

Legislative Assembly

1 October 1997

Mr CLEARY (Franklin - Minister for Transport on behalf of the Minister for Community and Health Services - 2R) - Mr Deputy Speaker, I move -

That the bill be now read the second time.

In providing services for children and their families there are few definitive answers and a large number of complex questions. It is not surprising that organisations which deal with children at risk do not always meet their own expectations.

The select committee's approach to this issue was focused on -

- preventing problems before a crisis occurred;
- supporting practitioners and increasing the available skills and knowledge base;
- developing policy, practice standards and a service system that provides the best possible outcomes for children and their families.

All three criteria will be met with the establishment of a **commissioner for children** in Tasmania.

The concept of a children's commissioner has been successfully trialled internationally. The concept has been reviewed as being of 'critical importance' in ensuring responsible and effective services. The **commissioner for children** is an innovative solution to problems that have been unresolved for more than twenty years. In recognition of the fact that bill incorporates a number of features which are new, the select committee agreed that it was important to review its implementation within two years. The commissioner will be well placed to do this. The commissioner will conduct reviews of decisions, provide advice on policy and practice standards, coordinate and provide community education, and advocate on behalf of children at a system level. The commissioner will be independent of the Department of Community and Health Services. The commissioner will report to the Minister for Community and Health Services and will report annually to Parliament.

Mrs BLADEL (Franklin)

The office of **commissioner for children** is also something that I applaud with heartfelt thanks. It is a great step forward for us. This is a great day for Tasmania if we bring about that office. It is a great development for our care of children and I hope for the instruction, the wise instruction and the guidance and help of parents. I want to see this **commissioner for children** have as wide a role as possible. The minister assisting did mention in his second reading speech some of the duties of that **commissioner for children**. I believe that this office should be given the widest and most unencumbered

powers to do all those things that the minister assisting mentioned, to research, to deal with the public, to hear complaints directly, to give advice to the minister, to give advice to the secretary.

However, I have always believed that the **commissioner** for **children** should report directly to the Parliament and should be involved in a process of operation and reporting that is as transparent as possible. With the main impetus for this legislation coming from the rights of the child - the United Nation Conventions on the Rights of the Child - to which Australia is a signatory, it is my hope that every provision of this bill as it is to be enacted will be taken with full cognisance of those rights. So that every person who is involved in carrying out any part of the process under which they operate, will be fully aware and reminded if necessary that the rights of the child are paramount in this legislation. The aim of the legislation I believe is to keep children away from the judicial system and away from alienation with their family, with their roots, with their culture.

Mr BENNEWORTH (Bass)

That is why I think it is such a brilliant creation to form this **commissioner** for **children**, because I think that certainly one of his roles will be to advise Parliament, advise the minister, on this legislation so that society keeps up with the kids.

'The office of the **commissioner** for **children** will be independent of the Department of Community and Health Services', and in that one line I think is a good story. It is a good story, and I admire the work that these two ladies did on that. They kept stressing through this process this person must be outside the department, and the more you think that through the more right □that is, because as much as we love and admire and respect the bureaucracy through which and in which we work, there are times when the bureaucracy gets a little bureaucratic, and this person must not get into that situation.

Mrs HOLLIster (Braddon)

Like the other speakers, I believe the appointment of a children's' commissioner is a very important step. It has been proposed by many research publications and human rights organisations as a means of meeting the special needs of children and their families for a pro-active, inclusive and accessible monitoring and review of services.

Mrs SWAN (Lyons - Minister for Community Development)

I think that we have spoken of the **commissioner** for **children** and obviously that is a matter that the select committee looked at extensively in the international evidence that they had before them. It has indeed been a mechanism which has been trialled very successfully overseas and it is important that once again that is seen in this legislation because I believe that it is a mechanism which will act as a brake in the area of care for children. This commissioner can, of course, act as advocate on behalf of the child and that too is particularly relevant in the protection of young people in this State.

Mr LLEWELLYN (Lyons)

The **commissioner** for **children** has been mentioned, again an important independent arbiter in the whole equation.

Bill read the second time.

Thursday 2 October 1997

CHILDREN, YOUNG PERSONS AND THEIR FAMILIES BILL 1997 (No. 30)

In Committee

Resumed from 1 October 1997 (page 122)

Mrs BLADEL - Clause 2, paragraph (d):

'to provide, or assist in the provision of, preventative and support services directed towards strengthening and supporting families and reducing the incidence of child abuse and neglect ... '

How assured are we that those support services would be adequate to the need?

Mr DEPUTY CHAIRMAN - Do you want to hear from the minister first before you move that?

Mrs BLADEL - Yes.

Mr CLEARY - The **commissioner for children**, who is provided for in the act, has a reporting responsibility through the minister to report to the Parliament. Under this particular act he is separate to the department, so he is basically there as a monitor, the watchdog, the auditor, whatever description that we want to put on that particular thing. That is his role and that is a very important role that is created by the legislation.

Mrs BLADEL - Yes, I do. I move -

That clause 7(2)(l) be amended after 'generally' by inserting 'to provide and maintain necessary funding to do all of the above and'.

Mr CLEARY - No, no, while the member catches up with the amendment.

Mr Deputy Chairman, the Government will not be supporting this amendment. In fact we will be opposing it. The simple answer is that it is not normal to put in any legislation any provision in relation to funding.

