Child Protection Legislation Amendment Bill 2015 (Proof)

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CHILD PROTECTION LEGISLATION AMENDMENT BILL 2015

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Second Reading

The Hon. SARAH MITCHELL (Parliamentary Secretary) [4.36 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

I am pleased to introduce the Child Protection Legislation Amendment Bill 2015. I indicate at the outset that the Government will be moving amendments to this bill. I congratulate the Minister for Family and Community Services, and Minister for Social Housing on these amendments, which are significant improvements to the working with children system in New South Wales. These amendments reflect this Government's strong approach to providing greater protection for children and responding to recommendations by the Royal Commission into Institutional Responses to Child Sexual Abuse. As members are aware, the royal commission conducted a comprehensive consultative process about the Working with Children Check around Australia and we now have the benefit of its report.

The commission recommended that more consistent standards in relation to the Working with Children Check be adopted by all States and Territories. This included a key recommendation about limiting review rights for certain people with serious convictions. This Government is pleased to be taking the lead in this regard. New South Wales is the first State to be implementing the royal commission's important recommendation. We are adopting this recommendation to exclude appeal rights for people who have adult convictions for indecent or sexual assault of a child, child pornography related offences and incest where the victim is a child.

The period of time that such a person will not be able to have rights of review will depend on the sentence or order received. If the person has received a custodial sentence for any of those offences they will be permanently excluded from seeking review. If, on the other hand, they are subject to a control order—like a good behaviour bond or an intensive correction order—they will be excluded from seeking review for the duration of that order. It is widely accepted that people who commit serious sexual or violent offences against children should not be cleared to work with children. The seriousness of these offences and what they represent to children's ongoing safety and protection in the community provides strong justification for this approach. This recommendation is squarely in keeping with the royal commission's proposed standard for all of Australia.

Members would also be aware that the NSW Children's Guardian is responsible for conducting risk assessments for applicants who have concerning records. The risk assessment process is comprehensive and requires information from a range of agencies and the applicant themselves. In making determinations regarding potential risk to children, there are occasions where the Children's Guardian would be assisted by specialist guidance. To this end, an expert advisory panel will be appointed to support the Guardian in making these sometimes challenging decisions that could affect people's future employment prospects. Experts such as forensic psychologists, psychiatrists and mental health specialists will constitute the panel and, where required, will help provide a high level of informed, professional input into this process. Guidance will be sought as and when required and any reports or advice provided will also be shared with the New South Wales Civil and Administrative Tribunal [NCAT], should a barred person appeal.

Finally, to better reflect community expectations and to apply community standards to the issues at hand, we propose that both the Children's Guardian and NCAT apply an objective "reasonable person" and a "public interest" test when making their respective determinations. This is similar to the test under the Victorian Working with Children legislation. The test requires that the decision maker is satisfied that a reasonable person would allow his or her own child to have direct contact with the applicant without any supervision. Further, the decision maker must be satisfied that in all the circumstances, it is in the public interest to make the determination. This

bill represents the Government's continued commitment to supporting vulnerable children by tightening and strengthening the legislative frameworks and systems that underpin their safety and wellbeing. I seek leave to incorporate the remainder of my second reading speech in *Hansard*.

Leave granted.

The responds to serious issues highlighted in the first hearing of the Royal Commission into Institutional Responses to Child Sexual Abuse and builds on the Government's Safe Home for Life reforms, which aim to keep every child in a permanent and stable home for life.

These important amendments will improve the way that carers of children living in out-of-home care are assessed, authorised and monitored. They will provide important checks and balances within the out-of-home care system to the non-government organisations that care for the most vulnerable children in New South Wales. The bill also amends the child protection legislation to enhance the efficiency and effectiveness of the new Working with Children Check online system, following its first 18 months of operation.

Of course government cannot do the important work of safeguarding the wellbeing of children without the collaboration and cooperation of partner agencies. In developing this bill, Government and non-government agencies were extensively consulted; and they support the amendments. It is anticipated that these amendments will also have bipartisan support. The reforms in the bill make various amendments to strengthen the out-of-home care system by amending the Adoption Act 2000 and the Children and Young Persons (Care and Protection) Act 1998.

Under the changes, the Secretary of the Department of Family and Community Services, or the principal officer of a non-government accredited adoption service provider, can help provide that certainty. They can invite an authorised carer of a child in out-of-home care to submit an application to adopt the child. Currently this may only be done by the secretary. The amendment should help to improve the processes and timeliness for adopting children to provide them with long-term stability of care. The Government also wants to ensure that children in out-of-home care are cared for by people who have gone through significant background scrutiny and background checking.

The bill allows for all carers, regardless of their type or status, to be subject to the same rigorous probity checks. All current and prospective adoptive parents, guardians and authorised carers will also be required to notify their authorising body if any adult household member over the age of 18 years is residing on their property for three weeks or more. The bill also permits any person to provide information about prospective adoptive parents, authorised carers, carer applicants, guardians or any person residing at the same property as these people.

