

Agreement in Principle

Ms LINDA BURNEY (Canterbury—Minister for Community Services) [10.41 a.m.]: I move:

That this bill be now agreed to in principle.

I am pleased to introduce the Children and Young Persons (Care and Protection) Amendment (Children's Employment) Bill 2009. The bill before the House will amend the Children and Young Persons (Care and Protection) Act 1998 to make the child employment provisions of the Act applicable to children up to 16 years of age who are employed as models. The existing child employment provisions in the Act apply to children up to the age of 15 years who are employed for still photography, entertainment or exhibition work. Exhibition work includes modelling before a live audience, for photographs and for film, TV or video recording. The effect of the amendment in this bill will be to extend the application of those provisions to children between the ages of 15 and 16 who are employed for modelling.

This bill will also make a consequential amendment to the Code of Practice in the Children and Young Persons (Care and Protection—Child Employment) Regulation 2005. That amendment will extend the daily time restrictions on the employment of children to include children between the ages of 15 and 16 years who are employed for modelling. Importantly, the bill will also increase the penalty for employment of a child in contravention of the child employment provisions of the Children and Young Persons (Care and Protection) Act 1998. The existing maximum penalty for which the Act provides is 10 penalty units, which means \$1,100. This bill will increase the maximum penalty for that offence to 100 penalty units, which means \$11,000. Employment is defined in the legislation as work by a child for whom payment is made or some other material benefit is conferred on the child or another person.

The Act requires all employers of children for still photography, entertainment, modelling or other exhibition work to hold an employer's authority and to comply with the mandatory Code of Practice in the Children and Young Persons (Care and Protection—Child Employment) Regulation 2005. The provisions of the mandatory Code of Practice acknowledge that child employees may be less capable than adults of negotiating conditions of their employment. For that reason the Code of Practice contains specific requirements on matters such as working hours, travel time, amenities, supervision and the effect of work on the child's education. Additional sets of requirements relate to the employment of children who are under three years of age and babies less than 12 weeks old.

The Children's Guardian has delegated authority to permit variations to the limits in the Code of Practice. That authority is only exercised when an assessment shows the welfare of employed children would not be compromised. The Code of Practice prohibits casting of a child in a role or situation that is inappropriate in view of his or her age, maturity, emotional or psychological development and sensitivity. The Code of Practice requires that details about each proposed instance of employment be notified in advance to the Children's Guardian. That notification provides an opportunity for the Children's Guardian to assess whether each proposal is likely to comply with the "appropriateness" test in the Code of Practice for each child involved.

One effect of this bill will be to give models between the ages of 15 and 16 years the benefit of the safeguards that the legislation already provides for models below the age of 15. I believe that is appropriate in view of the concern expressed in our community about the dangers for young people who are drawn into an adult world at an age when they are more mature physically than emotionally. It is difficult to define a precise age at which models are likely to be able to look after themselves in the workplace, but the broad consensus is that it is older than 15 years for most children. The extension of the legislative safeguards in New South Wales to apply to models up to 16 years of age is consistent with community opinion in New South Wales and elsewhere.

For example, in the cities of London, Milan and Sao Paolo the fashion industry peak bodies have responded to community views by making a voluntary commitment not to engage models under the age of 16 years. The legislative scheme in New South Wales recognises that children do work as models and is designed to regulate the activities of employers to promote the welfare of the children for whom they are responsible. I am sure all members would agree that it is preferable to extend the existing legislative protection to children between the ages of 15 and 16 who are employed as models, rather than leave them to fend for themselves.

The other significant effect of this bill will be to increase the maximum penalty that a court may impose on an employer for failure to comply with this legislation in relation to any child it is intended to protect. Failure to comply with the legislation is already an offence for which the maximum penalty prescribed in the Children and Young Persons (Care and Protection) Act 1998 is currently 10 penalty units. Non-compliance could occur in a range of ways, including failure to obtain an employer's authority from the Children's Guardian or to notify the Children's Guardian about a proposed instance of employment. The most extreme form of an offence under this provision would be for an employer to proceed with an employment proposal in defiance of a notification from the Children's Guardian that it would contravene the code of practice.

The maximum penalty prescribed for a comparable offence under the Industrial Relations (Child Employment) Act 2006 is 100 penalty units. That provision applies where an employer fails to comply with requirements contained in a compliance notice. This bill will increase the existing maximum penalty under the Children and Young Persons (Care and Protection) Act 1998 to match the corresponding provision in the Industrial Relations (Child Employment) Act 2006. That would enable the courts to impose similar fines on employers who deliberately flout either of these laws. I commend the bill to the House.