That the Bill be now read a second time.

This Bill allows for the registration and enforcement in Western Australia of restraining orders originating in New Zealand and other countries prescribed. It will ensure that people who have sought and obtained the protection of a restraining order in another country are afforded the continued protection of that order in this State.

The law in New Zealand relating to domestic violence was reformed recently with the commencement of the Domestic Violence Act 1995 on 1 July 1996. That Act provides for the enforcement of protection orders between New Zealand and other countries. Foreign countries must normally be prescribed by Order in Council, but Australia, and each of her States and Territories, was so designated at the time the Act was passed. As a result, as from 1 July 1996, New Zealand courts have been able to receive and register Australian court orders made for the protection of a person from the violent behaviour of another person. Once registered, an Australian court order has effect in New Zealand and can be enforced there.

At a recent meeting of the Standing Committee of Attorneys General in Melbourne, all Attorneys General indicated their support for amendment of the legislation of the respective States, where required, to allow for recognition and enforcement of New Zealand restraining orders.

Part 7 of the Western Australian Restraining Orders Act 1997 provides for the registration and enforcement in Western Australia of restraining orders issued in other States of Australia. The present Bill inserts a further part that provides for the registration and enforcement in Western Australia of restraining orders issued in New Zealand or any other prescribed country. The new part specifies the categories of persons who may make application for registration of a foreign restraining order; how the application is to be made; the actions to be taken by the clerk of the court on receipt of such an application; the effects of the registration; the impact on the order in Western Australia of variation or cancellation of the order in the foreign country; and, the impact on the order of variation or cancellation of the order in this State.

On registration, the order has effect in Western Australia as if it were a final violence restraining order made and served under the Western Australian Act. However, it is a defence to a charge of breaching the order to satisfy the court that the alleged breach did not constitute a breach in the country in which the order was made, or that the order had been cancelled in the country in which the order was made.

The clerk of the court that registered a foreign restraining order is to register any variation or cancellation of an order made in the originating country and, similarly, is to register any variation or cancellation of the operation of the order in Western Australia. The Restraining Orders Amendment Bill gives further effect to this Government's determination to ensure better access to justice for people who need the protection of a violence restraining order, by ensuring full reciprocity with New Zealand with respect to the registration and enforcement of restraining orders. I commend the Bill to the House.

Debate adjourned, on motion by Mr Cunningham.

CHILD WELFARE AMENDMENT BILL

Committee

The Deputy Chairman of Committees (Ms McHale) in the Chair; Mrs Parker (Minister for Family and Children's Services) in charge of the Bill.

Clause 1: Short title -

Mr CARPENTER: The Labor Party will oppose the clauses of this amendment because its members believe that they are wrongly focused. We applaud any move to improve child protection in Western Australia or anywhere else in the world. However, the problem is that this amendment seeks to legitimise a register which has been in existence for some time and about which genuine concerns are already held. Those concerns focus on a couple of areas: One of the areas is that while the children who have been abused or allegedly abused will appear on a register, and their personal details will appear on a register, there is no such requirement for the people who have abused, allegedly abused or who have been found to have abused children to appear on the register. This is a considerable concern to a large number of parents of children in the community. To give members an example of the sort of dilemma that erupts in this situation, I refer to one case which exemplifies several cases that have come to my office since I took over the portfolio of Family and Children's Services. In this situation, a young boy aged 12 years was sexually molested by a staff member at a school. That staff member was charged, found guilty and jailed for the offence. As this legislation presently stands, the offender's name would be recorded as would the child's. The parents of the child would ask why their child's name, in the circumstances that pertain to this case, appear on a register of this kind; it is a good question. The child has committed no offence. All sorts of implications flow from being listed on a register such as this. Other members of Parliament may have the same experience with other cases of people who have been found to have offended against and are considered to be future or potential offenders. That sort of reality is currently being played out in a couple of cases before the courts in Western Australia. I found it difficult
to come up with a rationalisation which would meet the fears and concerns that these parents had about their child’s name being on the register. I do not believe it should be.

If we are to have a register that deals with child abuse, it should be focused on the offenders and not on those offended against. In the two or three months that I have been the shadow spokesman in this area, no-one has come to me and supported the legislation as it currently stands. However, a range of people have expressed their concerns about the legislation. I will speak about those concerns specifically as we debate each clause.

