



Child Protection Legislation Amendment (Children's Guardian) Bill 2013 (Proof)

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CHILD PROTECTION LEGISLATION AMENDMENT (CHILDREN'S GUARDIAN) BILL 2013

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Second Reading

The Hon. JOHN AJAKA (Parliamentary Secretary) [4.50 p.m.], on behalf of the Hon. Greg Pearce: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Child Protection Legislation Amendment (Children's Guardian) Bill 2013 will improve child protection in New South Wales by integrating related child protection regulatory systems. The bill integrates the Working with Children Check within the newly established Office of the Children's Guardian, an independent division of the government service.

The Office of the Children's Guardian is the specialist accreditation and licensing agency of the New South Wales child protection system. It regulates out-of-home care, adoption and prescribed children's employment.

Integrating the check within the office will provide one single independent regulator for the child protection system.

I commend the Minister for Citizenship and Communities, Victor Dominello, and the staff of the Commission for Children and Young People for developing the new Working with Children Check, which will start on 15 June 2013.

The New South Wales Liberals and Nationals Government recognise the improved check is a critical child protection safeguard—a strengthened safeguard that needs to be integrated with other child protection regulatory systems. That is what this bill does.

The current Working with Children Check leaves the decision to employ a person in child-related employment to the employer, unless the person is a prohibited person as a result a relevant conviction. That means that people who have been assessed as posing a serious risk to children by a screening agency can still work with children. That must change.

The new check is no longer merely a risk-assessment system, but an accreditation-based licensing system for people who wish to work with children. The new check will either clear people to work with children or bar them, rather than leave it to an employer to make his or her own decision.

This bill integrates child protection regulatory functions within a single agency.

Schedule 1 [4] and other provisions of schedule 1, along with schedule 3.5 [1] of the bill, transfers responsibility for administering the check from the Commission for Children and Young People [CCYP] to the Children's Guardian.

Schedules 3.2 and 3.9 make consequential amendments, with the Children's Guardian to audit child-related conduct declarations under the Parliamentary Electorates and Elections Act 1912 and appear in relevant proceedings under the Child Protection (Offenders Registration) Act 2000.

Schedule 3.2 also incorporates the Working with Children Act definitions of "employer" and "worker" into the Offenders Registration Act. This responds to the Director of Public Prosecution's concerns about a Local Court decision that participation in the Work for the Dole program was not employment that registered offenders needed to report to police. Schedule 3.2 will ensure that registered offenders must report work for the dole and other volunteering arrangements to police.

Schedule 1 [5] to [7] requires adults living with home-based child care providers, rather than those living with childcare managers, to obtain Working with Children clearances.

Schedule 1 [12] is a key provision. It transfers to the Guardian the Commission for Children and Young People function of encouraging organisations to develop their capacity to be safe for children. This function supports the check and can be integrated with the related out-of-home care and adoption accreditation and children's employment licensing

functions of the Children's Guardian.

The Children's Guardian's existing staff, who conduct over 100 employer visits a year, will all provide education and compliance monitoring for the new check and the child safe organisation program.

Schedule 1 [15] of the bill is an important new initiative and I thank the Catholic Commission for Employment Relations for its lead role in developing it.

The regulations exclude most parents who volunteer in activities that involve their own children from the check, although parent volunteers who provide mentoring services or intimate personal care services for children with disabilities must obtain clearances.

This reflects the reality that parents have contact with their children's peers as part of normal life. It is neither practical nor appropriate for the State to impose checks on all parents who have contact with their children's peers.

However, employers should be able to introduce their own risk management strategies as part of making their organisations safer for children.

The Catholic Commission for Employment Relations will be requiring some categories of parent volunteer to sign statutory declarations that they have not been convicted of a barring offence under the Working with Children Act. Other employers may also choose to require statutory declarations targeted in accordance with their own workplace risk assessments. The penalty for swearing a false declaration is up to five years imprisonment.

The proposed statutory declaration arrangements can be distinguished from the outgoing prohibited employment declarations, which are not targeted, only have a two-year penalty for breach, are not understood or supported by many employers, and are seen as ineffective. The prohibited employment declaration arrangements are so broad that they do not allow for effective risk-based auditing. That is why the Working with Children Act provides for the repeal of the prohibited employment regime on 15 June.

Schedule 1 [15] will enable the Children's Guardian or an approved person to conduct audits of a sample of employer-initiated statutory declarations.

Schedule 2 [2] of the bill requires an authorised carer to notify their out-of-home care agency as soon as practicable after another adult starts living in their household. This improves the current three-month timeframe, which is incompatible with check requirements.

Schedule 2 [3] of the bill consolidates the principal functions of the Children's Guardian, reflecting the transfer of Commission for Children and Young People's child-related work and voluntary accreditation functions.

New section 181 (1) (d) of the Children and Young Persons (Care and Protection) Act 1998 requires the Children's Guardian to establish and maintain a register for the purpose of authorising persons as authorised carers. The Carers Register will ensure all carers have undergone necessary probity and other assessments and support agencies in sharing information about prospective carers. The transfer of the Working with Children Check to the Guardian will support the integration of the check and carers register systems.

