



Legislative Council
Legislation Committee

Report on the consideration in detail of the Disability Bill

April 2006

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**EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS
OF THE LEGISLATIVE COUNCIL**

Wednesday, 29 March 2006

- 8 LEGISLATION COMMITTEE** — Mr Gavin Jennings (for Mr John Lenders) moved, That the Honourables Philip Davis, Damian Drum and Bill Forwood, Ms Carolyn Hirsh, Ms Jenny Mikakos and Mr Matt Viney be members of the Legislation Committee.

Debate ensued.

Question — put and resolved in the affirmative.

Tuesday, 4 April 2006

- 10 DISABILITY BILL — REFERRAL TO LEGISLATION COMMITTEE** — Mr Gavin Jennings moved, That at the conclusion of the second reading debate, this Bill be referred to the Legislation Committee.

Question — put and resolved in the affirmative.

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MEMBERS OF THE COMMITTEE

Mr M.S. Viney, MLC (Chair)

The Hon. W. Forwood, MLC (Deputy Chair)

Ms C.D. Hirsh, MLC

Ms J. Mikakos, MLC

The Hon. D.K. Drum, MLC

The Hon. G.K. Rich-Phillips, MLC (substitute for The Hon. P.R. Davis, MLC)

REPORT

The Legislation Committee of the Legislative Council, appointed pursuant to the Resolution of the Council on 29 March 2006, has the honour to report as follows:

1. This is the first report of the Legislation Committee, established by trial Sessional Orders adopted by the Legislative Council on 8 February 2006.
2. The function of the Committee, prescribed by Sessional Order 43, is to consider in detail a Bill or series of related Bills referred to the Committee by the Council and to report to the Council on the Committee's consideration of the Bill, which may include any recommendations for amendments to the Bill(s).
3. On Tuesday, 4 April 2006, on the motion of Mr Gavin Jennings, the House resolved that at the conclusion of the second reading debate, this Bill be referred to the Legislation Committee.
4. Following the second reading of the Disability Bill in the Legislative Council on Thursday, 6 April 2006, the Bill was referred to the Committee by the House. The Committee met publicly to consider the Bill in detail on 12, 13 and 19 April 2006, in the Legislative Council Committee Room, Parliament House. Mr Gavin Jennings, Minister representing the Minister for Community Services attended and gave evidence along with Mr Arthur Rogers, Executive Director, Disability Services and Mr Ian Parsons, Ministerial Adviser to the Minister for Community Services.
5. Over the course of the three days of public meetings the Committee met for a total of 8 hours and 44 minutes to consider the 250 clauses in the Bill and 25 amendments moved and debated. The Committee notes the high standard of assistance provided by the Office of Chief Parliamentary Counsel to members of the Committee in relation to the 299 amendments circulated during the proceedings.
6. Amendments were moved by the Honourables Damian Drum and Bill Forwood, which are found in the Minutes of Proceedings which follow.
7. Mr Gavin Jennings moved two amendments to the Bill, which were agreed to by the Committee and are therefore found in both the Schedule of Recommendations and Minutes of Proceedings which follow.
8. Under Sessional Orders the Committee is required to consider the Bill in the same order and generally the same manner that Bills are considered in Committee of the whole Council. While remaining cognisant of these requirements, the Committee found it useful to adopt a flexible approach, including, but not limited to —

