

## Legislative Council

Wednesday, 12 November 2008, Page 644

### CHILDREN'S PROTECTION (HARBOURING) AMENDMENT BILL

**The Hon. A. BRESSINGTON** (19:48): Obtained leave and introduced a bill for an act to amend the Children's Protection Act 1993. Read a first time.

**The Hon. A. BRESSINGTON** (19:49): I move:

That this bill be now read a second time.

This bill seeks to prevent harbouring of children by adults without parental consent and to enable self-determination for families without the interference or restriction imposed on them by outside or third parties. Many parents and guardians are finding themselves in situations where their parental authority and responsibilities are being undermined and diminished.

It seems that the police are also hamstrung if a child is reported as being in the company of an undesirable person. Many of the reports that have come across my desk involve young teenage girls who have been lured away from the family by older men. These older men encourage these kids to stretch the boundaries and rules of the family, create conflict within that family, and then encourage the young girls to move out of home and live with them. Drugs and alcohol are often used as a grooming tool and that, combined with family conflict, is enough to change the teenager's perception that the parents are acting out of love and concern.

In one particular case a 14 year old female had run away from home. Admittedly the parents were not perfect, but who is? However, they loved their daughter and did their best to protect and care for her. This young girl also had the support of a grandmother with whom she had always spent a great deal of time, and they had a close relationship. The young girl met a man who was 24 years old—that is, a 10 year age difference. She started drinking and smoking dope, and within six months family relationships had deteriorated and she had run away.

The family reported this to Families SA and the police. The police told the family that they were unable to do anything if they located the girl and she was not in imminent danger. That meant that, if she had a roof over her head and she stated that she was okay, they had no authority to remove her and take her home. The police also told the parents that if they located her and made any attempt to remove her they could actually be charged with trespassing.

The young girl was found after three weeks in a drugged state, and the parents forcibly removed her from the boyfriend's home. She stayed put, and three months later the grandmother contacted the police and Families SA because in that period of time there had not been one telephone inquiry, not one interview, and no investigation. The representative of Families SA told the grandmother by telephone that the young girl had been put on a database, that it had not been investigated, and that if they did not receive any feedback as to the status of the girl—that is, if she had

not been found dead or had just been found—then it becomes a cold case after just three weeks. Mr President, I ask you and any other person in this place with children or grandchildren: is this is an appropriate response to a run-away 14 year old? I add that this was not an habitual run-away 14 year old: this was a one-off—the first time.

Other situations have been reported that when a family does approach authorities for support to deal with a wayward teenager they become almost a target. They are often told that it is just a phase and that they should be patient; they are told not to be too overbearing, or they are accused of being overprotective. This leaves the family in an untenable situation, and police have told me that there is no law that gives them the authority to return a run-away child to the family.

Of course, the argument may then arise: what if the parents were abusing or neglecting that teenager and she was to run away? Well, laws should not be applied only to 'what if' situations. If the person harbouring a child has concerns they should report them to the appropriate authorities and then take the child in and inform those authorities that that is what they have done and why; that they have taken this child into their home in order to protect the child. The next step should be for the child to be interviewed and the full story given to the appropriate authorities.

We have to keep in mind that most parents are good parents; most parents love their children and would protect them. However, we do have a situation now where our young people, for whatever reason, believe they can leave home if they want to. It is time for this parliament to legislate to protect our children and their parents against such influences. Then, of course, there are circumstances where children are being recruited into gangs. Why is it that the police, when they get a call that indicates an under-age child is at a clubhouse, cannot enter and remove that under-age child and return them home? For most it would seem the commonsense thing to do.

As I see it, this bill serves two purposes that are currently lacking. First, it provides legislative guidelines for police and child protection authorities to support mothers and fathers who are desperate to protect their children. Secondly, it gives the police the clout they have asked for to be able to intervene in such circumstances and to arrest and charge a person for harbouring an under-age child and encouraging that child to leave home.

My office has been inundated with stories from parents and carers. They have told of situations where girls as young as 14 have ended up living with pimps and drug dealers, with their parents unable to know of their child's whereabouts or lawfully bring them home. Sometimes, they have been living with other teens, with no adult supervision or care. In one case, the older teenage sister was able to claim family benefits for the care of her younger sister, even though drug use and excessive alcohol use was proven.

