

CHILD CARE SERVICES BILL 2007

Second Reading

Resumed from 16 May.

MS S.E. WALKER (Nedlands) [5.10 pm]: The Child Care Services Bill 2007 is relatively simple, although its subject matter - child protection - is very complex. I am not the shadow minister responsible for this portfolio, although I used to be. Hon Robyn McSweeney is the shadow spokesman who has responsibility for this area, and I thank her for providing me with some notes on this bill. Basically, the bill removes childcare service licensing from the Children and Community Services Act 2004 and includes it in a new piece of legislation. I understand that the provisions relating to childcare services are being included in a separate bill as a result of recommendations of the State Solicitor's Office.

The former Department for Community Development is now known as the Department for Child Protection, and from 1 July there will also be the Department for Communities. The Department for Communities will incorporate the areas of family and domestic violence, multicultural issues, women's policy, seniors, childcare licensing and early years strategy. Child protection will remain a separate entity, and that is the reason for splitting the departments. There will be two chief executive officers, instead of one, and this bill reflects that intention. According to Hon Robyn McSweeney, who has kindly presented me with a document on the changes, the wording in the legislation is virtually unchanged. This bill incorporates a schedule that covers the transition period. It does not alter the legislation.

In this bill the government is following through on the Ford recommendation that the childcare licensing and standard unit, together with the current resources, be transferred to the Department for Communities and that the Children and Community Services Act be amended to reflect the shift in the childcare licensing function. At the weekend, when I knew I would be speaking on this bill, I took the time to look at the catalyst for change in this area; that is, the Auditor General's eighth report of 2005, the "Second Public Sector Performance Report".

During the break from Parliament, I filled in the Auditor General's survey. I circled "excellent" in every box because the Auditor General's reports are clear, concise and very honest and the way in which they are presented, with the card at the beginning that gives an overview, is great. The Office of the Auditor General provides a marvellous service. The eighth report includes a report on the regulation of childcare services in this state. I have said many times that this state has nothing to be proud of in the area of child protection. We have nothing to be proud of in the regulation of childcare services, given the report's reference to the length of time it takes to investigate allegations of child mistreatment. The report states that the community expects that child care will occur in a safe and nurturing environment.

The statistics on the number of children who are in childcare places are interesting. The numbers are increasing. Between 2000 and 2004, there was a 26 per cent increase in childcare places from 30 380 to 38 395. When this report was brought down in 2005, more than 70 000 Western Australian children were in child care. Members can imagine how many are in child care today, taking into account the boom in this state and the number of people arriving to settle in Western Australia.

Under the 2005 legislation, a person who wished to provide a childcare service had to be licensed under the Children and Community Services Act. Now, they will have to be licensed under the Child Care Services Act 2007. The current legislation sets out minimum acceptable standards of care for children by licensed providers. The Department for Community Development is currently responsible for licensing and for ensuring that services meet required standards. The Auditor General's "Second Public Sector Performance Report" of October 2005 made some key findings in this regard. The report states -

The examination found:

- DCD adequately assesses applications for new or renewed licences.
- DCD's assessment of the number and qualification of staff at centres needs improvement. Thirty one per cent of new centres were not checked within six months of commencement. DCD also uses a staffing formula that in 30 per cent of cases tested resulted in fewer staff than required by regulation.
- Non-compliance by child care services with regulatory requirements that constitute no immediate risk to the child is common. The Department does not classify the significance of each type of breach in order to determine what levels of non-compliance constitutes grounds for prosecution, suspension or revocation of a licence.
- DCD's investigation of complaints and allegations into child maltreatment can be complex and take considerable time. Opportunity for improvement was noted though we were unable to

conclude on the reasonableness of the time taken to complete investigations due to a lack of performance measures. Testing showed:

- Complaints relating to matters such as health and safety, child care activities and administration took on average 111 days to resolve.
- Forty three per cent of investigations into child maltreatment allegations took between 91 days and 231 days to resolve.
- The licencing database should be improved to provide key information to management about licencing operations such as the performance of licence holders and the status of complaints being investigated.

