

**CHILD WELFARE AMENDMENT BILL 2001**

*Second Reading*

Resumed from 19 September.

**MR JOHNSON** (Hillarys) [3.36 pm]: The Opposition fully supports the Child Welfare Amendment Bill. Indeed, the origins of this Bill go back to the previous Government. Three previous ministers handled some of the work of the ministerial councils throughout Australia, which considered the Bill before the House. My colleague the member for Kingsley was the first minister to assume the mantle. She was then followed by two other ministers. I commend the current minister for introducing the Bill to the House prior to the main Bill being amended, which I am told will be in about 12 months.

Ms McHale: I hope to introduce it early next year.

Mr JOHNSON: I hope that is the case, because it is long overdue. The Bill dates back to 1947. Some of the issues in the Bill are of enormous importance. One issue of paramount importance, as the minister said in her second reading speech, is the best interests of the child. It is essential that that be looked at in every case. It has taken many years to introduce to Western Australia the concept of taking into account the best interests of a child. Unfortunately, we are behind the other States of Australia, and we are years behind other countries. I know of a case in 1974 in the United Kingdom, which went before the divisional court of the family division of the High Court of Justice in London. The judges heard an appeal on behalf of a mother who had been denied access to her children by various courts over a five-year period. That was something of a precedent because, until then, it had always been deemed that a mother had a basic right to have access to her children. A mother is not necessarily always given custody. Over the years, custody has been given to the father in various cases or to a government agency, such as the Department of Community Development or the equivalent in other States or countries. It was a very rare occurrence in which a mother was denied access to her children. I will quote some of the comments made by the judges in that case, which I know quite well, as they are relevant to this Bill. These things should be remembered. This case dates from 1974. I have a copy of the transcript of the appeal before the High Court in London. I will quote the relevant part of comments made by one of the judges, referring to that case -

Visits by the mother were certain to have a disruptive and confusing effect on the children. We accepted the father's evidence when he said the mother had a very violent temper and had caused many unpleasant scenes; and also that Paul still retained unpleasant memories of his mother. We believe that that conduct would be repeated if the mother were given access and this would bewilder, frighten and unsettle both children.

That was an unusual decision by the judges. Further on, their summing up states -

It was clear to us that the marriage between the parties was an unhappy one and that unfortunately the mother was unstable and moreover given to violent behaviour.

The judges go on to say that one of the children was very much in fear of his mother, and they refer to various occasions on which violent incidents had taken place with the children present. One of the children was the subject of violence over a period of years. It is of paramount importance that the best interests of the children should be a theme of this Bill, which has been a long time coming, and is long overdue. We should learn from that. This case was not in relation to custody of the children, although it was a High Court appeal decision, and no government agency, like the Department for Community Development, was involved. This was a disputation between a mother and a father over access to the children, and the concern the court had with access, but it involved the same principle as this Bill. Whether a case involves a parent or the Department for Community Development, the interests of the children must be of paramount importance; it does not matter what some adults, government departments, or the children think. Many learned people can make that decision. I will say more on that principle later.

In countries as diverse as Australia and New Zealand, with so many differing jurisdictions, it is essential that a uniform agreement and reciprocal legislation for the efficient transfer of child protection orders and proceedings be adopted. Both sides of the House will agree on this. It is inevitable that many children under a child protection order will need to move from one jurisdiction to another, for many reasons. This could happen as a result of foster parents needing to take up employment opportunities in another State, because children might be better cared for by extended family members in another State or Territory, or a whole host of other reasons. This is well covered in the Bill. This legislation enables the relevant government agencies to carefully plan the transfers, which is very important when children are moved, from not just one State to another, but also from one part of the State to another. Any movement of children, as members will be aware, is unsettling for them, and it is of vital importance that government departments plan such transfers very carefully. In particular, the

receiving State's authorities need to ensure that the legal protection of the child is in no way diminished. I am happy to say that the Bill covers that.

The Bill also covers the situation in which child protection proceedings may have been commenced in one State, and may more appropriately be continued in another. The Opposition accepts that that could often be to the advantage of the children. The Bill also addresses the matter of information exchange through a provision for the disclosure of information, which is an important area in the exercise of child protection functions. I refer to page 3 of the explanatory memorandum for the Bill, in reference to clause 7 -

Clause 7 inserts a new section 10C to provide for exchange of information between the Director General of the Department for Community Development and a "corresponding authority" or a "public authority". The new clause provides a definition of "corresponding authority" and "public authority". The clause identifies the type of information that can be exchanged by providing a definition of "relevant information". The clause will enable increased flexibility for departmental officers when requesting information, relating to the protection and welfare of children, from other Government agencies.

