

CRIME AMENDMENT (CHILD NEGLECT) BILL

Second Reading

Mr GRAHAM WEST (Campbelltown—Parliamentary Secretary) [10.56 a.m.], on behalf of Dr Andrew Refshauge: I move:

That this bill be now read a second time.

The Crimes Amendment (Child Neglect) Bill contains strong and sensible amendments to the Crimes Act 1900 to deal with the complex issue of child neglect. Late last year the Government set up a working party comprising officers of the Department of Community Services and the Attorney General's Department to review offences in the Crimes Act and the Children and Young Persons (Care and Protection) Act 1998 in relation to child neglect. The process was aimed at determining whether the law, as it stood, sufficiently reflected contemporary community standards and values. The working group recommended that the Crimes Act be amended.

This bill replaces the existing section 43, inserts a new section 43A, and amends section 44 of the Crimes Act. These changes complement the amendment late last year to section 43 of the Act, which saw the age of a child to which the offence applied increased from 2 years to 7 years. Other than that amendment and the proposed amendments in this bill, these provisions have been the subject of little or no modification since they were first incorporated in the Act. This is reflected in the language of the Act as it stands, which the Government has acknowledged requires modernisation. By making the language of these provisions more contemporary and otherwise strengthening the Act's treatment of child neglect-related cases, the relevant authorities will be better able to pursue prosecutions in appropriate circumstances.

I now turn to the individual amendments. The bill proposes the deletion of the current section 43 and its replacement with a new section 43. As before, the new section 43 applies to any person. While retaining the essential character of the section it replaces, new section 43 is phrased in contemporary language. If a person intentionally abandons or exposes a child under 7 years of age without reasonable excuse, and the abandonment or exposure causes a danger of death or serious injury to the child, the person is guilty of an offence and can be imprisoned for a maximum of 5 years.

A defence of "without reasonable excuse" replaces the use of the term "unlawfully" in the current section. It will be the role of judicial officers to determine whether an individual can establish this defence. Trivial or shallow reasons will not assist an individual being prosecuted under this section. I am advised, for example, that the proposed section could be used to mount a prosecution against anyone—it need not be a parent—who abandons a child in a car in the blazing summer sun, thereby causing a danger of serious injury to the child.

The section 43A offence focuses on people with parental responsibility who, without reasonable excuse, intentionally or recklessly fail to provide a child with the necessities of life. The necessities of life include, but are not limited to, such things as providing a child with adequate food, clothing, medical treatment, accommodation, and care. If a person with parental responsibility, without reasonable excuse, intentionally or recklessly fails to provide such necessities of life to a child for whom he or she has parental responsibility, and the failure causes a danger of death or serious injury to the child, the person is guilty of an offence and can be imprisoned for five years.

The bill also amends section 44. All references to "child" or "ward" will be removed as they are now covered under the new provisions of section 43A. This will mean that section 44 will continue to apply to other vulnerable people, but not to children. There is a similar offence under the care legislation, but if it is more appropriate for a custodial penalty to be pursued, the Crimes Act provisions can be used. It should be noted that the offences outlined in this bill will complement other Crimes Act provisions relating to assaults and other acts causing

danger to life or bodily harm.

It is appropriate at this point that I address whether custodial penalties should be provided for in the care legislation or whether they should be in the Crimes Act. The Government believes that gaol penalties and other non-financial penalties, such as community service orders, for such offences should be in the Crimes Act and not in the care legislation. The focus and thrust of the care legislation is about preventive and intervention strategies and working with families when there are allegations of risk of harm and neglect. The Minister does not believe that it is appropriate to reinstate prison sentences in the care legislation, given that they were specifically removed in 1998 following the Parkinson review of the 1987 care legislation. Gaol penalties were removed to make the legislation more focused on the interests of children and young people. The Government certainly supports the prosecution of people when there are serious allegations of abandonment and neglect. In appropriate severe cases, the option of imprisoning the perpetrator should be clearly available.

[Debate interrupted.]

Business resumed from an earlier hour.

Mr GRAHAM WEST (Campbelltown—Parliamentary Secretary) [11.44 a.m.]: In appropriately severe cases, the option of imprisoning the perpetrator should be clearly available. These prosecutions should be carried out by either the police or the Office of the Director of Public Prosecutions under the Crimes Act, rather than by the Department of Community Services [DOCS]. The process is then separated from the intervention work undertaken by DOCS. The Government does not consider it appropriate to amend in any significant way the care legislation at this time. The legislation already contains offences in relation to child abuse and neglect of children and young people.

The monetary penalties in the care legislation are significant. The maximum penalty for these offences is 200 penalty units, which is currently \$22,000. If proceedings are commenced in the Local Court, the maximum penalty that a magistrate can apply is \$11,000. The State's care legislation requires DOCS to focus on the safety, welfare, and wellbeing of a child or young person. It requires DOCS to provide a primarily care and protection response that is aimed at taking action to enhance a child's safety, welfare and wellbeing. The care legislation also allows DOCS to work with parents and care givers to provide support and education that is aimed at intervention for the family as a whole if possible, focusing on circumventing any cycle of neglect or abuse. It allows DOCS to engage in early intervention and prevention work so that DOCS can work with parents to help them change their behaviour. This preventive approach can help to circumvent or minimise the likelihood of harm from neglect.

The Government's Families First strategy and DOCS early intervention initiatives are excellent examples of the Government's commitment to strengthening families and preventing the abuse and neglect of children. These programs seek to identify the early warning signs and provide practical assistance to children and families in need. Families are offered tangible and positive help, rather than a punitive approach. Many children who come to the attention of DOCS have struggling parents or care givers who are facing myriad complex problems, among which might already be a history of incarceration.

The Government has consistently acknowledged that neglect issues are challenging and require a range of responses, including the tough, but workable, changes to the law proposed in this bill. As the Minister has said previously, the Government does not believe that custodial sanctions should automatically apply in all cases of child neglect. Such an approach might have superficial appeal, but it will not resolve the problem of child neglect. We must recognise, however, that there will be cases that demonstrate a complete and inexcusable failure to care for a child to such an extent that the child's life or health is seriously endangered. The bill proposes sensible and workable amendments in the difficult area of child neglect. The proposals use contemporary language and will provide clear options to care and law enforcement related authorities when determining what sanction should be

pursued in circumstances in which a child's welfare is jeopardised. I commend the bill to the House.