During the period from last year until now when this legislation has not been debated, I was hoping that the minister would have had another look at the objectives that it seeks to achieve, and perhaps either build in more safeguards to alleviate the concerns of some of the people involved, or to completely refocus the legislation on the offender. The Labor Party would currently consider only approving a register of this nature if it were kept in an office other than in Family and Children’s Services or any other department that delivers services to children. Fears are held in the community, and they were fears that the Wood Royal Commission justified, that the collation of sensitive information about children into an office which delivers services to children can lead to very unfortunate consequences.

Mr PENDAL: It has been many months since we last debated this matter and it is a bit hard in the space of a minute to refocus on where the debate left off. I will make a couple of overall impressions without getting into the detail of some of the amendments and some of the proposed sections. Overall, I think the Government is probably on the right track in wanting to minimise the number of occasions on which children in one form or another can be subjected to maltreatment. It is interesting that so much focus is placed on sexual maltreatment. I am advised that that type of offence represents the smaller number of offences when we are looking at the overall scheme of things and other offences such as physical abuse, emotional abuse and neglect of children are far more prevalent. If that is the case, I would be interested to hear from the minister at some stage early in the debate about where we are at in that overall understanding of maltreatment of children, and whether the sexual maltreatment that we tend to concentrate on is at the lower end of the scale of offences. It is not at the lower end of the scale in seriousness but in the overall number of offences.

That leads me to my view that the Government is heading in the right direction in wanting to extend in every way it can the protection of children in our society. However, that does not necessarily mean that the methods employed by the Government in every case should be accepted by the Parliament. I have concerns and I will express them at the appropriate time. I am worried about the provisions of proposed section 120F dealing with the level of detail - the names, sex, dates of birth and in every case should be accepted by the Parliament. I have concerns and I will express them at the appropriate time. I am worried about the provisions of proposed section 120F dealing with the level of detail - the names, sex, dates of birth and addresses of children - which will be entered on the register. The critics of that provision have a valid argument when they say that misused - and records can be misused - the information would play into the hands of people who are capable of the worst sorts of perversions. We will deal with that in due course.

The member for Willagee made a valid observation in expressing a general fear of this notion of accumulating a heap of data about victims and offenders, both convicted and suspected, around and within Family and Children’s Services. My response to that issue is slightly different. The information should not be accreted to a centre in Family and Children’s Services. Who should hold that sort of information? My immediate and considered response is that in the past, the information has been held by the Police Service and should continue to be held by it in the future. Does that mean that police officers are incapable of abusing the trust society places in them when providing that information? No, it does not mean that at all. Members should look at the shocking case where the police all but identified the alleged Claremont serial killer. Nothing was more desired than the removal of a man's fundamental rights in the leaking to the media of the police having everything they needed against this man except the evidence. It is an abomination that a police officer, whoever it was, should do that. Notwithstanding that lapse, the police are at least trained. Police officers have a culture in which they store away and add to information. In the main, police work for the day when that information can be turned into a successful prosecution. That is the best I can do in five minutes. I know the Government is seeking to do the right thing in the main, but I have some reservations in one or two areas which I will pursue in the committee debate.

