

EXPLANATORY MEMORANDUM

Children and Community Services (Mandatory Reporting)
Amendment Bill 2006 (EM 162)

(Introduced by Mr Omodei, MLA)

These explanatory notes relate to the *Children and Community Services (Mandatory Reporting) Amendment Bill 2006*, a private members Bill introduced into the Legislative Assembly by MLA (on behalf of the Hon Barbara Scott MLC) on 2006.

The *Children and Community Services (Mandatory Reporting) Amendment Bill 2006* is a Bill to amend the *Children and Community Services Act 2004* to provide for mandatory reporting of harm, or suspected harm, to children by abuse or neglect.

Background

Western Australia is the only State where the law does not make it mandatory that child abuse be reported by those with professional responsibility for children. Only in Western Australia can a professional in the care of children observe the unmistakable signs of child abuse, and be under no legal compulsion to report them. This is not the choice of the people of Western Australia, who revile child abuse.

The arguments usually made against mandatory reporting are the sort that appeal to Governments soft on crime and even softer on crime against children: that there will be too many reports; civil liberties will be compromised; there will be administrative confusion; and that the whole system will be too expensive. These are the problems of mandatory reporting systems adopted as a mere token.

This bill mandates the reporting of child abuse. This will apply wherever there is a reasonable belief that a child is suffering or at risk of suffering significant harm from physical or sexual abuse. Quite apart from its legal effect, this will be the first unequivocal statement by the Parliament of Western Australia that child abuse is to be detected and eliminated wherever it occurs.

In conjunction with the passage of this bill the government of the day must generously resource the Child Protection Unit within the Department of Community Development. The Unit should be responsible not only for receiving and dealing with reports of child abuse, but for the critical functions of advising and training mandated professionals in relation to their responsibilities, and monitoring the functioning of the system generally.

Mandatory reporting of child abuse will at last mean that Western Australia has joined the rest of Australia in squarely facing one of the great evils of our society. There is no room for a bit each way here: we either utterly reject child abuse, uncover it and eliminate it, or we wink at its existence.

The Bill

The bill is primarily modelled upon provisions in the New South Wales *Children and Young Persons (Care and Protection) Act 1998 (NSW Act)*, and the Tasmanian *Children, Young Persons and Their Families Act 1997 (Tasmanian Act)*.

Part 1—Preliminary

Part 1 contains the title of the Act and relevant commencement provisions.

Part 2—Amendment of *Children and Community Services Act 2004*

Part 2 amends the *Children and Community Services Act 2004* by the insertion of a new Division 1A after section 30 of the Act.

Key Concepts

The *Children and Community Services Act 2004* contains in section 28 definitions of ‘harm’, ‘neglect’, and ‘in need of protection’ for the purposes of the child protection provisions. Further, the definition of a child ‘in need of protection’ includes ‘harm’ as a result of ‘physical abuse’, ‘sexual abuse’, ‘emotional abuse’, ‘psychological abuse’ or ‘neglect’. This bill uses the same concepts by incorporating the definitions of ‘harm’ and ‘neglect’ from section 28. There is no need to incorporate the concept of a child being ‘in need of protection’ because section 28(2) provides that this concept applies for the purposes of Part 4, into which the new Division 1A is to be inserted.

Duty on non-professionals—clause 30A

The bill creates a civil duty (without criminal penalty) to prevent child abuse or neglect of children on all adults. This duty may be discharged by a report to a police officer or the CEO. This provision provides reassurance to members of the public that they will not in any way suffer (eg. civil suits) for reporting child abuse, that it is their duty to report child abuse, that this is a good and proper thing to do. The provision closely follows a similar provision in the Tasmanian Act.

Duty on professionals (with a responsibility in relation to children)—clause 30B

The primary distinction between professionals and non-professionals under this bill is the penalty that will attach to a failure to report child abuse (\$12 000 versus \$50). A professional must also make the report direct to the Department for Community Development rather than to a police officer.

Defining the relevant professional persons is always a difficult drafting issue. The Tasmanian Act attempts to list every relevant vocation (including, where applicable, by reference to legislation governing that vocation). And then provides as a catch-all for the Minister to gazette further classes of person. The problem is that because of the vast field of persons who may conceivably work with children the list is never going to be exhaustive (so that classes of persons may be missed if not gazetted) and the legislative cross-referencing is likely to change over time, necessitating on-going amendment.

The NSW Act applies the reporting requirement to broadly define classes of persons who work with children. This approach has been adopted in clause 30B of this bill.

Protections—clauses 30D, 30E

The bill provides comprehensive protections from any possible breaches of professional conduct or etiquette, civil and or criminal liability for making reports to the police or the Department for Community Development. The bill also provides very strong protection for the confidentiality of persons making a report.

Existing obligations

There are two existing reporting obligations—

- (a) section 160 of the Family Court Act 1997 requires various officers of the Family Court to report suspected child abuse;
- (b) various regulations to the WA Act required child care personnel to report suspected child abuse.

The proposed provisions in this bill overlap with these. Ideally, either the new provisions should exclude these, or the existing provisions should be repealed in the bill. It is recommended the government of the day should have discretion over this and this be made clear in the second reading speech.