I will come back to those areas in a little more detail. I was not going to go into consideration in detail on this bill, but I am sure that the minister can tell me in voluminous detail how he could improve the lives of these children in day care centres, and how the staff in his department have shored up their procedures. I do not know whether the minister has read the Auditor General's report No 8 of 2005. It recommended -

DCD should:

- Promptly check staffing at new centres to ensure that the number and qualifications of staff comply with regulations.
- Classify the significance of each type of breach of regulation for purpose of determining what level of non-compliance constitutes grounds for prosecution, suspension or revocation of a licence.
- Establish internal measures to monitor and manage the time taken to conduct investigations.
- Improve the management information provided by the child care licensing database.

DCD has largely accepted these recommendations.

I am always very cautious when I hear that because it is a bit like the reports from the Office of the Inspector of Custodial Services. When I was shadow Minister for Justice, I had a lot of time for Professor Richard Harding. In fact, he was one of my lecturers at law school. I like the way he operates and I like the way he presents his reports. He would visit a prison, say what was wrong and would give a list to the government. The government would then say, "Yes, we agree with those recommendations." However, we did not have a third column to say that the recommendations had been ticked off, so there was no follow-through. I want to hear from the minister whether all these things have been done and improved. He has a sort of glazed look on his face; I am not sure whether that means they have been. It is very important.

I was reflecting on this legislation over the weekend and thought back to the time about 38 years ago when my sister had a baby, Tonia. My sister was working at the time, and in those days one's child could be dropped off to a woman who looked after children in her home. I used to pick up Tonia from such a home when she was four years old. There were many services like that. However, over time, because of the increase in demand, the childcare industry has become regulated. The Auditor General's report outlines some of the history of childcare services in Western Australia. The report states at page 18 -

Child care providers in WA are regulated by the *Community Services Act 1972*, the Community Services (Child Care) Regulations 1988 and the Community Services (Outside School Hours Care) Regulations 2002. The regulations outline the minimum acceptable standards for the care of children by licensed providers. The three main types of child care services available in WA are:

- Child Care Centre (CCC) - casual or day to day care of children of preschool age in a centre based environment.
- Family Day Carer (FDC) - care of children of preschool age in a private dwelling in a family or domestic environment.
- Outside School Hours Care (OSHC) - provide child care for school age children before school, after school, during school holidays and on school pupil free days.

The report deals also with the licensing of childcare services. The report states that certain aspects of the assessment process for determining whether an applicant for a licence to provide a childcare service is "fit and proper" need to be strengthened. One of the problems is that the Department for Community Development has no clear criteria for assessing the appropriateness of the referee, or the adequacy of the reference. It is interesting to note from the report that the Department for Community Development cannot legally access the sex offenders register. The sex offenders register can be accessed only by the Commissioner of Police or an officer above the

rank of inspector, or an officer authorised by the Commissioner of Police. All applicants are subject to a criminal records check. However, that check does not cover criminal charges that are listed on the national sex offenders register. Therefore, a person may be listed on the sex offenders register in another state, but that will not be evident from the criminal records check. The report goes on to say -

New legislation to be introduced in January 2006 will allow more thorough record checking of people that work with children.

I would like the minister to tell me categorically that that legislation has been introduced and that the Department for Community Development can now legally access the sex offenders register, because I do not think that is the case as yet.

The report deals also with service provision. It states that applicants for the provision of childcare services must meet regulations covering things such as buildings and the physical environment, and health and safety. However, the report goes on to say -

However, we noted that the regulations do not cover the appropriateness of the location of the service, site characteristics and design or the effects that traffic, access, noise and health impacts can have on a service.

The report states that the Western Australian Planning Commission has drafted a policy to deal with this matter. I ask the minister whether that policy has been completed.

The report deals also with staffing. It states at page 21 -

DCD is not checking that all new child care centre licensees provide the correct number of appropriately qualified staff. . . .

We found that 79 per cent of new centres licensed since January 2004 had not had their staffing assessed.

The report deals also with the monitoring of compliance with the regulations. It states at page 24 -

DCD has successfully prosecuted three child care services where non-compliance resulted in immediate high-risk situations to children. However, DCD has yet to define what level of non-compliance constitutes grounds for prosecution, suspension or revocation of a child care licence where the non-compliance has no immediate risk to the children in care.

