

## **CHILDREN AND COMMUNITY SERVICES BILL 2003**

### *Council's Amendments*

Amendments made by the Council further considered from 22 September.

### *Consideration in Detail*

Debate was interrupted after the following motion had been moved by Ms S.M. McHale (Minister for Community Development, Women's Interests, Seniors and Youth) -

That amendments Nos 5 to 9 made by the Council be agreed to.

Ms S.E. WALKER: Yesterday the minister said that clause 28, which these amendments affect, is the crux of the Bill for the Government. Clause 28 is also the crux of the Bill for the Opposition. It is because of the way this clause is phrased that we oppose the Bill. This clause seeks to extract the provisions for the care and protection of children that are contained in the Child Welfare Act from that Act and put them into this Bill. It was the Opposition's view previously, and it is the Opposition's view now, that although the terminology in the Child Welfare Act is antiquated, anyone can read that Act and know what it means. What that Act means is that when a child is suffering harm in a particular situation, that child is in need of care and protection and will be taken into care and protection. However, under part 4 of this Bill, "Protection and care of children", a series of barriers will need to be gone through before a child is considered to be in need of care and protection. The second draft of the Bill, which is the one that we are now considering, contains an amendment to clause 28 that the minister made as a concession to the Opposition because of the concerns that we raised about the wording of clause 28. Clause 28(2) provides -

For the purposes of this Part a child is **"in need of protection"** if -

It then lists several things. It then provides, in paragraph (d) -

The child has suffered, or is likely to suffer, significant harm as a result of any one or more of the following -

- (i) physical abuse;
- (ii) emotional abuse;
- (iii) psychological abuse;
- (iv) neglect.

Prior to the Government's amendment, sexual abuse was also included in that list. It was of great concern to the Opposition that the Government would consider that a child is not in need of protection simply because the child is being sexually abused. We believe that a child is in need of protection against all categories of abuse. Therefore, the Government made a concession. That concession was to take sexual abuse out of that paragraph and to redraft it in the formula that is now contained in paragraph (c); namely -

the child has suffered, or is likely to suffer, harm as a result of the sexual abuse and the child's parents have not protected, or are unlikely or unable to protect, the child from harm, or further harm, of that kind;

The amendments from the upper House propose that the word "significant" be taken out of paragraph (d) so that it will read -

the child has suffered, or is likely to suffer, harm as a result of any one or more of the following . . .

Does that mean that sexual abuse has now gone back into that list?

Ms S.M. McHale: Yes.

Ms S.E. WALKER: I find it incomprehensible that, quite apart from suffering sexual abuse, a child will also need to be identified as having suffered harm, because harm has taken on a new meaning. The new meaning that has been sent to us from the other place is -

**"harm"**, in relation to a child, means any detrimental effect of a significant nature on a child's wellbeing;

A child may be in a situation in which he or she is being raped regularly by a member of the family or another person but is not actually exhibiting signs of harm. It would seem to me that under these provisions a child will not be taken into care and protection if that child cannot be identified as suffering significant harm. One of the real problems with this legislation is the fact that abuse for all the categories has not been defined. Had the

nature of physical abuse, emotional abuse, psychological abuse or sexual abuse been defined, we would not have the problem that we have now with the words “significant harm”.

Mrs C.L. EDWARDES: I would like the member for Nedlands to complete her remarks.

Ms S.E. WALKER: What concerns some members is that physical abuse may constitute just a slap across the face. It is a bit like the problem that we are having at the moment with the Criminal Code Amendment (Racial Vilification) Bill. How far should we go? If it is defined, people will have some sort of understanding. In my view, we are now in the same position that we were in when we began this debate. We are now in the position that if a child is suffering sexual abuse - which this Parliament has determined that in certain circumstances may carry a penalty of imprisonment for up to 20 years - that child will not be deemed to be in need of care and protection under this Bill unless that child is suffering a detrimental effect of a significant nature to its wellbeing. That is not acceptable to the Opposition.

Although I understand what has happened, I think the Bill is misconceived. It is a tragedy that “abuse” has not been defined. It could have been easily defined. I asked when we were debating the clause for it to be defined. I read out to the House the different definitions of psychological, emotional and physical abuse that had been included in the reports of the New Zealand Commission for Children and others. If we had defined emotional abuse, we would know whether a child came within the ballpark of needing care and protection.

