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MINISTER FOR COMMUNITY DEVELOPMENT, WOMEN'S INTERESTS,
SENIORS AND YOUTH; DISABILITY SERVICES; CULTURE AND THE ARTS

12TH FLOOR, DUMAS HOUSE, 2 HAVELOCK STREET, WEST PERTH, WESTERN AUSTRALIA 6005
TELEPHONE: (08) 9213 6900 FACSIMILE: (08) 9213 6901

Malcolm Peacock
Deputy Usher of the Black Rod
Legislative Council
Parliament House
PERTH WA 6000

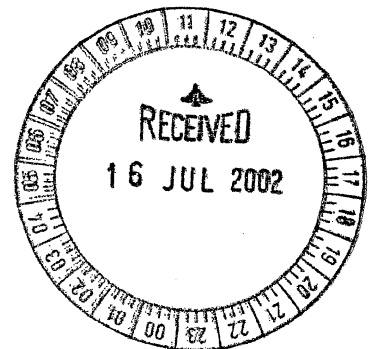
**STANDING COMMITTEE REPORTS
CHILD WELFARE AMENDMENT BILL 2001**

Please find enclosed the Government's response to the Standing Committee
on Legislation Report in relation to the Child Welfare Amendment 2001.

Sheila McHale MLA
MINISTER FOR COMMUNITY DEVELOPMENT
WOMEN'S INTERESTS, SENIORS AND YOUTH

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16 JUL 2002



**Response by the Government
to
Report of the
Legislative Council Standing Committee on Legislation
in relation to the
Child Welfare Amendment Bill 2001**

Reference

The *Child Welfare Amendment Bill 2001* (Bill) was referred to the Legislative Council Standing Committee on Legislation (Committee) on 6 November 2001, under Legislative Council Standing Order 230(d) (now Standing Order 230A).

The Committee tabled its Report on 12 March 2002. A Government response is required within four months of this date.

Background

Western Australia's existing child welfare laws are outdated and in much need of an overhaul. Past reviews have highlighted the deficiencies of the present legislation to adequately reflect the changes in practice and community thinking that have occurred in the decades since 1947 when the current child welfare laws were introduced.

New contemporary child welfare and community development legislation to replace the *Child Welfare Act 1947* is being developed by the Government. The task is a significant one. It is being undertaken with thoroughness to ensure that this State is provided with modern child protection and community development laws that address the needs of the Western Australian people. The proposed new legislation will reflect new standards and new ways of working. It will compliment the Government's strong focus on improving the social wellbeing of children, individuals, families and communities in Western Australia. The Government aims to build on the strengths and the capacities of the Western Australian people so they are better placed to positively shape their own lives.

The Government has introduced urgently needed amendments to the *Child Welfare Act 1947* via the *Child Welfare Amendment Bill 2001* as an interim measure until new child welfare and community development legislation is finalised and implemented.

The Bill amends the *Child Welfare Act 1947* with respect to five issues:

- inserting a 'best interests of child is paramount' principle;
- changing the definition of 'parent' to provide for the inclusion of unmarried fathers as a party in care and protection proceedings;
- facilitating the exchange of information between Government authorities;
- inserting warrant provisions to enable the apprehension of a child, under the guardianship of the Director General, who has been unlawfully removed; and
- inserting provisions concerning interstate transfer of child protection orders and proceedings which involves implementation of reciprocal legislation to facilitate a uniform national scheme.

Recommendations of Legislation Committee

The Committee has made four recommendations.

“Recommendation 1: The Committee recommends that the Government give consideration to including in the New Legislation principles indicating factors to be considered when determining the ‘best interests of the child’.

Recommendation 2: The Committee recommends that, in respect of the privacy and security of information obtained by the Department of Community Development and ‘public authorities’ (as that term is defined in the Bill) pursuant to the provisions of the Bill, the Government give consideration to those matters addressed in the former Legislation Committee’s report No 54, in particular Chapter 7 of that report at pages 31 – 36 which are attached as Appendix 7 to this report.

Recommendation 3: The Committee recommends that the Government give consideration to developing legislation regulating the execution of warrants in relation to children and young persons and in so doing to have regard to the provisions of the *Search Warrants Act 1985* (NSW).

Recommendation 4: The Committee recommends that the Child Welfare Amendment Bill 2001 be passed without amendment.”

Government Response to the Legislation Committee’s Recommendations

Recommendation 1

The Committee recommends that the Government give consideration to including in the New Legislation principles indicating factors to be considered when determining the ‘best interests of the child’.

Clause 5 of the Bill inserts a new section in the *Child Welfare Act 1947* to ensure that the interests of a child are given paramount consideration. Western Australia is the only state in Australia that does not reflect this principle in child welfare legislation. The clause will ensure consistency throughout Australian jurisdictions.