Mrs PARKER: I intended to wait for all members to make their introductory comments, but I will address comments as they are made and deal with issues as they arise. The purpose of the Bill is to coordinate the services provided to children when it has been established that harm has occurred. This register does not seek to be a central database of people against whom allegations of abuse have been established through the court process or otherwise. The Government is committed to the principle of the establishment of a central database of people who have been convicted of offences against children. However, it has also said that such a database is best set up nationally. For the information of members, I have here the federal coalition’s commitment to such a database. The Prime Minister is committed to the establishment of a national paedophile database and, through the Minister for Police in this State, this Government will be supporting national efforts in this area. Like the member for Willagee, a number of child protection groups have called for a focus on the establishment of a central database of people with convictions for child abuse. However, when that issue is raised, another issue consistently raised is that these people, by their nature, are mobile. The establishment of a state database will not be as effective as a national database. The Government is committed to a central database and it will support the Federal Government’s initiative through the Minister for Police.
The member for Willagee said he was disappointed that I had not re-examined the objectives of the register, but it is important for all members to look at those objectives. This register does not take the place of the investigative role that, by statute, the Police Service and Family and Children's Services have in the protection of children at risk. What is needed in the Government's response to those children is a process across government to better coordinate the services provided where harm has been established to ensure that children do not fall through the gaps. The lack of coordination was confirmed by the Wood royal commission report and in child protection literature. That is the essence of this register. As we proceed through this debate, it is important for members not to try to take issue with this legislation being all things to all people. The register is not attempting to fill the role of a central database of paedophiles. In principle, the Government believes that that must occur but it is far better for it to occur nationally. Last week, I announced that this State's Family and Children's Services was the first child welfare agency in Australia to establish a memorandum of understanding with the National Exchange of Police Information. That shows that this Government is committed to ensuring it has the best information with which to protect our children. However, this register and its objectives are clearly focused on the coordination of services across government to children who have been abused.

Mr CARPENTER: Several points have been raised by the minister. The objective of the Bill is to enhance the protection of children. Nobody would take issue with that. However, it is a matter of how that objective should be advanced and whether this legislation achieves that aim. The argument comes down to several categories. There are the offenders and those who have been offended against. The debate about the nature of the offence tends to divide into two categories, physical and/or emotional abuse and sexual abuse. The arguments in each category are somewhat different. A good case has been put to me by people who fear that this legislation will not enhance the protection of children when it comes to sexual abuse. They make the good point that we are opening up the possibility of the protection of children from sexual abuse being jeopardised by the establishment of this register.

I understand what the minister said about the Federal Government supporting a national database of paedophiles. Currently, no national database of paedophiles exists. Perhaps we should first deal with legislation along those lines so that some of the concerns about various aspects of this legislation can be dealt with in advance. However, what this legislation will do is to establish a database of children who have been the victims of sexual abuse by paedophiles. Although I do not know the statistics, I accept that a great deal of sexual abuse, perhaps even the majority, happens within the family and the home and is probably not of the predatory nature that we read about so often in the national Press. A substantial amount of paedophilia is not committed by members of the family but by other people on innocent children whom they do not know. The great fear that has been expressed to me is that, if a register of children who have already been the victims of sexual abuse is established, the details contained therein could find their way into the hands of people who are sexual abusers.

Without wanting to continually refer to the experience that was uncovered by the Wood royal commission, some substantiation exists for that fear, as outlined during the process of that inquiry. Why should the name of a child who has been the victim of abuse by somebody who is not a member of the family go on a register, including other personal details such as address and so on? In many cases, the offender is not prosecuted or convicted because of a variety of circumstances. Therefore, although there would be a register of children who have been abused, there would be no register of people against whom allegations of abuse have been sustained but against whom perhaps there has been no conviction. None of the amendments that I have seen adequately deals with that aspect of this legislation. I would not like to be part of a process which established a register, the details of which found their way into the hands of people who misused the information.

As we deal with this argument, I will turn to the inherent dangers for people who are given the information and the allegations that can be made against them. That is another area of concern. However, I want to focus at this stage on that problem with the register.

Mrs PARKER: Firstly, I will provide the member for South Perth with the proportions of the nature of the abuse that we are dealing with. Abuse is classified into four categories: Sexual abuse, physical abuse, emotional abuse and neglect. Thirty-five per cent of the current registrations are for sexual abuse, 30 per cent for physical abuse, 15 per cent for emotional abuse, and 20 per cent for neglect. Those proportions also reflect national data and registrations in other States.

I respond to the issue raised by the member for Willagee about the security of the register and the problem of the material falling into the wrong hands. Firstly, no new information about children is created for the register. It is important that members know that that information already exists in some other agency. The arrangements for the security of the documents which are held on the register are equal to the best that I have seen. The material is kept in a locked room. Only the manager and two assistants are able to access the information inside that facility. Everything is coded and can be accessed only by going through the encrypted code. Therefore, I am confident that the material is far more secure on the register than in the agency that provided the information in the first place. It is important to understand that there is no new information. Because of the software and the security of the register, it is impossible to create a list of the children who are on the register.