- The postponement of clauses and amendments to allow Members and the Minister to further consider the issues involved.
 - Debate across a range of clauses and circulated amendments in relation to the question on a single clause or amendment.
 - Brief suspensions of proceedings to allow some matters pertaining to amendments to be clarified.
 - The reconsideration of a clause (clause 5) previously carried to enable the Minister to move two amendments to the clause.
9. The Committee was pleased that a significant number of interested persons attended in the public gallery to view proceedings. The Committee notes that many more public were in attendance than would probably have attended and viewed the Committee of the whole stage in the House, notwithstanding the fact that the Bill seeks to enact a new legislative scheme relating to a sector comprising many interested parties and many complex issues.
 10. The trial Sessional Orders governing the operation of this Committee require the Committee to report back to the Council no later than the first sitting day that occurs after two sitting weeks or four calendar weeks following the referral of the Bill, whichever is the shorter period.
 11. This time line along with the prescribed function of the Committee, which is to consider the Bill in the same manner as Committee of the whole Council, do not envisage a lengthy narrative of the many issues raised during the consideration of the Bill. However, the Committee notes that the final part of this report, which is the Hansard transcript of the proceedings, included, pursuant to Sessional Order 56, serves to inform the reader of the various points of view on the Bill's contents.
 12. Given the intrinsic link between the work of the Committee and the passage of Bills through the House, the Committee extends its appreciation to Hansard for its efforts to provide a similar level of service and product that is only otherwise provided to the two Houses on sitting days.
 13. The Committee's detailed consideration of the Bill is found in the Minutes of the Proceedings attached to this Report. Following this consideration, the Committee recommends that the Bill be passed by the Legislative Council subject to the amendments contained in the attached Schedule.

Committee Room,
27 April 2006

SCHEDULE OF AMENDMENTS RECOMMENDED

Recommendation 1

The Committee recommends that Clause 5 be amended as follows:

Clause 5, page 15, after line 15 insert—

- "() acknowledge the important role families have in supporting persons with a disability;
- () acknowledge the important role families have in assisting their family member to realise their individual physical, social, emotional and intellectual capacities;
- () where possible strengthen and build capacity of families who are supporting persons with a disability;"

Recommendation 2

The Committee recommends that Clause 5 be further amended as follows:

Clause 5, page 16, after line 5 insert—

- "() be designed and provided in a manner which continues to reflect the role of the Secretary in providing and funding planning for persons with a disability;"

MINUTES OF THE PROCEEDINGS

The Minutes of the public proceedings of the Legislation Committee in relation to consideration in detail of the Disability Bill were as follows:

WEDNESDAY, 12 APRIL 2006

The Committee met in the Legislative Council Committee Room to consider the Disability Bill.

Present: Mr M.S. Viney, MLC (Chair)
The Hon. W. Forwood, MLC (Deputy Chair)
Ms C.D. Hirsh, MLC
Ms J. Mikakos, MLC
The Hon. D.K. Drum, MLC
The Hon. G.K. Rich-Phillips, MLC (substitute for The Hon. P.R. Davis, MLC)

Witnesses: Mr Gavin Jennings, MLC, Minister representing the Minister for Community Services
Mr Arthur Rogers, Executive Director, Disability Services
Mr Ian Parsons, Ministerial Adviser, Office of Minister for Community Services

Also in Attendance: The Hon. A.R. Brideson, MLC
Ms G.D. Romanes, MLC
Mr Andrew Young
Assistant Clerk – Committees
Ms Felicity Murphy
Manager – Papers Office

Meeting Opened

The Chair declared the meeting open at 2.41 p.m.

Consideration in detail

Clause 1.

Proceedings suspended from 3.40 p.m. to 3.46 p.m.

Consideration in detail continued on the question, That clause 1 stand part of the Bill.

The Honourable Bill Forwood moved Amendment No. 1,
Clause 1, line 6, omit "responsibilities and".

Question — That the words proposed to be omitted stand part of the clause — put.

The Committee divided.

AYES: 3

NOES: 3

Ms Hirsh
Ms Mikakos
Mr Viney

Mr Drum
Mr Forwood
Mr Rich-Phillips

There being an equality of votes, the Chair gave his casting vote for the Ayes.

Amendment thus negatived.

Question — That clause 1 stand part of the Bill — agreed to.

Clause 2 — agreed to.

Clause 3.

The Honourable Damian Drum moved Amendment No. 1,
Clause 3, page 2, after line 12, insert—

"**advocate**" means any individual who acts to intercede or mediates on behalf of a person with a disability and includes a family member, a friend or the Public Advocate;'

On the motion of Mr Drum, the Committee resolved to postpone consideration of Amendment no. 1 to clause 3.

The Committee agreed, by leave, that Mr Drums' Amendments nos. 1 to 5 to clause 3 be dealt with by the Committee at a later stage and after his Amendment no. 6 to a later part of clause 3 has been dealt with.

