CHILD PROTECTION (WORKING WITH CHILDREN) AND OTHER CHILD PROTECTION LEGISLATION AMENDMENT BILL 2016

First Reading

Bill introduced on motion by Mr Brad Hazzard, read a first time and printed.

Second Reading

Mr BRAD HAZZARD (Wakehurst—Minister for Family and Community Services, and Minister for Social Housing) (13:10): I move:

That this bill be now read a second time.

I am pleased to introduce the Child Protection (Working With Children) and Other Child Protection Legislation Amendment Bill 2016. The bill supports the commitment of this Government to keep children and young people safe on an ongoing basis. It amends the Child Protection (Working With Children) Act 2012 and the Children and Young Persons (Care and Protection) Act 1998 and includes amendments to the Teaching Service Act 1980 and the Education (School Administrative and Support Staff) Act 1987. Turning first to the amendments to the Child Protection (Working With Children) Act, as members of the House will be aware, this Government has already implemented a number of significant improvements to the Working With Children Check regime.

The most recent amendments introduced last November will ensure that those who have committed serious sexual and other offences and have served a term of imprisonment will never be able to appeal a bar imposed on them. Persons who have been convicted of serious offences and are subject to a current specified bond also cannot appeal the duration of the bond. These amendments were in line with recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse and its Working With Children Check report. Other notable improvements were the introduction of a "reasonable person" test to be applied by the Children's Guardian and the NSW Civil and Administrative Tribunal [NCAT] and the establishment of an expert advisory panel to provide general advice to the Children's Guardian in relation to risk assessments.

I can safely say that the New South Wales Working With Children Check regime is by far the most progressive check in Australia and is broadly consistent with the standards recommended by the royal commission in its Working With Children Check report. I note, however, that no legislative regime can ever replace implementing strong child safe practices and strategies that complement the Working With Children Check scheme to provide a child-safe environment in every workplace. This legislation builds on the strong foundations of our Working With Children Check scheme, providing greater clarity in strengthening legislative frameworks and systems that underpin the safety and wellbeing of children in our State. Overall, the amendments clarify certain provisions that have unintended consequences or are ambiguous and provide legislative authority for operations that address community concerns regarding perceived risks to children.

I turn now to the detail of the Working With Children Check amendments. As I mentioned earlier, many of the proposed amendments address inconsistencies within the Act. One such inconsistency is in the treatment of applicants for a Working With Children Check and holders of a Working With Children Check clearance. One of the most notable features of the Working With Children Check scheme is that all cleared persons, that is holders of clearances, are subject to ongoing monitoring for relevant records in New South Wales for the five-year life of the clearance. Some continuous check events will cause a holder of a clearance to be disqualified or it will trigger a risk assessment. In the risk assessment process, both applicants and holders should be treated alike. However, there are some inconsistencies in the treatment of applicants and holders which this bill addresses.

At present, the Children's Guardian can terminate an application if the applicant fails, without reasonable excuse, to provide further information within three months of a request by the Children's Guardian for further information. This does not extend to holders. The bill will allow the Children's Guardian to similarly cancel a clearance if a holder fails, without reasonable excuse, to provide further information within three months of a request by the Children's Guardian for further information. Similarly, applicants who wish to withdraw their Working With Children Check applications cannot do so without the consent of the Children's Guardian, and such consent will not be granted if the Children's Guardian is of the view that the person wishing to withdraw their application poses a risk to the safety of children.

To ensure consistency of practices, the bill will require a holder of a clearance to similarly obtain the consent of the Children's Guardian before surrendering a clearance. Further, an applicant who has been refused a clearance because of pending charges for a disqualifying offence cannot seek review or apply for an enabling order. However, at present, this exclusion does not apply to a holder whose clearance has been cancelled because of a pending charge. The bill makes it clear that a person whose clearance has been cancelled on the ground of pending charges for a schedule 2 offence is also not entitled to make an application for review or an enabling order, as is the case for applicants with a similar pending charge.

Other clarifying amendments are in relation to where a person has been convicted of a specified offence and is subject to a current order under specified New South Wales and Commonwealth legislation. Such persons are precluded from seeking review at NCAT for the duration of the order. No reference is currently made to equivalent orders of another State, Territory or foreign jurisdiction. The bill clarifies that a person who is subject to equivalent current orders from another jurisdiction to those currently prescribed in the Act will also not be entitled to apply for review or an enabling order for the duration of the order, as is the case in relation to persons convicted of certain offences who have served a term of imprisonment regardless of the jurisdiction. The bill also reiterates the present position that a person whose clearance has been cancelled can apply for review only if the cancellation was because the person has been disqualified or poses a risk to the safety of children.

Section 35 of the Child Protection (Working With Children) Act requires reporting bodies to notify the Children's Guardian of their findings that a child-related worker has engaged in sexual misconduct or serious physical assault. The notification period extends to findings made before the commencement of the section, which is 15 June 2013, with no limitation on the age of the findings. This means that all historical matters must be reported regardless of the age of the matter, placing an unreasonable burden on agencies. Under the previous legislation before the Child Protection (Working With Children) Act was enacted, the reporting period was limited to post-1995 matters. The change is understood to be unintended as there was no consultation on this issue. The issue was resolved temporarily by way of a transitional regulation, which lapses on 29 October 2016, not requiring reporting of findings pre-1995 except if required by the Children's Guardian.