As I stated, only the manager and two assistants are able to physically access the information on the register. Under the legislation, the information held on the register is submitted by an approved person from an agency. If there is a second
registration of the same child, and the manager determines that it is in the best interests of the child, both agencies will be notified that a second agency is dealing with that child. This is the essence of this legislation. Members will vividly remember the tragic case of Daniel Valerio. He finally died at the hand of his mother's partner. He had received services from 17 agencies. However, not one agency had communicated with another that that child had been receiving services. There is an expressed need in both national and international literature, as well as an expressed recommendation of the Wood royal commission, that the services being delivered to children must be coordinated in a better way when it has been established that they have been harmed. That information cannot be coordinated if it is not on file. However, no new information is created or held on the register that does not already exist in an agency elsewhere.

The DEPUTY CHAIRMAN: Before I give the call to the member for South Perth, I have allowed a great deal of latitude in the debate on the short title. I remind him that we are dealing with the short title of this Bill.

Mr PENDAL: The minister made a number of good points, one of which is that the need exists to coordinate information about offenders. However, my problem is a real life one. I will explain what it is. We will soon deal with some of the definitions, one of which, at page 3, is a reporting agency, and one of which, under paragraph (c)(ii), is a public hospital or a private hospital. My problem with the minister's concepts is summed up in this question: What if the information is wrong? What if the information that we already have on various databanks is incorrect? I give an example. For four years I have been pursuing a matter on behalf of a woman in my electorate, a grandmother, who was accused by her estranged daughter of sexually molesting her grandson. The woman came to me distressed that that information is held on file by the Princess Margaret Hospital for Children; in other words, that we will be legitimising the proposed definition of a "reporting daughter of sexually molesting her grandson."

It seems to me that a person is unlikely to go to a member of Parliament and to open up her heart about a dreadful allegation if it is truthful. Her quest was that the information that she had molested her grandchild was wrong and was preferred against her by a daughter maliciously attempting to get back at her mother. No matter what I did in arguing the case with those involved at Princess Margaret Hospital, we could not get the woman's name removed from the records. If those at Princess Margaret Hospital believed the grandmother had sexually molested the grandson, they had an obligation to go to the police and, in turn, if there was evidence of the complaint, for the police to prosecute the grandmother. They did not do that because the evidence was insufficient. Our whole justice system relies on the presumption of innocence. That person should not have to go through what she has been doing with me, as her member of Parliament, in attempting to prove her innocence. This is a reversal of the onus of proof. It is repugnant to what we believe in. This grandmother, a woman probably in her seventies, is stuck with a dreadful allegation that she sexually molested her grandchild.

I come back to the point the minister related to the House. I agree that we must do all sorts of things to minimise the occasions on which children can be maltreated, whether it be sexually, physically, emotionally or by neglect. I thank the minister for providing the statistics because they help to put some perspective back into the debate. My fear is that this Bill is concentrating on the wrong people. A little later we will talk about the inclusion of the name, address, sex and date of the birth of the child involved. We are given an absolute assurance that that information is sacrosanct and could never be abused. I do not accept that because, human nature being what it is, somewhere, some day, some time, someone will have an axe to grind or will push the wrong button on a computer thereby downloading the identification of the victims, as in this case, rather than the perpetrators; however, I will pursue that at another time.

Mrs PARKER: I agree with the member entirely about vexatious allegations and the great degree of distress they cause to those against whom they have been made. I, too, have constituents who have experienced great distress in knowing an allegation of this sort has been made and is on record somewhere. For that very reason and also, very explicitly, because of the issues of natural justice, this legislation does not enable the name of the person against whom an allegation is made to be registered unless there is a conviction. In this real life situation in which the hospital believes the abuse has occurred and a person was the perpetrator, if the registration were to be made under this legislation, the name of the child, the nature of the abuse and the service that is being provided would be registered, but all identifying information as to whom the hospital believed was the perpetrator would be deleted, for the reasons the member explained.