The Australian Homeless Youth—National Youth Commission Report tells us that in 2001 over 36 children under 18 were homeless Australia wide. It states:

*The 1989 HREOC inquiry faced a problem because the size of the homeless youth population had not been established. The difficulties of quantifying such a transient population were well recognised but little had been done since the 1983 Senate*

*Inquiry. Many homeless young people were essentially 'hidden' from statistical counting and it was difficult to distinguish long-term homeless young people from those experiencing a temporary crisis that might be resolved in a relatively short period of time with little or no intervention by a service. The report commented that:*

*There are no reliable measures, in fact very few measures at all, of the incidence of child and youth homelessness...[and]... due to the lack of government and other data, however, it is very difficult to assess how many children and young people are in fact homeless.*

In order to address this information deficit, the inquiry commissioned Dr Rodney Fopp to provide an estimate of the size of the homeless youth population. Dr Rodney Fopp's estimation of the size of the homeless youth population was the first serious attempt to establish the size of the problem. After receiving Dr Fopp's report and conducting hearings throughout Australia, the inquiry concluded:

*Sufficient research has now been compiled, however, to enable the inquiry to estimate that there are at least 20,000 to 25,000 homeless children and young people across this country. We stress that we consider this to be a conservative estimate. Dr Fopp's considered conclusion, based on all the evidence available, was that the likely figure is actually 50,000 to 70,000 children and young people who are homeless and at serious risk.*

Over my 12 years with DrugBeat, I can say that I heard stories from parents about their child being supported to live away from home—stories where children have been asked to say that they were abused in order to claim the allowance. Back then, I was unable to believe that this was how the system actually worked. However, after 2½ years in this place, I apologise to those parents who I doubted.

I have also had the opportunity to work with youth who have lied about the abuse to live away from home and who, after 12 months, have dug themselves into a hole so deep with drugs and criminal behaviour that they want to return home. I am proud to say that I have been personally involved in reuniting some children with their families and that I have worked to strengthen those families.

It is quite usual for children around the age of 15 and 16 to start to daydream about leaving home. That is all quite normal. What is not normal is for government systems to be put in place to encourage this and to have youth workers guide our youth through the loopholes to achieve their desired outcome of independence, albeit too early.

Children need time to prepare for leaving home, and they also have a great deal to learn in that two-year period about money management and other life skills that will ensure that, when they do leave home, they will have some ability to problem solve and manage their finances. What is happening now is not okay, and it is setting our children up for failure. Again, it gets down to government and youth workers being trained to strive for best practice—not best practice for breaking up families, although unintentionally, but best practice for putting families back together when things get tense, where and when possible.

Yes, there are some teenagers who want to leave because things are bad at home. There may be domestic violence and other forms of abuse where it is in the best interests of that child to leave, and not I nor anyone else would oppose every measure being taken to ensure that those kids are protected and safe. But if a worker cannot tell the difference between a child at risk and one who just wants to leave home because they do not like the rules, then there is something wrong with that worker and, in turn, that indicates a failure of the department to train, assess and evaluate, and have appropriate case management for its workers. It also indicates a serious lack of supervision and/or an attitude where policy and procedures are only there because they do not have to be implemented, followed or applied.

The speaker for the government to this bill may say that child protection is a difficult area to work in and that resources are stretched to the limit, and there simply is not enough of anything to do a job better, so resources and complex issues are always the reasons why. It is a complex issue dealing with complex family dynamics, but that is not the case every time and I can tell you that this government's performance in the area of child protection will be the unspoken election issue of 2010.

We will reach a point of critical mass and there will be more people disappointed than protected and I would imagine that this is all the more reason for ministers to get a handle on the fact that adequate training, appropriate job selection, case supervision, ongoing assessment and evaluation will not only keep the people happy but will also reduce spending and improve efficiency. What we have now is a mish-mash where critical decisions are often made by an inexperienced social worker who is poorly supervised—perhaps too much power and authority to someone not deserving of it. When I say 'not deserving of it', I am not talking about the person: I am talking about the level of experience and training that they have achieved in their career.

I am not on my feet to bash child protection workers because I know it is a very difficult job and I know that they are damned if they do and damned if they don't, and the decisions they make often come down to whether a child will live or die. Again, it comes down to training and assessment tools, policy and procedures that must be followed and that are based on world's best practice. Once best practice has been achieved, then it is revised and updated so that it is an ongoing practice of striving for best practice rather than believing it has been achieved and then resting on our laurels. In fact, best practice is to continue to strive for best practice.