Ms GIDDINGS - I rise to support this amendment that has been put here. I think a lot of hard work has gone into putting this and the Youth Justice Bill together and both bills will only work if adequate funding is provided and maintained for the implementation and operation of both these systems which are going to be put in place. I certainly do not think it does us any harm at all to ensure that that is enshrined as an objective in this act. It is an important objective otherwise we are all wasting our time for being here in the first place and debating it. Without that backing it is not going to get anywhere; it is a nice bunch of words put together on some pieces of paper but it will not get anywhere.

I know that the minister has said that the sentiment behind it all of us agree on. I think we should all be prepared to agree on actually putting that into

words and putting it into the bill itself. This whole bill has the welfare of the child as its paramount aim and we are not going to be able to even come near - well, we are not going to be able to achieve that if the funding is not there for the department to actually implement what is here.

Mr LENNON - I rise to support the amendment because the amendment will have meaning. I do not accept what the minister says because it will extend the duty of care that the minister in charge of the legislation would have. It could mean down the track that if the minister in the minds of the community did not provide adequate funding then there could be action available to people in the community to have the meaning of that word tested and the level of funding would then come under question somewhere other than here to see whether in fact it met the test. That would be possible and so it would ensure that the intent of the Parliament in passing this legislation could be tested other than here in Parliament, I would say, Mr Deputy Chairman. So I do not accept that it is a meaningless amendment put forward by the member because it could create a legal requirement on the Government of the day to ensure that adequate funding was maintained.

It is easy to pass the law if you have no intention of adequately funding it and ensuring that it can be properly implemented. What this does is put an onus on the Government of the day, be it this Government, the next or one in twenty year's time, to make sure that the intent of the Parliament is maintained in passing this law. If a future parliament does not want to maintain the commitment of this Parliament then they can come and amend it at some stage down the track.

Mrs BLADEL - Yes, I understand what you are saying. The commissioner must act independently, impartially and in the public interest and in clause 80(2):

'Without limiting the powers of the Commissioner under subsection (1), the Commissioner may require any person to answer questions or to produce documents so far as may be relevant to the administration of this Act.'

So that does seem to have some kind of quasi-legal framework where they 'may' require, it does not say can but they may require persons to answer questions or produce documents, so that does seem to have a certain level of power built into the commissioner's role. I would like to know with what authority the commissioner may require those persons to do those things.

Mr CLEARY - Obviously, Mr Deputy Chairman, that is a matter for the judgment. There is a need where you give the commissioner certain responsibilities under the act that you have to give them power to be able to undertake that role.

Mrs HOLLISTER - I just wanted to note that I think that this is one of the most significant parts of this bill and there was considerable debate during the committee's time where the two important words that were constantly referred to were the need for this commissioner to be 'independent and impartial'. I believe that is how this legislation has been set up because that office of the **commissioner for children** is independent of the Department of Community and Health Services, and the commissioner does report to the minister and has

to provide an annual report to Parliament. I think this is a real breakthrough because in recent years when we have had claims of abuse, and a need for investigation we have had to bring experts in from outside the State - and I can just, off the top of my head, think of three cases that were brought to the attention of the Parliament last year where Dr Dorothy Scott was brought in to investigate those.

I see the role of this commissioner as dealing with that, so we no longer need to look outside the State to look at an issue for someone to investigate complaints, or someone to give independent advice on policies and practice; to also advocate services and needs for children, and to promote the development of policies for children. That is a very important aspect of that because this commissioner will take briefs and matters from outside but, more importantly I think, act within government to not only increase public awareness for child welfare matters, but to look into other ministerial portfolios where desired to actually raise the issue of what is needed for children. Pro-active policy formulation and -

Mrs Bladel - That's why I think that research arm is going to be important.

Mrs HOLLISTER - Yes. I envisage that there would be a research arm within this area because if the commissioner is looking into the other departments to try to produce the best policy and practice standards throughout those departments that deal with children - and of course in that area you would look at the whole education area as well as community and health services - I would have assumed that within the development of policies and services that would assist the well-being of children, there would have to be some research.

CORRECTIONS BILL 1997 (No. 77)

Second Reading

Mr FOLEY –

I would like a clarification on the right of people to have children with them. It is clause 24 in the bill where at the request of a prisoner who is a child's parent or guardian, the child may live with the prisoner.

I actually feel that we need to go further. I am concerned about that and I am not wishing to cast aspersions at the director but my understanding is that this House has just recently passed legislation on the child and its family and it has established a children's commissioner.

I would like to think that the prison authorities where necessary would go and seek the advice and counselling of the **commissioner** for **children** both in terms of whether it is practical and emotionally desirable or socially desirable for the child to stay longer than four years, mindful of schooling and such and, where the director has decided in his or her wisdom that that child is a proper handful and needs to be got rid of, that there is a right of appeal of the parent to have the child with them and if necessary some support.

**Monday 16 November 1998 - House of Assembly - Estimates
Committee B - Part 3**

Mr SMITH - A question to the minister. At what stage is the establishment of the office of **commissioner** for **children** and when will it be fully running?

Mrs JACKSON - There is money in this Budget for that. There is an amount of \$180 000. It has been decided to co-locate that office with the Public Guardian's office because we consider the function of the children's commissioner will be as an advocate on behalf of the children therefore we think and I think it is more appropriate that it be there than with the Ombudsman who I believe was given some undertakings by the previous Government that it might be located in his office. But, as I say, I do not believe that is appropriate. I think it is more appropriate that this, as I say, be located with the Public Guardian because it is an advocate role. This person will be in place by the time the legislation is proclaimed on 1 July.