I agree with the member. Those issues are very important. They go to the heart of the principle of natural justice and must be protected. At the same time, we must also ensure there is coordination of those services to the children. The member asked why the hospital did not notify the police. In years gone by there were no formal mechanisms or protocols for those reports to be made as a matter of process. That is why, by agreement, reciprocal child protection procedures have been established between a range of government agencies, including Princess Margaret Hospital, King Edward Memorial Hospital, the Disability Services Commission, the Education Department, the Alcohol and Drug Authority, the Health Department of Western Australia, the Western Australia Police Service, the Ministry of Justice, the Coroner's Court and Family and Children's Services. Those protocols were established in 1996, and I will seek leave to table them today for the information of members involved in this debate. They are very important in addressing the issues identified in the system by the member for South Perth. I trust my comments have answered some of the member's concerns. The identifying information and the names of people against whom allegations have been made will not be registered unless there is a conviction and the principle of natural justice is enshrined in this legislation.
Mr Pendar: Does the minister see my point that we are entrenching under the definition of “reporting agency” the hospital's right to keep on record that allegation against my constituent? It is wrong to keep information which has insufficient strength to justify passing it on to the police and having her prosecuted.

Mrs PARKER: Since 1996, and under the reciprocal child protection procedures, as signatory to those protocols, the hospital has an obligation to report the case to Family and Children's Services, which, in turn, has a responsibility to follow it up, to substantiate the abuse. If a criminal activity is believed to have occurred, the information is then passed to the police to undertake their responsibility in the matter. Before the reciprocal procedures were in place that might not have happened, but it has now been formalised in those protocols. I will give members the figures relating to those who perpetrate the abuse. For abuse perpetrated by a family member or family friend, the figure is 65 per cent, and "stranger danger" represents 15 per cent.

Mr Carpenter: Is that sexual abuse?

Mrs PARKER: Yes. For abuse by a duty-of-care type person in contact with the child, the figure is 15 per cent; and by a paedophile, 5 per cent.

The DEPUTY CHAIRMAN: The minister can seek leave to table the document for the information of members; however, that must be done when we go back into the business of the House because documents cannot be tabled while we are in Committee. I also remind members we are still dealing with the short title of the Bill. I noted the member for South Perth referred to matters on page 3, which contains a subsequent clause.

Mr CARPENTER: As I said at the beginning of the debate, the Opposition opposes the legislation. In just the few moments the short title has been discussed, some of the reasons for that opposition have begun to surface. I appreciate that there are perhaps unresolvable questions that we will be addressing. Whatever action we take or program we implement, there will be criticism from some quarters. However, I return to the short title and the objects of the Bill, which the minister said are to protect children from abuse.

Mrs Parker: To coordinate services to children who have been abused.

Mr CARPENTER: Does it seek to protect children from abuse?

Mrs Parker: It seeks to provide a better mechanism for the coordination of services to children against whom it has been established harm has been done. Do you have a problem with the objective?

Mr CARPENTER: No, of course not. Our concerns are that some of the aspects of the Bill will not enhance that objective; in fact, they may well open up the possibilities for potential further abuse or new abuse of children. Before we proceed, I ask the minister if, when developing the legislation, the Government considered whether such a register would be better placed in a department or office independent of Family and Children's Services? I ask that because I flagged it in the first five minutes of debate when considering the objects of the Bill and the concerns that have been raised. The Labor Party is of the belief that if such a register were to be legitimised, some of the concerns that have arisen will be alleviated if the register itself were not held within the department that delivers services to children.

In the upper House of this Parliament a motion was moved for the establishment of an office for children. We support the establishment of such an office if it is independent of Family and Children's Services and any government department so that it is not staffed by people who are delivering services but rather by people who would act as an overseeing body. It would report and be responsible directly to the Parliament and not to the minister in the same way the Ombudsman and others report. I ask the minister: Was that concept considered seriously in relation to the establishment of the register? Was any concern raised with the minister or the department by groups within the community about the establishment of the register and its housing in Family and Children's Services? In particular, did Aboriginal groups specifically indicate their preference for such a proposed register to be independent of Family and Children's Services? If so, why were their concerns dismissed? Was a body independent of Family and Children's Services dismissed on purely economic grounds because it would cost money to establish an office for children, albeit a relatively small amount in the context of overall government expenditure? Did the Government make a decision, based primarily upon costs, that the creation of an office for children would not be supported? Will the minister answer those questions before we proceed to debate the other clauses of the Bill?