In South Australia, the rate of homeless youth between 12 and 18 was 2,394 in 2001, with a higher percentage rate than that of New South Wales, Victoria or the ACT. On 18 December 2007, *The Advertiser* published figures showing that, in 2006-07, 37 cases in which the child was deemed to be in immediate danger were not investigated within the 24-hour period required by departmental policy and procedure, more than 4,600 cases or almost half the children considered at risk were not investigated within one week, and a further 7,969 cases were simply not investigated at all.

It is important to highlight that these statistics come only from the data that is gathered by the authorities and does not include all the data that is never compiled

and, therefore, unknown. On 7 December 2007, the former minister for families and communities, the Hon. Jay Weatherill, said, 'We are also shifting our child protection system away from purely investigating responses towards early intervention and support for families.' However, that promise of early intervention for many families never comes as there is currently no trigger mechanism to ensure that those families get the help and support they need when their son or daughter runs away.

Whilst this bill does not intend to address all the problems associated with youth homelessness, I believe it will limit the transience of youth and the propensity of at risk youth to live without proper parental care, supervision and protection which would predispose them to becoming our long-term homeless or drug addicts. It will also provide a trigger mechanism for state authorities to collate statistics on the reports made of juvenile runaways and tracking those families that are not coping well.

However, current practice is that when a child runs away from home they are not regarded as being at risk by child protection authorities and, therefore, they are not noted in statistics if they are living with a friend, another adult or with another family member. Instead, they are deemed to be safe, so their file is never really made active as no interventions are offered. As only those children deemed by Families SA to be at risk of significant harm are actually investigated, no-one is required to inquire about the fitness of the carer or the appropriateness of the child's living environment in these cases—for example, minors sharing beds with an adult in that one home.

One always hopes that those families might find the help they need from authorities mandated to protect our children and enforce the law, and by that I do not mean the easy option of helping the run-away teen get into foster care or onto some independent rate of youth allowance and onto the emergency housing short list.

These situations arise through a variety of circumstances, often when it is too late for the parent or guardian to intervene and exert influence to turn things around. In far too many instances, young people are lured or groomed by their peers or predators away from otherwise caring families. Often those peers have already found themselves in a drug culture through other family, friends or school networks.

In these situations, when parents or guardians have approached Families SA or police, often the response given has been, 'We can't do anything because the young person has chosen to live in that environment or with that family. It is their choice to use drugs or live with their girlfriend or boyfriend. We can't make them go home.' I ask: why not? In my opinion, we have become too smart for our own good and our social policy is in direct conflict with childhood and teenage development stages.

We are expecting far too much far too early, and the result should be evident to us all. We have created a generation of kids where all too many are not productive, are not responsible and have no consideration for the community in which they live. For the parents of those children life is more difficult than it should be and there is nowhere for them to turn.

Police have taken the view that, since harbouring is not illegal and the child protection system turns a blind eye anyway, there is no impetus or lawful authority for

them to act so as to return the child back to their rightful home and family. I am gobsmacked that we debated the animal welfare bill and so much thought and focus was put into the protection and care of animals. I made the comment in my speech that if our child protection act was anywhere near as thorough as the animal welfare act we would be on the home straight.

I have waited and waited for the government to come up with something—anything—especially as it is a recommendation from the Mullighan inquiry, but nothing has come that will protect our children, often from themselves, and support families at the same time. It often seems that it is one or the other, or one at the expense of the other. Protect and support should be two words that are applied equally where and when possible.

Hence, the lack of harbouring laws in South Australia has enabled child protection and law enforcement authorities to wipe their hands clean of any responsibility for missing children. I do not want to imply here that neither child protection workers nor law enforcement authorities do not want to take responsibility for this. I have spoken with many police officers who have been in the force for many years and their heart literally breaks because they are powerless to do anything.

I have spoken with child protection workers who literally have given up because they are banging their head against a brick wall trying to get any sort of action to help these families and to return these kids home. That is not a healthy work environment for any professional to be working in.

With that, they have also been forced to avoid any duty of care to at-risk or vulnerable teenagers. It is an easier option to ignore the problems of run-away teenagers because the presenting family and behavioural issues involved are often complex and difficult to resolve. Commonly, change in the family dynamics cannot be achieved in a month or two before closing the file. Enforcement of court orders and other consequences (monitoring and follow-up) in such cases are vital to success, and that makes it both very labour intensive and resource intensive.