The Honourable Damian Drum moved Amendment No. 6,
Clause 3, page 5, after line 31, insert—

"**family carer**" means a person of any age, who without being paid, cares for another person who needs ongoing support because of a disability but does not include a volunteer for an organisation;'

Question — That the Amendment be agreed to — put.

The Committee divided.

AYES: 3

NOES: 3

Mr Drum
Mr Forwood

Ms Hirsh
Ms Mikakos

Mr Rich-Phillips

Mr Viney

There being an equality of votes, the Chair gave his casting vote for the Noes.

Amendment thus negated.

The Honourable Bill Forwood moved Amendment No. 2,
Clause 3, page 2, line 26, after "social", insert ", educational and vocational".

Amendment negated.

Adjournment

The Committee adjourned its deliberations at 5.20 p.m. on the Question, That clause 3 stand part of the Bill.

THURSDAY, 13 APRIL 2006

The Committee met in the Legislative Council Committee Room to further consider the Disability Bill.

Present: Mr M.S. Viney, MLC (Chair)
The Hon. W. Forwood, MLC (Deputy Chair)
Ms C.D. Hirsh, MLC
Ms J. Mikakos, MLC
The Hon. D.K. Drum, MLC
The Hon. G.K. Rich-Phillips, MLC (substitute for The Hon. P.R. Davis, MLC)

Witnesses: Mr Gavin Jennings, MLC, Minister representing the Minister for Community Services
Mr Arthur Rogers, Executive Director, Disability Services
Mr Ian Parsons, Ministerial Adviser, Office of Minister for Community Services

Also in Attendance: Mr Wayne Tunnecliffe
Clerk of the Legislative Council
Ms Felicity Murphy
Manager – Papers Office

Meeting Opened

The Chair declared the meeting open at 9.13 a.m.

Consideration in detail

Clause 3.

On the motion of Mr Drum, The Committee resolved to postpone clause 3 until the next meeting.

Clause 4.

The Honourable Bill Forwood moved Amendment No. 6,
Clause 4, after line 5 — To insert—

"() advance the social, communication, emotional, intellectual and physical development and wellbeing of persons with a disability;"

On the motion of Mr Forwood, the Committee resolved to postpone clause 4 until the next meeting.

Clause 5.

The Honourable Bill Forwood moved Amendment No. 9,
Clause 5, page 13, after line 26, insert—

"() It is the responsibility of the State of Victoria to plan, fund, ensure the provision of and evaluate services to persons with a disability according to the principles stated herein.

() The families of persons with a disability have an important role to play in supporting, and encouraging the development of, a family member with a disability."

Amendment negated.

The Honourable Bill Forwood moved Amendment No. 10,
Clause 5, page 15, line 4, after "services", insert "provided that spreading services across local communities does not alter the effectiveness of the service or result in the loss of service specialisation".

Amendment negated.

The Honourable Damian Drum moved Amendment No. 19,
Clause 5, page 16, line 3 after "advocacy", insert "and family".

Amendment negated.

The Honourable Bill Forwood moved Amendments Nos. 11 and 12,
Clause 5, page 16, lines 14 and 15, omit "as is possible in the circumstances".

and

Clause 5, page 16, after line 15, insert—

- "() A restriction to rights or opportunities may only be applied when exercising the right or opportunity poses a direct threat to the health, safety or wellbeing of the person with a disability or any other person.
- () In determining whether a person with a disability poses a direct threat to the health, safety or wellbeing of the person with a disability or any other person, a disability service provider must make an individualised assessment, based on reasonable judgement that relies on current medical knowledge or on the best available objective evidence, to ascertain—
 - (a) the nature, duration and severity of the risk; and
 - (b) the probability that the potential injury will actually occur; and
 - (c) whether reasonable modifications of policies, practices or procedures will mitigate the risk.
- () A disability service provider must make reasonable modifications to policies, practices or procedures if the modifications are necessary to afford services, facilities, privileges, advantages or accommodations to persons with disabilities unless the disability service provider can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations."

Question — That the Amendments be agreed to — put.

The Committee divided.

