

## **CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) AMENDMENT (AUDITING OF OUT-OF-HOME CARE PROVIDERS) BILL 2017**

### *First Reading*

**Bill introduced on motion by Ms Tania Mihailuk, read a first time and printed.**

### *Second Reading*

**Ms TANIA MIHAILUK ( Bankstown ) ( 10:44 ): I move:**

That this bill be now read a second time.

I introduce the Children and Young Persons (Care and Protection) Amendment (Auditing of Out-of-Home Care Providers) Bill 2017 on behalf of the Labor Opposition. This is a landmark bill that will significantly improve outcomes for the most vulnerable children in our State and is continuing Labor's proud legacy of being at the forefront of vital child protection reforms in New South Wales. At its essence, this bill will correct a gap that has been identified in our child protection legislation by the Auditor-General and the recent parliamentary inquiry into child protection by introducing a new requirement for the Auditor-General to conduct an audit of contracts between the Department of Family and Community Services [FACS] and designated non-government organisations that are receiving State funding to provide out-of-home care services.

On 17 November 2016, the New South Wales Auditor-General's report on Family and Community Services recommended "public confidence in government and its agencies would be enhanced if the New South Wales Auditor-General had the mandate to 'follow the dollar' into NGOs", noting that other jurisdictions in Australia provide their respective auditors-general with this power. To understand the critical need for this bill, one must understand the context behind the existing child protection framework in our State. In 2007, following the highly publicised deaths of a two-year-old boy and a seven-year-old girl, the New South Wales Labor Government requested the Hon. Justice James Wood to conduct a wide-ranging special commission of inquiry into child protection with the view of reforming the child protection system to meet future levels of demand.

Justice Wood's recommendation 16.2 was for the Department of Community Services, now FACS, to transfer the provision of out-of-home care services to the non-government sector. In 2009 former Premier Nathan Rees and then community services Minister Linda Burney released the Keep Them Safe report in response to Justice Wood's report, committing to implement 106 of the 111 recommendations made in the Wood report, including the gradual transfer of out-of-home care services to the non-government organisation [NGO] sector. The transfer of out-of-home care services from FACS to the NGO sector commenced in 2012, when the initial contract arrangements between the department and non-government designated agencies were formulated and executed by the then and current Minister for Family and Community Services Pru Goward. In June 2016 the New South Wales Government extended these contracts for a further 12 months until June 2017. These contracts were due for renewal by 30 June this year but have yet again been delayed, possibly until December.

According to the Auditor-General, there were a record 21,145 children in out-of-home care in 2016, with children staying longer in care and fewer being restored back to their families. Since 2012, approximately 57 per cent of children and young people in out-of-home care are currently in the care of and managed by a non-government designated agency, yet there is little to no measurable oversight of the contractual arrangements between the New South Wales Government and non-government agencies. Since the awarding of the last round of out-of-home care contracts shocking details have emerged about children who have been abused and neglected while in out-of-home care. The most prominent of these examples was the tragic case of Girl X, a 14-year-old who was repeatedly abused while in care. Another tragic case is that of 22-month-old toddler Braxton

Slager-Lewin, who drowned in a swimming pool three weeks into his placement. The police report into Braxton's death was scathing. It identified:

The pool fence did not comply with legislative standards as it was not a self-latching gate ... the premises were not safe or secure for young children placed under foster care. There were also excessive amounts of alcohol and blister packs with medication left throughout the location and within reach of the children.

In May 2016 General Purpose Standing Committee No. 2 established an inquiry examining the effectiveness and resourcing of the child protection system in New South Wales. The inquiry focused on the procedures, practices and systems that operate in the area of child protection and received 139 submissions in total. The report of the inquiry was published on 16 May 2017, making 28 recommendations relating to the role played by the Department of Family and Community Services and the NGO sector. Recommendation 12 of that report states:

That the NSW Government make legislative amendments to extend the performance audit function of the Auditor-General to include audits of all non-government organisations who have been provided with state funding to deliver child protection related services.

The child protection inquiry report further stated:

The committee also agrees that currently there is limited independent oversight of the funding directed towards the non-government sector. We therefore fully endorse the Auditor-General's suggestion for additional "follow the dollar" powers which will enable it to scrutinise the performance of all non-government organisations that perform out of home care functions on behalf of the state.

One of the core functions of the New South Wales Government is to provide care for children whose parents are unable or unwilling to care for them. New South Wales is fast approaching the highest rates of children in out-of-home care in Australia, second only to the Northern Territory, with 9.9 per cent of every 1,000 children being in care, according to the Australian Institute of Health and Welfare. Sadly, many of these children are staying longer in care and fewer children are being escorted back to their families.