The bill legislates for agencies to not be required to report on misconduct matters pre-1995 unless required by the Children's Guardian. The bill also includes reporting obligations for holders of key positions reflecting the findings of the royal commission about the requirement for an agency to report if aware of relevant records, but with no requirement to review or seek out pre-1995 records. The bill also proactively makes provision for the recommendations of the royal commission with regard to exchange of information relating to Working With Children Checks with corresponding bodies in other jurisdictions, subject to ministerial protocols.

TEMPORARY SPEAKER (Ms Anna Watson): Order! It being 1.15 p.m., I ask the Minister whether he is seeking leave to continue to conclude his second reading speech?

Mr BRAD HAZZARD: Yes, I am.

Leave granted.

Mr BRAD HAZZARD: This provision is modelled on a similar provision in the Children and Young Persons (Care and Protection) Act, which makes provision for the exchange of assessment information relevant to assessing the suitability of a person to be an authorised carer or adoptive parent. Providing for such an information-sharing provision about decisions relating to Working With Children matters between the Office of the Children's Guardian [OCG] and corresponding interstate bodies is a step towards eventual portability of information between States and Territories, a step that will vastly assist in keeping our children safe from people who pose a risk to the safety of children and use jurisdictional boundaries as a mode of escape. Another recommendation of the royal commission included in the bill is the introduction of the offence of providing false and misleading information when applying for a Working With Children Check or in connection with any inquiry made by the Children's Guardian in relation to such an application.

On the advice of the Solicitor General, the bill also formalises the disclosure of certain probity information to prescribed government agencies. This disclosure limits the need for further probity checking, thus providing significant savings to Government. Lastly in relation to the Working With Children Check amendments, the bill provides clarification that the reasonable person test is to be applied by the Children's Guardian and the NCAT only where the Working With Children Check application to the Children's Guardian has been made after 2 November 2013. All of those amendments, of which some are more significant than others, contribute to making the Working With Children Check scheme in New South Wales an even more effective tool in managing risk in the workplace. I strongly support those amendments. However, I reiterate it is only one of a range of responses not to be relied on in isolation but rather as a necessary adjunct to other child safe strategies and policies.

Moving now to the amendments to the children's employment provisions in the Children and Young Persons (Care and Protection) Act, overall the amendments are intended to strengthen the enforcement options available to the Children's Guardian for the protection of children. The amendments pertain to the regulation of child employment by the entertainment industry. While ethical employers willingly comply and take direction from the OCG, there are increasing numbers of production companies, particularly from overseas, who, for commercial reasons, blatantly falsify information about children employed in their productions to avoid falling within the ambit of the regulation of the OCG. Employers who knowingly and deliberately break the law by employing children without obtaining the necessary authority required under the law are currently under no obligation to provide information or assist the OCG with its inquiries and the OCG has no powers to require compliance.

To this end, the bill proposes amendments to the Children and Young Persons (Care and Protection) Act to provide that the Children's Guardian can: accept a written undertaking from an employer in relation to children's employment as an enforcement option; by notice, in writing, require a person to provide information and documents relevant to their functions relating to employing children; enter and inspect premises other than a dwelling if there is a reasonable suspicion that a child is being employed in contravention of the legislative provisions governing children's employment; and authorise an employee of the Office of the Children's Guardian to serve penalty notices. The types of enforcement options listed above are widely used by Government regulators across a wide array of legislative regimes in New South Wales.

Further, the power of entry is already available in relation to children's employment where the employer holds an employer's authority or exemption. However, for employers who should but fail to hold an employer's authority, staff of the Children's Guardian do not currently have the power to enter the employer's work premises. This bill amends this gap to allow authorised officers approved by the Children's Guardian to enter premises where there are reasonable grounds to exercise the power on the suspicion that a child is being employed in contravention of the legislation.

Further, appropriate safeguards adopted by other regulators will be adopted by the OCG and included in the Standard Operating Procedures. These safeguards will include authorised officers having widely recognised and appropriate training, for example, a minimum of Certificate V in Government Investigations; the requirement for reasonable belief or grounds to believe that an offence has been or

is being committed under the legislation; and the requirement to carry the delegation of the Children's Guardian appearing on the authority identification card which officers must be able to produce when asked.

I am pleased to advise the House that there has been considerable consultation on these proposals from the stage of developing the Cabinet minute through to the development of the bill with industry bodies and government agencies, including the NSW Police Force which is supportive of the proposed changes. Overall, the amendments to the Working With Children Check and the children's employment provisions of the care Act are aimed at acting responsibly and ensuring greater safety for our children. The last set of amendments introduced by this bill relate to education. The amendment makes provision for a person whose Working With Children Check has been cancelled on the grounds of pending proceedings to be suspended or placed on alternate duties pending the outcome of the proceedings, rather than being immediately dismissed.

From the point of view of the Working With Children Check, this change makes no difference as such persons will not be engaged in child-related work. From the perspective of the employee, it would be more reasonable to suspend rather than dismiss an employee while the investigation is still pending. Members on both sides of this House are all aware of the tragic outcomes for children where adequate protections have not been put in place to safeguard their wellbeing. Indeed, there can never be too much protection for our children. This bill reflects the Government's ongoing commitment to provide the continuous improvements necessary to protect our children and young people, particularly those most vulnerable in our society. I commend the bill to the House.

Debate adjourned.

TEMPORARY SPEAKER (Ms Anna Watson): Government business having concluded, Community Recognition Statements will now be proceeded with.