AYES: 3

Mr Drum
Mr Forwood
Mr Rich-Phillips

NOES: 3

Ms Hirsh
Ms Mikakos
Mr Viney

There being an equality of votes, the Chair gave his casting vote for the Noes.

Amendments thus negatived.

Proceedings suspended from 11.16 a.m. to 11.28 a.m.

Question — That clause 5 stand part of the Bill — agreed to.

Clause 6 — agreed to.

Clause 7.

On the motion of Mr Drum, the Committee resolved to postpone clause 7 until the next meeting.

Clause 8.

The Honourable Bill Forwood moved Amendment No. 13,
Clause 8, page 21, line 8, after "disability", insert "including services for children aged 6 years or less including but not restricted to early childhood intervention services".

Amendment negatived.

The Honourable Bill Forwood moved Amendment No. 14,
Clause 8, page 21, omit lines 9 to 12 and insert—

- "() provide and fund programs which afford services, facilities, privileges, advantages and accommodations to a person with a disability in the most integrated setting appropriate to the needs of the individual;
- () ensure that despite the existence of separate or different programs or activities provided in accordance with this Act, a disability service provider must not deny any person with a disability an opportunity to participate in programs or activities that are not separate or different;"

Amendment negatived.

Question — That clause 8 stand part of the Bill — agreed to.

Clauses 9 to 11 — agreed to.

Clause 12.

The Honourable Bill Forwood moved Amendment Nos. 15 to 17,
Clause 12, page 25, after line 15, insert—

- "() In performing its functions the Victorian Disability Advisory Council must act independently."

and

Clause 12, page 25, line 17, omit "Minister" and insert "Parliament".

and

Clause 12, page 25, after line 18, insert—

"() The report under sub-section (2) must specifically report on the advice provided on the matters specified in sub-section (1)(a)(iii).".

(Mr Rich-Phillips left the meeting at 12.31 p.m.)

Amendments negatived.

Question — That clause 12 stand part of the Bill — agreed to.

Clause 13 — agreed to.

Clause 14.

The Honourable Bill Forwood moved Amendment No. 18,
Clause 14, omit sub-clauses (2) to (7) and insert—

"() The person appointed as the Health Services Commissioner under section 5 of the **Health Services (Conciliation and Review) Act 1987** is the Disability Services Commissioner under this Act.".

Mr Forwood withdrew his Amendment.

Question — That clause 14 stand part of the Bill — agreed to.

Clause 15 — agreed to.

Clause 16.

The Honourable Bill Forwood moved Amendment No. 20,
Clause 16, page 30, line 1, omit "subject to the approval of the Minister,".

Amendment negatived.

Question — That clause 16 stand part of the Bill — agreed to.

Adjournment

The Committee adjourned its deliberations at 1.01 p.m.

WEDNESDAY, 19 APRIL 2006

The Committee met in the Legislative Council Committee Room to further consider the Disability Bill.

Present: Mr M.S. Viney, MLC (Chair)
The Hon. W. Forwood, MLC (Deputy Chair)
Ms C.D. Hirsh, MLC
Ms J. Mikakos, MLC
The Hon. D.K. Drum, MLC

Apologies: The Hon. G.K. Rich-Phillips, MLC

Witnesses: Mr Gavin Jennings, MLC, Minister representing the
Minister for Community Services
Mr Arthur Rogers, Executive Director, Disability Services
Mr Ian Parsons, Ministerial Adviser, Office of Minister for
Community Services

Also in Attendance: Mr Andrew Young
Assistant Clerk — Committees
Ms Felicity Murphy
Manager – Papers Office

Meeting Opened

The Chair declared the meeting open at 1.08 p.m.

Consideration in detail

Proceedings suspended from 1.11 p.m. to 1.33 p.m.

On the motion of Ms Mikakos, The Committee resolved to postpone clauses 17 to 250 until later this day.

Clause 3.

Consideration continued on Mr Drum's postponed Amendment no. 1 to Clause 3, page 2, after line 12 (moved on Wednesday, 12 April 2006).

Mr Drum withdrew Amendment no. 1.