Perhaps that is dealt with in this bill. It continues -

For example, we identified six services with more than 20 instances of non-compliance in the past year. DCD has also identified one group of companies providing 12 services with 134 substantiated breaches in 2004-05.

A graph on page 25 of the "Second Public Sector Performance Report" is rather instructive about the number of complaints and breaches that have been identified in the three different types of childcare centres. They seem to have risen considerably. In 2002-03, the number of breaches for the three types of childcare centres was 158; in 2003-04, the total number of breaches was 1 833; in 2004-05, the number of breaches was 1 845.

Another issue is the investigation of complaints and the fact that it takes an average of 111 days to investigate a complaint. I hope the minister can tell me that that wait time has been reduced. The report states -

DCD has not adopted priority ratings for types of complaints or benchmark timeframes for action and completion to guide the CCLU to prioritise its work

. . .

Since 2002, fifty-one child maltreatment allegations have been made against a licenced child care provider, a staff member or another person at the service.

I am not sure who that was. Perhaps the minister can provide some information on that. The report further states that an opportunity exists to strengthen procedures and practices for investigating allegations of child maltreatment at these centres and that -

- not all CCLU staff or children's services officers have received child protection training even though they are the most likely persons to receive complaints about licenced services. As a consequence, they may not identify or take too long to identify a complaint as a potential child maltreatment allegation. Three of the investigations we reviewed took more than seven days to identify as a child maltreatment allegation.

- increased coordination is needed between the CCLU and the district offices to clearly agree and allocate any follow-up action that is required.
- in several cases we examined, DCD did not inform all parties of the progress or outcomes of the investigation.

It also addressed operational issues that are quite concerning. It states that although DCD had a childcare licensing system, staff were entering data inconsistently, there was no system to ensure that the data was accurate, there was no quality review of the data or the work carried out by the unit and staff could change licence holder details, including breaches and exemption history.

The last finding I want to mention to the minister - I am horrified by this report - is that the Office of the Auditor General has been unable to ascertain the number of complaints that the unit received directly about its own work practices as it does not have a system to register those types of complaints. As a result, it has been unable to identify recurring or systemic issues. The report states that the department is finalising a system to capture these types of complaints. I ask the minister to tell me whether that has been done.

In essence, what was a very simple bill that would transfer provisions from one act to create a new act has turned into something a lot deeper. I am sure that the minister will answer all my questions during the consideration in detail stage. The opposition supports this bill.

MR D.A. TEMPLEMAN (Mandurah - Minister for the Environment) [5.24 pm]: I have carriage of the Child Care Services Bill 2007 on behalf of the Minister for Child Protection. The member for Nedlands has raised a number of questions. I will not seek to deny that those questions are important, nor will I seek to deny that they relate to previous reports and to the Ford review which, of course, has made a series of recommendations that are currently being implemented by the government. I will not deny that those questions are valid, but they are not valid in the context of the legislation currently before the house. This bill enables the implementation of recommendations 4 and 5 of the independent Ford review. The review recommended restructuring the department by the creation of two departments. The first is the focus on child protection, which remains a key priority of the Carpenter government. We have therefore seen the establishment of the Department for Child Protection. The other key recommendation embraced by the Carpenter government was for the creation of the Department for Communities. A further recommendation of the review was that the child care licensing and standards unit, together with its resources, be transferred to the Department for Communities. In order for this to occur, it is necessary to amend the Children and Community Services Act 2004. The key purpose of this bill is to prevent ambiguity and ensure clarity in the new arrangements. The preferred way to do that was through the introduction of the bill before the house, which is supported by the opposition. I thank the opposition spokesperson in the other place for taking this matter, as I understand, to her party room and seeking its support, and I thank the member for Nedlands for her acknowledgement of the opposition's support.

The bill provides for the transfer of part 8 of the current act, which relates to childcare services, together with a small number of ancillary provisions, to new legislation to ensure the smooth transfer of the child care licensing and standards function to the Department for Communities. It is important that we understand that clause 56 of the bill enables the continuation of the four sets of regulations relating to child care, highlighting the fact that no substantive or procedural changes to child care in Western Australia will result from this legislation. I acknowledge the issues that have been raised by the member for Nedlands and the important questions about access to sex offenders registers and other such issues, but they are clearly not relevant to this particular bill. Those questions are best referred to the Minister for Communities and Child Protection, and I urge the member to do that. No procedural or substantive changes have been made to childcare services in Western Australia. Only the structural change is necessary to allow for the transfer of the childcare licensing function to the Department for Communities.