I hope that the Opposition gets into government in the next term. If I have any power or say in the matter, I will try to change this legislation so that children who are sexually abused in their home, or physically, emotionally or psychologically abused, do not have to go through the barrier of a test to determine whether they have suffered significant harm as a result of that abuse before somebody steps in and says that they are in need of care and protection.

**Question put and passed; the Council’s amendments agreed to.**

Ms S.M. McHALE: I move -

That amendment No 10 made by the Council be agreed to.

This amendment relates to a drafting error that needs to be corrected.

**Question put and passed; the Council’s amendment agreed to.**

Leave granted for the following amendments to be moved together.

Ms S.M. McHALE: I move -

That amendments Nos 11 and 12 made by the Council be agreed to.

These amendments are again Hon Derrick Tomlinson’s attempts to be grammatically pure.

**Question put and passed; the Council’s amendments agreed to.**

Ms S.M. McHALE: I move -

That amendment No 13 made by the Council be agreed to.

I will quickly explain this amendment, which relates to clause 90 and is consequential. It is necessary because of amendments we made in this House in relation to ensuring the carer receives a copy of the report. The insertion of the words in the amendment was omitted when we made amendments in this House and, therefore, they follow through consequentially.

**Question put and passed; the Council’s amendment agreed to.**

Ms S.M. McHALE: I move -

That amendment No 14 made by the Council be agreed to.

This amendment deals with clause 93. The reason for it is more or less the same as the reason for the previous amendment. It is a consequence of ensuring that any carer of a child has access to a report. The amendment was required and was not picked up in this House.

**Question put and passed; the Council’s amendment agreed to.**

Leave granted for the following amendments to be moved together.

Ms S.M. McHALE: I move -

That amendments Nos 15 to 19 made by the Council be agreed to.

Ms S.M. McHALE: As I said, these amendments are a consequence of amending clause 28.

Ms S.E. WALKER: I will make very brief comments similar to the comments I made on clause 28. The clause states that it is an offence for a person who has the care and control of a child and who engages in conduct knowing that the conduct may result in the child suffering significant harm as a result of any one or more of the following: physical, emotional or psychological abuse, harm, or neglect. I understand the amendment now inserts “sexual abuse” into the clause. It will, therefore, be all right for a person who has care and control of a child to commit sexual abuse as long as the person did not know that the conduct may result in the child suffering significant harm. I just make those comments. We know that there have been and there are many children in foster care suffering because of abuse. It is a tragedy in this State that legislation has had to be brought into this place to lift the bar for intervening to protect those children.

**Question put and passed; the Council’s amendments agreed to.**

**Council’s amendments Nos 20 to 23 agreed to.**

Ms S.M. McHALE: I move -

That amendment No 24 made by the Council be agreed to.

This amendment deals with clause 199 and relates to childcare centres. It adds a further principle around best practice and is a reasonable amendment to make.

**Question put and passed; the Council’s amendment agreed to.**

Leave granted for the following amendments to be moved together.

Ms S.M. McHALE: I move -

That amendments Nos 25 to 28 made by the Council be agreed to.

For this purpose, these are further amendments from Hon Barbara Scott on what an applicant for a licence for a childcare centre must be required to produce and what may be required to be produced. I am happy to accept the amendments.

**Question put and passed; the Council’s amendments agreed to.**

Ms S.M. McHALE: I move -

That amendment No 29 made by the Council be agreed to.

Like the previous amendment, this amendment deals with clause 204.

**Question put and passed; the Council’s amendment agreed to.**

Ms S.M. McHALE: I move -

That amendment No 30 made by the Council be agreed to.

This is purely a drafting error correction.

**Question put and passed; the Council’s amendment agreed to.**

Ms S.M. McHALE: I move -

That amendment No 31 made by the Council be agreed to.

Again, this is a drafting error that is being corrected.

**Question put and passed; the Council’s amendment agreed to.**

Leave granted for the following amendments to be moved together.

Ms S.M. McHALE: I move -

That amendments Nos 32 and 33 made by the Council be agreed to.

These are consequential amendments to schedule 2.

Ms S.E. Walker: Can you explain those, please?

Ms S.M. McHALE: The amendments deal with schedule 2 and the offences under this Bill. Amendment No 33 will remove “significant” from the description of the offence. Amendment 32 will remove a typo; namely, “and (2)”.

**Question put and passed; the Council’s amendment agreed to.**

**The Council acquainted accordingly.**