

Agreement in Principle

Mr BARRY COLLIER (Miranda—Parliamentary Secretary) [10.48 a.m.]: I move:

That this bill be now agreed to in principle.

In New South Wales only designated agencies are permitted to provide out-of-home care for children and young persons who do not live with their families in accordance with orders of the Children's Court. The New South Wales Children's Guardian is responsible for accrediting designated agencies and monitoring their responsibilities. The New South Wales Children's Guardian Accreditation and Quality Improvement Program is the first of its kind in Australia and has been operating since 15 July 2003. The system of accreditation is governed by the Children and Young Persons (Care and Protection) Act 1998, the Children and Young Persons (Care and Protection) Regulation 2000 and the Children and Young Persons (Savings and Transitional) Regulation 2000. The two regulations give effect to the overarching Act.

In mid 2006 the New South Wales Children's Guardian commenced a review of the program and its systems. The main purpose of the review was to improve the efficiency, effectiveness and ease of use of the program for out-of-home-care designated agencies, having regard to the best interests of children and young people in out-of-home care. While the review found that the majority of agencies reported that the program helped them to deliver better outcomes for children and young people in their care, it also found that a number of improvements should be made to the program. It found that the existing regulation lacked necessary flexibility and unnecessarily burdened out-of-home care agencies and organisations applying for accreditation. It also found the existing regulatory framework for interim accredited agencies to be unclear and insufficient to address any significant concerns that could exist about the quality of care provided by these agencies. The review recommended legislative and regulatory changes to provide for greater flexibility and clarity in the accreditation and monitoring framework and to reduce the red tape on agencies applying for accreditation.

The amending Principal Regulation and the amending Savings and Transitional Regulation have been gazetted already. The review also recommended several minor amendments to the Children and Young Persons (Care and Protection) Act 1998. The Children and Young Persons (Care and Protection) Amendment Bill 2009 will make these minor amendments to the Children and Young Persons (Care and Protection) Act 1998. The amendments are not substantive but will help to provide greater flexibility to out-of-home care agencies applying for accreditation and reduce the regulatory burden of applying for accreditation. In addition, the amendments will permit developing new regulations to provide greater clarity for out-of-home care agencies regarding the regulatory process. The amendments will also allow the Children's Guardian to do its work of accrediting and monitoring agencies that provide out-of-home care services more effectively.

I will now outline the amendments to the Children and Young Persons (Care and Protection) Act 1998 in detail. These are detailed in schedule 1 to the bill. Item [1] of schedule 1 amends section 141 of the Act to make it clear that the Department of Community Services does not assume the rights or liabilities of a designated out-of-home care agency that relate to a placement of a child or a young person when it assumes responsibility for that placement. Currently, section 141 requires the Department of Community Services to assume a designated agency's responsibility for an out-of-home care placement when the agency is no longer able to fulfil its responsibilities in relation to a child or young person. An example of when this may occur is if the agency's accreditation ceases. The Department of Community Services has previously expressed concern that it may be open to argument that the department, in assuming this responsibility, also assumes pre-existing liabilities of the designated agency relating to the supervision, such as, for example, meeting the costs of any unpaid carer allowances or workers compensation entitlements.

Section 141 may also apply to situations where the Department of Community Services assumes responsibility for all of an agency's out-of-home care placements. This may occur if a designated agency enters liquidation. In such circumstances a liquidator, creditors or persons who have commenced legal proceedings against the designated agency might seek to pursue the department for any claim they may have had against the designated agency. This bill makes it clear that the Department of Community Services, in assuming such responsibility for a placement, does not assume any property, rights or liabilities of the agency relevant to the placement.

The bill also corrects an apparently inadvertent result of the original drafting of section 185 in relation to the power of the Children's Guardian to direct a prescribed person to provide the Children's Guardian with information relating to the safety, welfare and wellbeing of a particular child or young person or class of children and young persons. A prescribed person includes the Director General of the Department of Community Services, a designated agency or an authorised carer. Currently, section 185 of the Act provides the Children's Guardian with the power to direct the provision of information. However, under the current drafting, the Children's Guardian may direct the provision of such information only "for the purposes of providing information to, or exchanging information with, a prescribed person".

This means that the Children's Guardian, when directing prescribed persons to furnish her with information relevant to the exercise of her functions, must provide some information in return or use the information furnished to provide information to another prescribed person. The bill corrects this anomaly. The bill amends section 185 to enable the Children's Guardian to provide, or direct the provision of, information under section 185 for the purpose of exercising her functions. The bill also amends section 248 of the Act, which deals with the Director General of the Department of Community Services directing a prescribed body to provide information relating to the safety, welfare and wellbeing of a particular child or young person or class of children and young persons. Currently, section 248 contains the same unintended limitation as section 185. The bill corrects this unintended limitation.

In addition, the bill creates a new offence for failure to comply with a direction of the Children's Guardian to provide information in accordance with section 185 of the Act. This new offence will carry with it a maximum penalty of 10 penalty units. Finally, this bill will also create a regulation-making power in respect of the licensing of principal officers and other prescribed officers of designated out-of-home care agencies. Under the previous legislative framework for out-of-home care, the Department of Community Services, on behalf of the Minister, was required to conduct probity assessments for all principal officers of out-of-home care agencies. This probity regime was inadvertently not carried forward into current out-of-home care legislation, with assessment provisions confined to carers authorised by designated agencies. However, principal officers are authorised under the Children and Young Persons (Care and Protection) Act 1998.

Principal officers are responsible for authorising all of an agency's carers and carrying out highly sensitive functions. It is therefore essential that a person's suitability be independently assessed before they are appointed to this important and sensitive role. In some designated agencies that provide only out-of-home care services, the principal officer will personally have direct responsibility for all of an agency's out-of-home care operations. However, in larger organisations that provide a range of community services, a senior manager or other similar position may have that responsibility. The current regulation suggests that the principal officer is the person who has overall supervision of the arrangements the agency makes for the provision of out-of-home care, although there is no regulation-making power to support the principal officer being defined in this way.

To deal with the fact that a senior manager or similar position may have responsibility for an agency's out-of-home care operations, it is appropriate to recognise a new statutory office of out-of-home care manager of a non-government designated agency. The holder of this office will be the individual who has direct responsibility for all the agency's out-of-home care operations, if not the principal officer. Regulations are required for a new regime for assessments of a person's suitability to be the principal officer of a designated agency, integrating this regime with the accreditation system, and extending it to out-of-home care managers. However, this requires a new regulation-making power to be included in the Children and Young Persons (Care and Protection) Act 1998.

The bill amends section 264 (1A) of the Act to provide a regulation-making power for the licensing of principal officers and other prescribed officers of designated agencies. This will allow the making of regulations to reintroduce assessments of a person's suitability to be the principal officer of a designated agency. These regulations will be introduced following the amendment. This bill forms part of a suite of legislative and regulatory reform measures that will improve the efficiency, effectiveness and ease of use of the Accreditation and Quality Improvement Program for out-of-home care designated agencies, whilst at the same time having regard to the best interests of children and young people in out-of-home care. The details of these reform measures were provided to the Special Commission of Inquiry into Child Protective Services in New South Wales.

The commission advised that the proposed changes are consistent with its recommendations, and has indicated in its final report that it supported the recommendations of the Children's Guardian's internal review. The effect of these measures will be to provide greater flexibility to out-of-home care agencies applying for accreditation and reduce the regulatory burden of applying for accreditation. In addition, the measures will result in greater clarity for out-of-home care agencies regarding the regulatory process. I commend the bill to the House.