New section 181 (1) (g) of the Care Act and Schedule 2 [1] and [6] to [12] of the bill also provide for the Children's Guardian administering the children's employment provisions of the Care Act, which the Guardian has been doing under Ministerial delegation since 2003. Schedule 2 [10] reduces the timeframe for processing applications for a children's employment authority from 28 to 14 days.

Schedules 1 [16] and 2 [4] to [5] replicate provisions of the Commission for Children and Young People Act that are necessary to support the Children's Guardian's new functions. The other provisions, with the exception of Schedule 3.5 [3] to [4] are consequential or address matters inadvertently omitted when the Working with Children Act was introduced.

Schedule 3.5 [3] to [4] contain critical provisions to ensure the Children's Guardian independently and transparently administers the child-related employment functions transferred from the Commission for Children and Young People.

The member for Canterbury has suggested that the transfer diminishes the independent administration of the check. She is wrong.

Section 36 (2) of the Commission for Children and Young People Act, introduced by the former Labor Government, provides that the Commission for Children and Young People must comply with the written directions of the Minister in administering the current check. That is the Labor way.

It was this Government that made the new check at arm's length from government by not replicating that provision in the Working with Children Act.

It was the former Labor Government that removed the independence of the Commission for Children and Young People and the Children's Guardian. Labor shut them down as independent departments in 2006, incorporating them into the Office of Children within the Premier's department and later the Department of Communities, now part of the Department of Education and Communities. The Children's Guardian's budget and staffing have since been controlled by that department.

This Government has restored the independence of the Children's Guardian by establishing the Office of the Children's

Guardian as a standalone division of the government service, with the Children's Guardian remaining an independent statutory office. Just like the Ombudsman's Office. Just like the Office of the Director of Public Prosecutions. Just like the Office of the New South Wales Electoral Commission.

The Children's Guardian is completely independent of the Department of Family and Community Services. It has a separate budget.

It will continue to report directly to me as the Minister, as it does now.

The Children's Guardian will continue to be appointed by the Governor, and may only be removed by the Governor for misbehaviour, incapacity or incompetence.

The Children's Guardian will also continue to have the ability to report directly to Parliament.

And the bill provides for the Joint Parliamentary Committee on Children and Young People monitoring, reviewing and reporting on the exercise of the Children's Guardian's functions under the Working with Children Act.

The functions of this bill are well supported by the sector.

The Ombudsman, Bruce Barbour, has advised he supports a single independent body administering child protection probity systems and that integrating the Working with Children Check with the Children's Guardian's other regulatory systems will improve the coordination of child protection regulation and assist his office in its work with the community services sector.

The 2010 Review of the Commission for Children and Young People Act 1998 supported a move towards an accreditation-based check. A number of submissions to the review highlighted the tension between the Commission for Children and Young People's advocacy role and its administration of the check.

- The Benevolent Society recommended that the check be part of an integrated system of risk reduction for all organisations that provide services to children and young people and suggested the exploration of a link with out-of-home care accreditation.

- Save the Children recommended that the Commission for Children and Young People's responsibility for conducting checks be transferred to a separate regulatory agency, as did the National Children's and Youth Law Centre, which suggested that the check might be transferred to the Children's Guardian.

These comments reflected the 2004 submissions of the Council of Social Service of New South Wales [NCOSS], the Association of Children's Welfare Agencies [ACWA], and Ethnic Child Care, that administering the check diminished from the Commission for Children and Young People's advocacy, education and research functions.

The Commission for Children and Young People's own submission to the Special Commission of Inquiry stated that advocacy and regulatory functions do not appropriately sit in the same agency. The new check has a much stronger regulatory character than the outgoing one.

This bill does not make any changes to the Commission for Children and Young People's advocacy and policy functions and Minister Dominello has announced that the Commission for Children and Young People will be consulting with key stakeholders on how best to strengthen these important areas.

The regulatory and advocacy benefits of the bill are acknowledged by Louise Voight, the CEO of Barnardos, who has advised that situating the new check with the Children's Guardian cements the Guardian's role as a strong regulator and enhances the status of this function, and the separation of regulation from advocacy will be beneficial for children's interests.

Claire Robbs, the Chief Executive of Life Without Barriers, has welcomed the transfer of the check to the Children's Guardian as "a fantastic opportunity for regulatory streamlining."

The Catholic Commission for Employment Relations believes the transfer will allow for the more efficient and responsive delivery of the check and aligned child protection services.

This bill provides for an independently administered Working with Children Check, subject to Parliamentary oversight. It integrates that check with other child protection regulatory systems, improving child protection in New South Wales. It also allows for a renewed and reinvigorated focus on policy and advocacy work for children and young people.

The New South Wales Liberals and Nationals Government came to government to improve service and lives for vulnerable children in New South Wales. That is what we are doing.

I commend this bill to the House.