Mr NICHOLLS: I was not planning to speak on clause 1; however, I make two pertinent comments. First, I believe that, as members of a Parliament, we should be striving to implement legislation that provides the best possible outcomes for our community. In considering a register for child protection, I do not support the minister's comment that it can be a register of services only. The register should be a child protection register. I do not have a problem with services being part of the focus; however, I believe that the amendment to the Act is deficient in that it does not make provision for the names of alleged offenders. I do not have a strong feeling about where the register is located, even though I am aware of strong feeling in the community about such a database being located within Family and Children's Services.

The DEPUTY CHAIRMAN: The member for Mandurah is straying into discussion on future clauses. I ask him to restrict
his comments to clause 1.

Mr Nicholls: I am responding to comments made in the debate thus far. The point I make is that the short title involves amendments to the Child Welfare Act. The debate is about legislation to support a child protection services register. It is clear that I do not believe that the focus being simply on services is adequate. The minister made specific comments about the notion of reciprocal protocols. Although they are good, in my view they do not provide accountability.

I stress that there are concerns in the community about where such a database will be located. That is not the fundamental debate but the minister should be able to answer the questions from the member for Willagee. In doing so, she may be able to provide an insight into the reasons for the location of the register before we start the debate on the other clauses.

Ms Anwyl: I will make a brief contribution to the debate, given that we are dealing with such an early part of the Bill. Although we are dealing with the Child Welfare Amendment Bill, we are waiting for a more complete amendment of the child welfare legislation which has been promised from the time the minister has held her position.

Mrs Parker: It is a major rewrite.

Ms Anwyl: Absolutely.

Mrs Parker: We are hoping it will be ready by the spring session.

Ms Anwyl: It is important for members to be aware that we are awaiting - and have been for some time now - an important rewrite, as the minister says, of a number of different pieces of legislation. This Bill is just one part of the legislation which deals with child welfare in this State. We know already that in the last budgetary year, approximately $208 000 was spent on the register and that there were 1 847 registrations of abused children for the period 1 July 1996 to May 1998. I believe there were only 37 adults' names recorded because the police Service has difficulty in releasing details of convictions prior to this legislation being enacted. The Opposition has always made it clear that it endorses totally the concept of part of the register recording the names of convicted child abusers in this State. There is absolutely no issue between the parties on that point.

I listened with interest when the minister talked about natural justice because one of the Opposition's main concerns is that the Government is very careful in protecting the rights of adults when there have been substantiated allegations, but it will not record on the register the names of those adults, or indeed children who have abused other children; however, it will record the names of children who have been abused. I, as an adult and a resident of Western Australia, often wonder who exactly in this State advocates for children. We do not have a clear advocate for children in this State. Without straying into that area, I return to the question I ask of all members here: Who will advocate for children? How can we have been so careful about natural justice for adults but not for children? How can we have so many children's names but virtually no adults' names already recorded on the register? How is it that the recording of adults' names will not be retrospective? How can we set up a register of adults' names but not trawl through existing police records to make sure that we have a full record?

The other issue is resourcing. If the register is a tool for coordination, that is all very well, but we know that there are difficulties in coordination. Nobody would dispute that. Last year a report was leaked to Parliament from the Child Abuse Unit of the Police Service in which police officers talked about the need for more resources and the fact they could not even get a computer to run an undercover Internet pornography operation, notwithstanding that it is internationally accepted that Australia is one of the top three problem countries for Internet child pornography. There was a notable case recently which is under appeal in relation to sentence. How can we be so sure that Family and Children's Services is the right place to house the register? How can we be sure that the issue is not about increasing the department's existing parameters? Many people in Parliament and in the community would argue that the department is not fulfilling its role of child protection. Within the concept of natural justice, how can we have one rule for children and no rule for adults? How does the legislation fit into the planned overhaul of the Child Welfare Act?

Mrs Parker: I shall respond to the member's question in regard to natural justice for children. Again we must refer to the purpose of the Bill: How can we coordinate services to children who have been harmed if we do not have their names?

Ms Anwyl: You have their names.