The Honourable Damian Drum moved Further Amendment No. 1,
Clause 3, page 2, after line 12, insert—

"**advocate**" means a person who—

- (a) primarily represents the interests of a person with a disability in a way consistent with the expressed wishes of the person with a disability; or
- (b) who acts in the best interests of the person with a disability where he or she is unable to express his or her wishes, in order to assist the person with a disability to exercise control over his or her life;'

Amendment negated.

The Honourable Damian Drum moved Further Amendment No. 2,
Clause 3, page 2, after line 26, insert—

"**carer**" means a person such as a family member, friend or neighbour, who has been identified as providing regular and sustained care and assistance to the person requiring support;".

Amendment negated.

The Honourable Bill Forwood moved Amendment No. 3,
Clause 3, page 4, after line 32, insert—

"or
() an autism spectrum disorder;".

Amendment negated.

The Honourable Bill Forwood moved Amendment No. 4,
Clause 3, page 5, after line 16, insert—

"**early childhood intervention services**" means intervention services used to modify a health or development outcome for a child with a disability aged 6 years or less;".

Amendment negated.

The Honourable Bill Forwood moved Amendment No. 5,
Clause 3, page 6, after line 4, insert—

"**inclusion**" in relation to persons with a disability, means the participation of persons with a disability in educational, social, recreational, vocational and community environments according to their needs and choices;".

Amendment negated.

Question — That clause 3 stand part of the Bill — agreed to.

Clause 4.

Consideration continued on Mr Forwood's postponed Amendment to clause 4,
page 2, after line 5 (moved on Thursday, 13 April 2006).

Amendment negated.

Question — That clause 4 stand part of the Bill — agreed to.

Clause 7 — agreed to.

Clause 17.

On the motion of Mr Drum, the Committee resolved to postpone clause 17 until later this day.

Clauses 18 to 38 — agreed to.

Clause 39.

The Honourable Damian Drum moved Further Amendment No. 16,
Clause 39, page 52, line 3— after "guardian", insert "or the persons representative".

Amendment negatived.

Question — That clause 39 stand part of the Bill — agreed to.

Clauses 40 to 50 — agreed to.

Clause 51.

Question — That clause 51 stand part of the Bill — put.

The Committee divided.

AYES: 3

NOES: 2

Ms Hirsh
Ms Mikakos
Mr Viney

Mr Drum
Mr Forwood

Clause thus agreed to.

Clauses 52 to 55 — agreed to.

Clause 56.

Question — That clause 56 stand part of the Bill — put.

The Committee divided.

AYES: 3

NOES: 2

Ms Hirsh
Ms Mikakos
Mr Viney

Mr Drum
Mr Forwood

Clause thus agreed to.

Clauses 57 to 250 — agreed to.

On the motion of Ms Mikakos, the Committee resolved to reconsider clause 5.

Clause 5.

Mr Gavin Jennings moved Amendment No. 1,
Clause 5, page 15, after line 15, insert—

- "() acknowledge the important role families have in supporting persons with a disability;
- () acknowledge the important role families have in assisting their family member to realise their individual physical, social, emotional and intellectual capacities;
- () where possible strengthen and build capacity of families who are supporting persons with a disability;"

Amendment agreed to.

Mr Gavin Jennings moved Amendment No. 2,
Clause 5, page 16, after line 5, insert—

- "() be designed and provided in a manner which continues to reflect the role of the Secretary in providing and funding planning for persons with a disability;"

Amendment agreed to.

Question — That clause 5, as amended, stand part of the Bill — agreed to.

Consideration of the Bill concluded.

Adjournment

The Committee adjourned its deliberations at 4.05 p.m.

**EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS
OF THE LEGISLATION COMMITTEE**

Thursday, 27 April 2006

Report on the consideration in detail of the Disability Bill

Adoption of paragraph 13 —
Moved Ms Hirsh, seconded Ms Mikakos.

Question — That paragraph 13 be agreed to — put.

The Committee divided.

AYES: 3

NOES: 2

Ms Hirsh
Ms Mikakos
Mr Viney

Mr Brideson
Mr Forwood

Paragraph thus agreed to.

Hansard Transcript of Proceedings

12, 13 and 19 April 2006

