting the baby under the Children and Young Persons (Care and Protection) Act. The magistrate thought the offence merited a 12-month gaol term and he imposed that sentence. But the sentence was overturned after it was pointed out to the court that the Children and Young Persons (Care and Protection) Act does not provide for a gaol penalty for abuse and neglect.

Sadly there are people in this society who place such a small value on the welfare of children that they will knowingly place them at risk of great harm. Often the offender is a not the child's parent but someone who is prepared to risk harming a child to escape detection for a criminal offence. We all remember the sad case of baby Leo, who died of hypothermia in a car in December 2000 after it was stolen and abandoned by a thief. The car thief put the life of the child at risk, and that resulted in the death of the child. Since then there have been other cases of car thieves taking vehicles with children inside and abandoning them. They commit the offence of car theft, which does carry a gaol penalty, but they also put a child's life in danger. The Opposition believes that this is an additional matter for which the courts should have the option of imposing a further gaol penalty.

I know of another case before the courts in which a 24-year-old woman was charged under the Children and Young Persons (Care and Protection) Act after she failed to tell doctors or police that her three-year-old daughter had swallowed five ecstasy tablets. The child swallowed the tablets while she was unsupervised in a motel room where her mother had taken a prostitution client for sex. Police allege that she knew all along that her daughter had swallowed a dangerous quantity of drugs and she refused to tell them exactly what had happened to her daughter. A police officer allegedly asked her 20 times to tell him what her daughter had swallowed and she refused to say anything even though her daughter required intubation, eventually lapsed into a coma, and nearly died. A number of times the police officer involved in the matter approached the woman, assuring her that she would not get into trouble for the drugs, and that he just wanted her to give information vital for saving the life of her child. In a similar situation, in the absence of a gaol penalty for the offence of abuse and neglect, the police are not able to say that the consequences of not giving this sort of information will be more severe than the penalty they may face for any other crime that may be uncovered as a result. Police need to be in a position to say, when it is becoming obvious that a person is not being co-operative, that there is a risk of a gaol penalty if they do not co-operate. I will not comment further on the matter, but my purpose is

simply to illustrate the types of offences that are covered by the law now, for which the maximum penalty is a fine of only \$22,000.

The Opposition agrees with former Police Inspector John Heslop, who has a much-respected reputation for spending his career in New South Wales Police fighting child abuse. He commented on the outcome of the Central Coast matter I spoke about earlier by saying that the case was "another sign that society had failed to move with the times". He also said, "If you have a dog, your treatment of that dog can have worse implications than your treatment of a baby," and "if you look at the kind of things the neglect of children could cause, it can be catastrophic". There is reason to be concerned about societal attitudes to child neglect. A recent national public opinion survey showed that adults ranked child abuse as less of a concern than council rates. Child abuse and neglect are described in sections 227 and 228 of the Children and Young Persons (Care and Protection) Act 1998. The Act provides that a person who "intentionally takes action that has resulted in or appears likely to result in" the physical injury or sexual abuse of a young child or a young person, or any intentional act that causes a child or a young person to be "significantly damaged" or which causes the physical development of a child to be "significantly harmed", is guilty of an offence. A person is also guilty of an offence if they leave a child or young person unsupervised in a motor vehicle.

This bill imposes a penalty of two years gaol for this offence if the matter is prosecuted in a Local Court and judged by a magistrate, and a maximum penalty of five years if the offence is prosecuted as an indictable offence in the Supreme Court before a judge. Amendments to the Criminal Procedure Act 1986 allow prosecuting authorities to elect to proceed summarily, in which case the maximum gaol penalty can be two years, or on indictment, with a penalty of five years. The bill also increases the maximum fines for child abuse and neglect from the current maximum fine of \$22,000 to a maximum of \$44,000 if the prosecutor elects to proceed on indictment. The maximum penalty of \$22,000 remains for a summary offence, as this is the largest amount a magistrate in a Local Court can impose by way of fine.

When we first announced this bill the Government claimed that there were already gaol penalties in the Crimes Act for child abuse or neglect. I imagine it was thinking of sections 43 and 44 of the Crimes Act 1900 which provide for a five-year gaol penalty for anyone who "unlawfully abandons or exposes any child under the age of two years" such that the child's life or health is endangered, or for anyone who is "legally liable to provide necessary food, clothing, or lodging" to "any wife, child, ward, apprentice, or servant or any insane person" but wilfully fails to do so. I have been told by police that they would never be able to use these laws today because their wording is obviously archaic, they are in some cases limited in their application to children under two, and they can only be tried on indictment where the burden of proof for the prosecution is to prove to a jury beyond reasonable doubt that the alleged offender whose actions put the child at risk deliberately intended to harm the child. These laws are too high a benchmark to be of any effective use in protecting children. They need to be urgently reviewed. This bill is an attempt to do that. The indictable offence in this bill could well replace the offences outlined in sections 43 and 44 of the Crimes Act. I have not moved to repeal those provisions in case I cause unintended consequence. However, if the Government advises that it is safe to do so, I would willingly agree to do that in the bill by way of amendment.

The significant difference between the offences outlined in the Crimes Act and those outlined in the Children and Young Persons (Care and Protection) Act is that the onus placed on the prosecution in proving a case against the accused is different. Under the Children and Young Persons (Care and Protection) Act the prosecution needs only to prove that the accused intentionally committed an action that had the potential to cause harm to a child. For an offence under the Crimes Act, the prosecution has to prove in some cases that the accused not only did something that put a child in danger, but also wilfully intended to cause harm to the child. That additional step can be a very difficult, if not impossible, task.

Some may be concerned that as these offences are often committed by the parents or caregivers of a child that it is not in the best interests of the child to gaol the parents. While I understand that concern, the first thing I would say is that frequently and increasingly the perpetrators are not the parents. They can be criminals who put a child at risk of harm to escape detection for another criminal activity, such as, drug trading, car jacking or car theft. Secondly, magistrates and judges are capable of weighing up this issue at the time of sentence.

Finally, I would like to provide the House with some information about penalties that apply to offences of child abuse and neglect in other States. In Queensland the Criminal Code Act 1989 provides for a seven-year maximum gaol term of imprisonment for failure to provide a child with adequate food, clothing, medical treatment or accommodation and a three-year gaol penalty for parents or other adults with a duty of care for a child who fail to provide for the necessities of life for a child in their care aged under 16. The Western Australian Child Welfare Act states that:

Any person who has by wilful misconduct or habitual neglect or by any wrongful or immoral act or omission caused or suffered any child to become, or continue to be a child in need of care and protection or contributed to any child becoming or continuing to be a child in need of care and protection shall be guilty of an offence punishable by a penalty of \$10,000 or imprisonment for 12 months or both.

Section 261 of the Victorian Children and Young Persons Act 1989 describes child abuse and neglect in terms very similar to the New South Wales Care and Protection Act. It states that any person who has a duty of care in respect of a child who intentionally takes action that resulted, or appears likely to result, in significant harm as a result of physical injury or sexual abuse or psychological harm that damaged the child's emotional or intellectual development "is guilty of an offence and liable to a penalty of not more than 50 penalty units or to imprisonment of a term of not more than 12 months". The Opposition believes that it is time New South Wales child protection laws were updated and strengthened to ensure that our children are adequately protected from the harm of neglect and abuse. We do not propose to

proceed further with this bill during this session, but it will now be circulated for comment and consultation. I have an open mind as to how this bill may be improved. However, I am confident that we have done a thorough job and that the bill deserves support.

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