The information can be provided to the principal officer of an accredited adoption provider, a designated agency or the Secretary of the Department of Family and Community Services, as the case may be. The information may be used to determine the suitability of a person for the relevant role, and the provider is protected from liability if the information was given in good faith. The amendments affect both adoption and out-of-home care services and aim to protect children and young people within the homes where they are placed.

Members on both sides of this House are aware of the tragic outcomes for children where adequate protections have not been put in place to safeguard their wellbeing. Provisions in this bill represent the Government's response to issues highlighted in the first hearing of the Royal Commission into Institutional Responses to Child Sexual Abuse. The hearing focused on the actions of Steven Larkins as principal officer of the Hunter Aboriginal Children's Services Corporation. At the time of Mr Larkins' arrest for child pornography charges in 2011, he was caring for a young person in out-of-home care within his own home residence. He also had parental responsibility for a number of other children and young people placed with the Hunter Aboriginal Children's Services Corporation. However, he had not been subject to any carer assessment.

The Children's Court had granted Mr Larkins parental responsibility for a number of children and young people. This was in keeping with past practice where the Children's Court directly allocated parental responsibility to specialist Aboriginal out-of-home care agencies or their principal officers. This bill seeks to redress the governance problems of principal officers providing out-of-home care that were identified in the Larkins matter. The definition of the principal officer role of a designated or registered agency has been made consistent with the Adoption Act 2000. Accordingly, the role of principal officer is clearly defined to mean the person who has the overall supervision of the agencies' arrangements for providing out-of-home care.

This bill prohibits principal officers of non-government designated agencies from caring for children from their own agency in their own home—except where their home is also a residential service. The Children's Court is similarly prevented from granting parental responsibility to an organisation or to principal officers of non-government designated agencies. These changes establish transparency and accountability so those in powerful positions are not able to then abuse those positions of trust with the young people in their agency's care. Further, both the principal officer and the agency will now be held responsible for the protection of children and young people in their care.

The bill provides that anything done by or with the approval of a principal officer of an accredited adoption service provider or designated or registered agency is taken to be done by the relevant agency. This is an important distinction between previous legislative arrangements and what we are proposing to the House today. This change addresses the governance concerns arising from principal officers providing care without being subject to standard agency assessment and supervision arrangements. It also strengthens the accountability of out-of-home care non-government providers and provides significant penalty provisions for contravention.

The first hearing of the royal commission highlighted the critical importance of good governance in agencies that provide out-of-home care services. It also highlighted the role of agencies in recruiting suitable carers to provide authorised care to some of the most vulnerable children in New South Wales. This is especially so where the designated agency with responsibility for children has concerns about a carer's suitability to care for those children.

The industrial relations system already recognises that failure to appoint a person to a position is not generally a matter capable of review. To bring the child protection system in line with the industrial relations system, changes will be made in relation to the NSW Civil and Administrative Tribunal review rights. Consequently, a refusal to authorise an applicant as an authorised carer would no longer be reviewable by the tribunal. Current review arrangements will still be maintained in relation to existing rights at law if there are grounds for discrimination.

Applicants will also be able to make a complaint about carer authorisation decisions to the New South Wales Ombudsman through its community services complaints jurisdiction. This is clarified through an amendment to the Community Services (Complaints, Reviews and Monitoring) Act 1993. Additionally, the bill provides for the cancellation of a carer's authority where they have not cared for children for a significant and reasonable period of time. This will ensure agencies maintain accurate records of carers who are actively providing care to children and young people.

Supporting out-of-home care agencies to recruit appropriate carers is a priority for the New South Wales Government. The NSW Children's Guardian is currently establishing a register of people who are authorised, or have applied to be authorised, as carers of children in out-of-home care. The purpose of the carers register is to be certain that people who want to care for our most vulnerable children—and their household members—are subject to rigorous screening and assessment checks on their suitability.

The register will enable the sharing of information between the different agencies to help prevent unsuitable carers moving from one agency to another agency in New South Wales. To help reduce the likelihood of unsuitable carers simply moving across State borders, the bill also strengthens information sharing arrangements between New South Wales and assessing bodies in other jurisdictions. The exchange may only be in accordance with protocols made by the Minister, in consultation with the New South Wales Privacy Commissioner.

The bill also expands the Children and Young Persons (Care and Protection) Act 1998 to the sharing of carer and household information between agencies. The amendment permits the Children's Guardian to disclose information to the Secretary of the Department of Family and Community Services for the purpose of the secretary's functions relating to children in need of care and protection. The information that may be disclosed is information about persons that the Children's Guardian reasonably believes is or was an authorised carer, carer applicant, prospective adoptive parent, a guardian or prospective guardian, or adult residing on the same property. With the transition of out-of-home care services to the non-government sector, these reforms offer an additional layer of protection for children while securing greater accountability from the service providers.