The proposed new legislation will contain the overriding principle that the best interests of the child is paramount. There are also other principles that will guide the Department and court in administering the act.

The Government agrees with the Committee’s recommendation to include in the proposed new legislation, principles indicating factors to be considered when determining the ‘best interests of the child’. Such principles can provide a starting point for consideration of the most common types of significant factors and aid consistency of decision making by the court and practitioners. It provides a benchmark and lessens the subjective nature of the ‘best interests of child’ principle.

Recommendation 2

The Committee recommends that, in respect of the privacy and security of information obtained by the Department of Community Development and ‘public authorities’ (as that term is defined in the Bill) pursuant to the provisions of the Bill, the Government give consideration to those matters

addressed in the former Legislation Committee's report No 54, in particular Chapter 7 of that report at pages 31 – 36 which are attached as Appendix 7 to this report.

Clause 7 of the Bill inserts a new section 10C to provide for exchange of relevant 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". Information that can be disclosed must be relevant to the welfare, safety or health of a child or the performance of functions under the act. The clause will enable increased flexibility for department officers when requesting information, relating to the protection and welfare of children, from other Government agencies. There is no mandatory requirement to provide the information requested however, the requested agency may comply with the information request despite any other written law to the contrary. The development of Protocols for the exchange of information with other Government agencies is planned to address practice issues.

The Committee's recommendation refers to the former Legislation Committee's report No 54, which was an inquiry into the *Child Welfare Amendment Bill 1998*. The 1998 Amendment Bill provided for regulation of the operation of a Child Protection Services Register. It aimed to create a register of children's names where maltreatment had been substantiated. It allowed for interagency cooperation between a limited number of Government departments regarding child protection matters.

The Committee's inquiry into the 1998 Amendment Bill highlighted the need for appropriate safeguards for the secure passage of confidential information between agencies and individuals within those agencies. The same issues have been raised by the Committee in relation to the 2001 Amendment Bill. Particular concerns are regarding the protection of individual rights and sensitive information being inappropriately received, accessed and possibly disclosed.

Exchange of information provisions in legislation are critical to enabling the Department for Community Development to receive and disclose information related to a child's welfare, safety and health. The Government acknowledges the Committee's concerns. Legislative procedures for the exchange of information must be guided by principles of natural justice and procedural fairness.

The proposed new legislation will contain confidentiality provisions to regulate information disclosure. In response to the Committee's recommendation, consideration will also be given to including provisions in regulations that provide for security and privacy of information.

Recommendation 3

The Committee recommends that the Government give consideration to developing legislation regulating the execution of warrants in relation to children and young persons and in so doing to have regard to the provisions of the *Search Warrants Act 1985* (NSW).

Clause 9 of the Bill inserts two new sections into the *Child Welfare Act 1947* which provides for a department 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 (Department for Community Development) and unlawfully removed. The provision also covers children who have been apprehended as being in need of care

and protection, where the court proceedings have not yet been finalised. Warrant provisions are important to assist officers in apprehending children who may have run away or been unlawfully taken. Such provisions are currently not available in the *Child Welfare Act 1947*. The new provision will have jurisdiction within Western Australia. In addition, it will also allow for the return of children who have been unlawfully removed from Western Australia when used in association with Commonwealth legislation (*Service and Execution of Process Act 1992*).

The Bill details the procedures to be followed when applying for a warrant. The provision provides for urgent and geographically isolated situations whereby a warrant can be sought by remote communication, which includes using telephone, fax, email and radio.

The Committee's recommendation refers to the New South Wales *Search Warrants Act 1985*. This act provides for the issue of search warrants in respect of indictable and certain other offences and makes provision in connection with those search warrants and search warrants under other Acts. Certain requirements must be met when executing a warrant.

The area of child welfare can be highly emotive, particularly in relation to executing warrants. Protecting the child must always be a primary focus. The greatest degree of flexibility is required so that a warrant in relation to a child can be validly executed whether or not anyone other than the child is at home and whether or not the warrant was shown (unless, of course, the occupier asked to see the warrant). At the same time, executing a warrant should proceed with sensitivity and fairness to the child, the child's family and any other parties concerned.

There is merit in developing guidelines in relation to the execution of warrants concerning children to ensure uniform standards. The Government agrees in principle with the Committee's recommendation and will take it into account in development of the proposed new legislation.

Recommendation 4

The Committee recommends that the Child Welfare Amendment Bill 2001 be passed without amendment.

The Government seeks urgent passage of the *Child Welfare Amendment Bill 2001* through the Legislative Council as a matter of priority. This Bill is needed in the interim period while the new comprehensive child and community development legislation is finalised, considered by Parliament, and preparatory work completed prior to proclamation.



Sheila M^oHale MLA
MINISTER FOR COMMUNITY DEVELOPMENT,
WOMEN'S INTERESTS, SENIORS AND YOUTH

15 JUL 2002