Non-government designated agencies providing out-of-home care services on behalf of the New South Wales Government received \$2.8 billion in public funding in 2015 and 2016, representing 34 per cent of the family and community services cluster expenses. While the New South Wales Government has directed a significant level of public funding to the non-government sector to deliver out-of-home care services, at the same time it has absolved itself from its inherent responsibility of providing a minimal level of oversight into the non-government sector to ensure transparency, accountability and better outcomes for vulnerable children in care. The Auditor-General's 2016 *Report on Family and Community Services* noted that there were inconsistencies in the contractual and oversight arrangements, which weakened the department's ability to efficiently and effectively monitor services and provide a performance. The Auditor-General's report further notes:

The Department relies on NGOs to collect reliable data on service delivery to self assess performance. Data collected is not timely, reliable and is not reviewed before finance acquittal.

The government of the day must be held to account where there is a failure in its duty of care to protect and care for our most vulnerable children. This bill will implement the recommendations of both the Auditor-General and the parliamentary inquiry into child protection to introduce unprecedented levels of accountability and transparency into the out-of-home care sector in our State. The bill will fill a clear gap in our child protection framework—one that does not exist in other Australian jurisdictions—and enable the Auditor-General to conduct audit reports of contracts between the department and non-government designated agencies.

The bill will insert a new chapter 8, part 8 into the Children and Young Persons (Care and Protection) Act 1998 for the purpose of auditing publicly funded placement functions provided by non-government agencies. In a nutshell, this bill will create an onus on the Minister for Family and

Community Services to ensure that the Auditor-General conducts a performance audit of all publicly funded placement functions exercised by a designated agency involving the placement of children in out-of-home care. This performance audit will determine whether NGO providers are exercising their functions effectively, economically and efficiently in compliance with the Act and will identify ways on how to improve its functions. Audits must be completed prior to the renewal of a contract between the Department of Family and Community Services and an NGO or within three months after the expiry or termination of a contract.

Under the audit report, the Auditor-General may make recommendations to the Minister on appropriate remedial actions to be taken if it is of the opinion that a non-government designated agency could in the future exercise publicly funded placement functions in a more effective, economical and efficient manner. The bill proposes that the Minister would have one month upon receipt of the completed audit report to table the report to the Parliament. The department secretary would not be able to renew a contract with a designated agency to provide placement functions until after the Minister has received an audit report by the Auditor-General and the recommendations for improvement have been considered.

The costs of audit reports will be borne by the NGOs which are in receipt of State funds. The bill further proposes to make it an offence for any person to obstruct the Auditor-General or any other person from conducting an audit report and, if requested by the Auditor-General, a non-government designated agency must produce or cause to be produced any material required for the performance audit and answer any question required for the performance audit. Material that could be audited may include any books, accounts, agreements, vouchers, letters or documents kept or held by the agency relating to the placement of children in their care.

While the New South Wales sector plays a crucial role in supporting the needs of children in care, we need to increase transparency to ensure greater accountability. It is a crucial element required to significantly improve outcomes for our most vulnerable children. The bill does not question the conduct and ethics of non-government out-of-home care providers. Instead, it will implement recommendations made by the New South Wales Auditor-General and the recent parliamentary inquiry into child protection. The vast majority of non-government designated agencies are doing a tremendous job given the complexities of caring for vulnerable children and are working under difficult circumstances and doing their best in delivering the best standard of care for vulnerable children who are at risk of harm.

Labor's bill will simply ensure and prioritise better outcomes for the record number of children and young people now in care across New South Wales. I urge the Government to support this and I extend the offer of bipartisan support for this legislation. Through increased oversight, accountability and scrutiny the Department and non-government providers will be able to work hand-in-hand to deliver better outcomes for our most vulnerable children. This bill is an important step that will implement recommendations made by the Auditor-General and the parliamentary inquiry into child protection relating to increased oversight, accountability and transparency of the out-of-home care sector. There is still much work to be done by this Government to implement the other recommendations made in the child protection inquiry report, including recommendation two:

That the NSW Government provide a specific one off injection of additional funding for evidence based provision and early intervention services including targeted client services and programs that operate in regional, rural and remote areas.

The New South Wales Government is expected to collect more than \$11 billion from stamp duty revenue alone in 2017 and 2018, yet despite this windfall the budget has failed to fulfil this recommendation to support early intervention services in order to improve child protection outcomes.

I understand that General Purpose Standing Committee No. 2, which inquired into child protection, sought a response from the Government to its recommendations by August 2018, but

given that the most recent phase of out-of-home care contracts are expected to be renewed by December 2017, we cannot afford to delay reforms that will deliver an improvement in the quality of care provided to children in New South Wales. Let us start prioritising bills, such as the one before the House, to improve outcomes for the record number of children in care. I welcome the robust debate that this bill will bring and I welcome the views of the sector, but ultimately I welcome an outcome whereby we improve the lives of the 21,000 children in out-of-home care in this State.

**Debate adjourned.**