In the briefing I had with the minister's officers, it was explained to me that, very often, the officers may need to talk to another government agency - the Police Service, for instance. Under certain rules and Acts under which the police work, they are unable to disclose information because of privacy conditions. As I understand it, this Bill does not negate those provisions, but it enables the police to give the information, should they wish to do so. That is important, because the Police Service is one agency that would have much information in relation to child protection orders in force. It would be a dreadful situation if the police were hamstrung by being unable to give to officers in the Department for Community Development relevant information that is essential to the welfare of those children. It remains to be seen whether they will provide that information, but I hope they will, because this Bill will provide for that.

Ms McHale: That provision means that the police may still refuse, but they can no longer say that they would like to provide information but are prohibited from doing so. It enables the police to provide that information, but it does not mandate to them.

Mr JOHNSON: Yes, I agree with the minister, and I commend whoever put that clause into the Bill. It is an excellent clause, which will go a long way to helping children in that situation.

Another important aspect of the Bill relates to the warrant provisions, which will enable a departmental officer or a police officer to apply to the Children's Court for a warrant to apprehend a child who has been committed to the care of the director general, and unlawfully removed. As the explanatory notes confirm, such provisions are not currently available in the Child Welfare Act 1947. These new sections will also allow for the return of children who have been removed from Western Australia, when used in association with the commonwealth Service and Execution of Process Act 1992. This is another good clause, because, if children have been removed, whether willingly or unwillingly -

Ms McHale: They must have been unwillingly and unlawfully removed.

Mr JOHNSON: Yes, unlawfully removed - that covers the area quite well. I also note that, in this modern world we live in, there is a provision in the Bill for warrants to be applied for in geographically isolated areas by way of telephone, facsimile, e-mail and even radio, which is again a good move. In a State as large as Western Australia, it must be possible to facilitate those warrants much more quickly than by sending somebody to a remote area in person. Many sections of the Bill ensure that the various checks and balances needed to allow the efficient transfer of children under the legal protection of one State to the legal protection of another State are put in place.

Another aspect of the Bill is unique. The Bill ensures that an unmarried father of a child who is the subject of child protection court proceedings will now be recognised as a party in the proceedings. That will remove the current discrimination against unmarried fathers. Members of Parliament occasionally are approached in their constituencies by unmarried fathers who are greatly concerned about what is happening to their children. The person might have been in a de facto relationship, which has since ended, and the mother, of course, has the child. Up until now, the only person deemed the parent of an illegitimate child has been the mother. The Opposition has no problem with the proposition that the unmarried father, who might want to be married but unfortunately is not, will be recognised. He obviously has a keen interest in the child, as I am sure do most unmarried fathers.

Ms McHale: They have no rights because of the definition of "parent" in the substantive Act. That is the issue.

Mr JOHNSON: Unmarried fathers will now have rights. An unmarried father will now be seen as a party to any legal proceedings and will be informed of any action, for instance, to send or transfer a child under a child

protection order from one State to another. He will also be able to appeal a decision if he wishes. That is only fair and equitable.

As I said earlier, a few aspects of the Bill are long overdue. The Opposition is pleased that they are included in the Bill. There are two different types of transfers - administrative transfers and judicial transfers. The director general may make the first and the Children's Court the second. It was interesting to read the specific provisions about when transfer orders can be made and matters taken into account, the notification of decisions to transfer, and the limited periods for the review of a decision. They are all good.

This Bill at long last amends the 1947 Act inasmuch as it ensures that the best interest of the child will be paramount in matters that relate to a child's welfare. I am sure all members agree that children are the most precious individuals within our society and that their welfare must be protected and assured at all cost. Children are also among the most vulnerable in our society. I have spent a quarter of a century doing what I can to help children who are in need, have disabilities or are sick in hospital. I will continue to do so until I can breathe no longer.

I referred earlier to a 1974 case in English law. Members may wonder why that case was of such significance in my support for this Bill, which ensures that the best interest of the child is paramount. The reason is simple - the case was that of *Johnson v Furnival* and the Johnson referred to was me. I commend this Bill to the House.