An initiative of this government saw the introduction of the Children and Community Development Bill 2003 by the previous minister in this place, Hon Sheila McHale. It was the first major overhaul of children's services legislation in Western Australia in 60 years. In its first term this government ensured that Western Australia would have modern legislation on children and children's services. I was not a member of this place before 2001, but I do not think the opposition, when it was in government, made any attempt to replace the outdated legislation. It was this government, when it came into power in 2001 and in 2004, that passed that bill through this place, which has ensured that we now have modernised legislation. On top of that, we introduced other legislative measures in this place, including the working-with-children checks, which are focused on ensuring that people in the community who work with children, both in paid and voluntary capacities, understand their obligation to be adequately and properly screened under that legislation. Western Australia is acknowledged as having by far the best legislation in the country for people working with children. It is acknowledged that Western Australia's screening process is far superior to the process in other states and territories. That is something of which we should be proud. It is this government that has focused clearly on the protection of children and ensured that the legislation underpins that protection.

The Ford review, which was undertaken while I was Minister for Community Development, acknowledged that we needed to go further and look at the culture and the core business of the Department for Community Development. The Ford review was an independent review. The chairperson, Ms Ford, consulted extensively with the sector and a range of groups, including not only people who work or had worked for the department but also the non-government sector and other interested organisations such as the Childcare Association of WA and childcare providers. The Ford review was a wide-reaching independent review of the activities of the department. The 70 recommendations and the final structure of the report contained some clear guidelines for the government. A number of those key recommendations, particularly recommendations 4 and 5, focused on the need to ensure that the work of the department was strengthened and refocused so that child protection became the absolute focus of the department. We created the Department for Child Protection and established the Department for Communities so that a range of services would become part of the scope of the Department for Communities and the focus on child protection would, of course, sit with the new Department for Child Protection. This bill is a procedural bill to allow the smooth transfer of the childcare element to the Department for Communities. I repeat: there are no substantive changes to childcare services in WA as a result of this bill. However, if the member for Nedlands or other members have specific concerns about elements relating to child care, of course they have every right to raise those concerns with the minister and, indeed, with the department.

Ms S.E. Walker: You are the minister.

Mr D.A. TEMPLEMAN: No. The member for Nedlands did this in estimates.

Ms S.E. Walker: No, I didn't.

Mr D.A. TEMPLEMAN: She did this in estimates; she forgets that I am no longer the Minister for Community Development, I am no longer the Minister for Communities and I am no longer the Minister for Child Protection. I am the Minister for the Environment, the Minister for Climate Change, and the Minister for Peel. Maybe the member for Nedlands will spend a little more time in this place and understand that there has been a change. The member for Nedlands sat in this chamber during estimates and she did not even know that I was no longer the Minister for Community Development until halfway through her questioning. I missed the member for Churchlands during estimates; I was looking forward to some intelligent questions during the estimates process. During the estimates, the member for Nedlands had to be told that I was no longer the Minister for Community Development or the Minister for Communities. She constantly said that my department had to do certain things and she asked why I had not done certain things. I like the member for Nedlands; she knows that. I do not dislike anyone in this place. Sometimes she needs to be a little more informed about the state of play and maybe we would then be able to progress important legislation without -

Ms S.E. Walker: You're going to be tortured.

Mr D.A. TEMPLEMAN: No. I will not say what I was going to say. I am going to be kind. I made a new year's resolution that I would continue to say only positive things. This is an important bill that ensures the smooth transition of the Department for Community Development into the Department for Communities. The recommendations of the Ford report were endorsed by the government. We are in the process of implementing those recommendations, including the recommendation regarding mandatory reporting. We have continued to ensure that we reform and focus the attention of the government on the priority of protecting children and ensuring that those children have the best possible future and share in the wonderful optimism that this government has created in its tenure over the past six years. I endorse the bill and I look forward to a grilling during consideration in detail. I am sure that we will be able to respond to the issues relating to this bill in that process.

Question put and passed.

Bill read a second time.