Few in this state would not be aware of the case involving Mr John Ternezis and his daughter, who ran away at age 13, only to develop a serious drug habit, get pregnant and have a baby. Mr Ternezis states in his letter to the former minister responsible for Families SA:

*The department's attitude was always one where they felt the best thing for my daughter was to support her in doing what she liked to do. This is a completely irresponsible attitude to take for any 13 year old child and in relation to our most vulnerable children , it is a real tragedy.*

I agree that it is a real tragedy. The purpose of this bill is to ensure that no more 13 year old or 14 year old children are left exposed to the predators in our community. It is also intended to prevent our police and child protection workers from becoming either complacent or demoralised or, worse still, aiding and abetting predators in the community, of which, I have to admit, I have no proof. But, by taking no action, we are enabling those predators to do what they will. If we do not believe that this goes on, we only have to look at the stats that I have presented.

The added tragedy to Mr Ternezis's story is that he has spent the past 11 years since that time trying to hold the child protection authorities to account, almost in vain. A significant anomaly in our child protection system resides in the fact that a parent who neglects or abuses their child can easily have that child removed or they can even be charged with an offence themselves. However, as we observe in the case of Mr Ternezis, when an adult who harbours a child harms that child, that perpetrator is unlikely to be charged or held accountable by any authority at all.

Mr Ternezis's daughter is now 24 but, at the age of 13, she was already living with three men who were supplying her with drugs. She fell pregnant to a 33-year-old man by the age of 15. None of the three men were ever charged with any offences, although even our current laws would have been sufficient to ensure appropriate remedy and protection to that child.

Despite the situation, the authorities knew all along that the child was being abused by the adults with whom she was residing and, despite Youth Court orders to ensure her protection, social workers did nothing, knowingly ignoring the court orders.

Former ministers have similarly ignored the father's pleas for assistance and have evaded any undertaking to ensure other families would not have to endure this tragedy. I have also been told of a situation in which a 14-year-old girl has run away to live with her best friend's family—which condones the use of drugs—only to then have that child influence her younger 12-year-old sister to run away and do the same while her mum was at work. In other situations, adult siblings have taken over the role of parent without parental consent, sometimes as an act of spite.

While I acknowledge the importance of informal carers in the community and good Samaritans out there who put young people up for a few nights, or even a few weeks, and provide them with food, shelter and care, this is usually a poor substitute for parental love, nurturing and guidance. It is also no excuse for the state itself to turn away and deny our vulnerable teenagers the necessary supports they may need to prevent them from turning to the streets, drugs or crime because of relationship difficulties at home.

The bill aims to ensure that, at an early stage of a minor's disappearance, there is a trigger which will either compel someone to notify the proper authorities when a child becomes at risk or which will ensure that a parent whose child has run away can be informed of the child's whereabouts and the child promptly returned to the family. This bill aims to ensure that parental and guardian authority is properly respected and recognised by law, with the aim of limiting the different ways that families can be destroyed by third parties.

I also acknowledge that there are many situations in which children have been taken in by very caring and responsible adults because there has been nowhere for them to go. This bill cannot address their particular concerns, as this is ultimately the role of the child protection services. I also acknowledge that the child protection services have not been able to do the best for those children most at risk.

This bill solely aims to ensure that parents and guardians are given back the rights and powers which have been eroded by legislative flaws and administrative inaction and, ideally, where there is cause for further intervention or support to the child and his or her family, that the appropriate authorities can be alerted to the needs of that family. It is also anticipated that, when this bill takes effect, future ministers will not be able to dead-end process these families as the former minister for families and communities did when he wrote to his local MP about Mr Ternezis, as follows:

*I have been assured that Mr Ternezis has previously accessed all legislative avenues available to him for addressing his grievances, including the state Ombudsman. The Ombudsman determined that Families SA had acted appropriately in respect of all matters raised by Mr Ternezis. In addition, Families SA consulted with the Crown Solicitor's office at the time and received advice supporting the Families SA position.*

As I said, there would be very few people in this place who would be unaware of the struggle that Mr Ternezis faced. He had a 13 year old daughter who was out of control, living with three adult men and, at the age of 15, was pregnant to a man 33 years old. How could the Ombudsman's Office find that it was okay to allow that to happen?

In closing, I ask that this bill be supported to appropriately recognise the primacy of parental authority over that of any other parties, particularly when the state is absent. I also ask that we give back the rights that parents have lost over several decades; rights which are essential in order for parents to fulfil their parental responsibilities.

Debate adjourned on motion of Hon. I.K. Hunter.