Another safeguard for strengthening the child protection framework for children in care concerns the NSW Ombudsman, which oversees agency investigations of reportable allegations involving carers. An amendment to the Ombudsman Act clarifies the scope of the Ombudsman's oversight role in relation to these investigations and extends it to include adults who live with authorised carers for three weeks or more. The bill will allow agencies to provide information and advice to the child victims, parents or carers on the progress and outcome of these investigations. It will also be extended to alleged victims with disabilities and/or their relevant support persons. The proposed victims support amendments will override New South Wales and Commonwealth privacy issues so that persons providing advice are provided with civil protections for disclosure of information. That approach is also more consistent with the approach to informing complainants of police investigations. The Ombudsman will issue guidance as to appropriate disclosure arrangements.

I am pleased to highlight another key reform in the Government's child protection framework that focuses on the Working with Children Check. The new online system has now been in operation for 18 months and the community has embraced the Working with Children Check with great enthusiasm. Since the start of the new system in June 2013 there have been more than 720,000 applications processed for a Working with Children Check either as a paid or volunteer worker. Registering as a child-related employer and verifying that the Working with Children Check number of a paid or voluntary worker has been cleared is an important part of being a child-safe organisation.

So far nearly 600 applicants have been barred from working with children in New South Wales.

Approximately 100 more have a current status of interim bar, pending further risk assessment investigations by the Office of the Children's Guardian. One of the strengths of the new online verification system is that it checks continuously for new relevant records that could change a person's status from a clearance to a bar on working with children. By registering as an employer and verifying an employee's status, the Office of the Children's Guardian can ensure relevant employers are notified of the bar and take action to remove the barred employee from child-related employment.

The bill amends the Child Protection (Working with Children) Act 2012 to tighten existing requirements for employers. They will be required to not only ensure employees have a current Working with Children Check application or clearance but also verify the employee's status via the Working with Children Check Register. The legislative requirements on employers are not onerous, and the Working with Children Check has been established to assist them to select appropriate people for child-related roles. However, the amendment will help employers to understand and comply with their obligation to verify the status of their paid and unpaid employees online. If they do not register and verify, employers will run the great risk of employing someone who cannot work in a child-related role. They will also run the risk of being audited by the Office of the Children's Guardian as part of their ongoing Working with Children Check compliance program.

The bill also extends the employer verification requirements for prospective adoptive parents, prospective guardians, and adult persons who reside with them by prescribing certain agencies as the responsible agency for verification purposes. Further, the bill clarifies the meaning of "residing" as it relates to adult household members for the purpose of the Child Protection (Working with Children) Act and applies it across the adoption, care and protection, and Ombudsman legislation. The bill changes the terminology from "reside at home" to "reside at a property" to provide greater protection for children without limiting the definition of what constitutes a home environment for them.

In response to issues highlighted by the royal commission, the bill also focuses on the roles and responsibilities of a governing body of an organisation and its principal officers. These amendments will ensure that a person appointed on a permanent basis to a key position that involves child-related work must have a Working with Children Check clearance or current application for a clearance. Key positions are defined as: the chief executive officer; the principal officer of either a statutory or voluntary out-of-home care non-government agency or an accredited adoption provider; and any other position that may be prescribed by regulation. Failure to comply with that requirement is an offence. The amendment reflects community expectations that principal officers need to be held to the same child protection compliance standards as other employees. The reform will also help to strengthen public confidence in the governance of bodies that are exercising critical functions related to vulnerable children and young people.

Another improvement to the Working with Children Check is reducing the time frame for applicants to provide information to the Office of the Children's Guardian from six months to three months. That requirement will affect only those applicants who are being risk assessed. By reducing the time frame in which they are required to provide supporting information, the Office of the Children's Guardian will be able to resolve these applications in a timely and efficient manner.

There are some instances in which an applicant knows the risk assessment outcome is likely to result in a bar, so they withdraw their current application. The bill will restrict the capacity for an applicant to withdraw their application for a Working with Children Check clearance by requiring the consent of the Children's Guardian. The Children's Guardian will now have the option to withhold consent where there is information to suggest the applicant poses a risk to the safety of children. It provides the opportunity for the Children's Guardian to complete the Working with Children Check application and follow through with a thorough risk assessment and possibly a bar.

The bill also clarifies that interim bars are enforceable against adult household members of authorised carers or home-based education and care services or where a family day care service is provided. Again, that is an important clarification for protecting children from those who have access to them in a home environment. Families and agencies who use the services of people authorised to provide home-based care and education services will also be reassured with the additional safeguards in those situations.

We know that keeping children and young people safe is a shared responsibility that requires a multi-faceted and comprehensive approach by the whole community. A Working with Children Check can be an important tool in helping to protect children, but it cannot identify people who have not been caught previously or are yet to offend. Research and history demonstrates that managing potential risks in the environments where children spend their time is the most effective way to keep them safe.

Child-safe environments are those where paid staff, volunteers, parents and children themselves know what conduct is acceptable and what to do if conduct is not acceptable. This bill helps to improve the legislative frameworks that encourage organisations and individuals to be safer for the children in their care. It reflects the Government's ongoing commitment to protect our children and young people, particularly those most vulnerable in our society. I commend this bill to the House.