**MS McHALE** (Thornlie - Minister for Community Development, Women's Interests, Seniors and Youth) [3.54 pm]: I thank the Opposition for its support of this Bill. This is a straightforward Bill and, as the member for Hillarys indicated, it has a long history. He indicated that at least three previous ministers, who are now members of the Opposition, had some involvement through the ministerial council in developing the model legislation. I am pleased to be the minister who has brought this legislation to Parliament for debate and endorsement. As I said in my second reading speech, this Bill is an interim measure to deal with a number of pressing procedural matters, which will enable the department to conduct its legal responsibilities in regard to child protection in a more efficient, effective and streamlined way. It is an interim measure because I intend to introduce major legislation on children's services, rights and welfare some time early next year. I hope that it does not take as long to introduce that Bill as it has taken to get this Bill into Parliament.

As the member for Hillarys said, modern child services legislation is overdue. It is incumbent upon me, as the minister, to ensure that proper consultation occurs and that we bring forward a good Bill for debate. That second Bill, by definition and necessity, probably will be more controversial than this Bill, because it will be an overarching, comprehensive Bill. Nevertheless, if the Government can have some dialogue with the Opposition and Independents, it will be a good piece of legislation and will pass through the House. As the member for Hillarys said, its major principle will be that of concern for our children.

This is a straightforward Bill. I am pleased that the Opposition has supported it in its entirety. It introduces five process matters that relate, among other things, to interstate transfer provisions. As I said, this includes the principle of "best interest of the child." One would think that that would be axiomatic in legislation dealing with child welfare; nevertheless, it has taken a long time for it to be introduced. That principle was linked to the model legislation negotiated between state and commonwealth ministers over several years and I am pleased that it has been enshrined in this legislation.

The Bill also simplifies and modernises the definition of "parent" to give an unmarried father the right to have a say in the future of his child. Up until now, an unmarried father has not had that right in child protection proceedings. This Bill corrects that anomaly.

The Bill deals with the important issue of exchange of information. It allows for the interstate and overseas exchange of information. It enables agencies in this State, notwithstanding other state legislation, to exchange information with the Department for Community Development if it believes it is in the best interest of the child. As I said by way of interjection, the legislation does not provide the power to require an agency to provide that information, but it enables the exchange of information if it is deemed important for the furtherance of a case, an investigation or a court proceeding.

Mr Johnson: When you said overseas, did you mean New Zealand?

Ms McHALE: Corresponding authority includes a country. It does not provide the power to override other legislation. It is an empowering clause.

Mr Johnson: It will surely have effect only in Australia and New Zealand?

Ms McHALE: There could be instances when a child goes overseas, for example, to the United Kingdom, and there may well be the need for an exchange of information. Alternatively, a child may have been in this State under care and subsequently transferred to another country. The clause provides for the possibility.

Mr Johnson: For argument's sake, if a child were going to the United Kingdom, there would not be reciprocal legislation that will take into account the Bill before the House.

Ms McHALE: In relation to an exchange of information?

Mr Johnson: Yes.

Ms McHALE: There may well be reciprocal legislation. The clause is quite broad about the exchange of information. It is for good reason; children move between countries.

Mr Johnson: It is great if it takes into account movement between countries. It is better than I thought originally. I thought information could be exchanged just between Australia and New Zealand, notwithstanding that laws in other States may prohibit such exchanges.

Ms McHALE: Exchange of information may take place between those countries, but it is not mandatory.

The fifth issue is the provision of warrants. It is an important provision; children are often removed unlawfully, whether they are wards of the State or are in the process of becoming a ward. Children are often abducted. No provisions currently exist for warrants to be issued to departmental officers or the police. The legislation corrects that. It will ensure that children can be returned in cases when they are unlawfully removed.

I will not expand further on the Bill. The purpose and objectives of the amendment Bill are clearly set out in the second reading speech. They have been ably reiterated through the contribution of the member for Hillarys. I thank him for his interest and his understanding of the importance of the principle of having children's best interests protected by the legislation. I was not aware that the member had personal experience of these issues. Personal experience can often heighten one's sense of awareness of the importance of principles such as these. I thank him for his insight.

I thank departmental staff for briefing the opposition and independent members in both Houses. While the Bill is straightforward, it nevertheless is important that members are briefed thoroughly so they have a good understanding of what is a very important piece of legislation. The legislation is not generating great media interest or debate in the House. That is fair enough. The Bill will enable procedures for the department to be modernised. It will bring Western Australia into line with most of the other States regarding interstate transfers and interstate child protection proceedings. I thank the legal section of the Department for Community Development for their work in constructing the final draft of the Bill and for briefing members of the Opposition and me so that we had a good understanding of the details of the Bill. I thank the Opposition for its support. I look forward to further support when the Government introduces the modernised Bill - a comprehensive Bill - early next year.

Question put and passed.

Bill read a second time, proceeded through remaining stages without debate, and transmitted to the Council.