Mrs Parker: We must have their names. We must find a way to coordinate across agencies so that children do not fall through the gaps in care. Unless we have the names we cannot do that. The member asks why we have so many children on the register and not so many adults. We have so few adults on the register because allegations must have gone through the court process and convictions must have been upheld in relation to the relevant children who are registered for an adult to be registered. The priority objective is to coordinate services to children who have been harmed. If we do not have their names we cannot coordinate, and we would then fly in the face of the Wood royal commission's recommendation that we must coordinate better. We would then fly in the face of all the literature on child protection which consistently says that we fall down repeatedly by being unable to coordinate services to children who have been harmed. It is now accepted child
Mr Pendal: It has been four months since there was a substantive debate.

Mr Carpenter: Many of the points that we are addressing do not easily fit into any specific clause. The Child Welfare Amendment Act 1998. We should not be having a general debate on the matter.

The Deputy Chairman (Mrs Holmes): I remind members that we are discussing clause 1, which is to agree to the short title; namely, the Child Welfare Amendment Act 1998. We have a great democracy here under which we make up our minds.

Mr Carpenter: I appreciate that the minister was directing her comments at the questions raised by the member for Kalgoorlie, but I asked a series of questions and she indicated that she could answer them. Will she answer them, please?

Mrs Parker: The member for Willagee said that he would raise his questions during committee debate, so I assumed that he would raise them again. If he wants me to answer them while we are discussing the short title, I ask him to repeat them, but he indicated that he would raise them during debate when it would be normal to do so. We are still debating the short title. Should you direct me to do so, Madam Deputy Chairman, I shall answer them.

The Deputy Chairman (Ms McHale): We have had a wide-ranging debate so I will give the call to the member for Willagee to ask his questions and then I will call the minister to respond.

Mr Carpenter: I might have misled the minister and said that she could address the questions as the debate proceeded, but I do not think that I did so. I commented on other matters, including the role of the manager and so on. I see no clause that addresses the points that I raised. I refer to the process by which the Government rejected the suggestion that it was put to the Government, and I assume on good advice that it was—such an office was suggested in the upper House. The Labor Party believes that some concerns would be alleviated if the information were held in an office which was independent of any department, such as an Australian body such as an office of children, and which would report directly to Parliament. I specifically asked whether concerns along those lines had been put to the minister or the department by Aboriginal groups and whether their concerns were discounted. I asked also whether that was done on the basis of advice that to establish such an office would incure a financial cost to the State and whether it was rejected along those lines.

Mrs Parker: In regard to resources, absolutely not. That was not part of the consideration. As to whether Aboriginal people raised concerns regarding the independence of the register, the matter was raised by the Aboriginal health section of the Health Department. It raised some concern about that matter. To my knowledge and in my time as the minister, that is the only time the matter has been raised. Issues were discussed that were raised by Health relating to concerns of the Aboriginal health section. Some wording in the register was changed to make it more acceptable. We had originally called the manager a custodian. The word "custodian" was offensive to Aboriginal people and I was quite happy to find another name.

As to whether the register should be independent of Family and Children's Services, the manager of the register will be appointed and will report directly to the minister. As such, I am accountable to Parliament. Although the register is physically located within Family and Children's Services, staff at Family and Children's Services will have no more or no less access to information than approved persons in other agencies will have. The accountability of an independent person is a philosophical issue on which we will make up our minds. We have a great democracy here under the Westminster system. As the minister I am responsible to the Parliament. If at any time there is debate, the member for Willagee's role will be to scrutinise some of those issues. Some people have made easy passing shots at Family and Children's Services and its performance and trustworthiness. The member for Willagee should agree that irrespective of whether it is under this or the previous Government, Family and Children's Services in Western Australia performs well and professionally in a very difficult role.

The issue of independence was raised by people from Aboriginal health in discussions with the Health Department and changes were made to their satisfaction. I will appoint the manager, who will be accountable to me as the minister. As I said, persons within the Family and Children's Services will have no more or no less access than the approved persons in government agencies who are covered by this legislation.

The Deputy Chairman (Mrs Holmes): I remind members that we are discussing clause 1, which is to agree to the short title; namely, the Child Welfare Amendment Act 1998. We should not be having a general debate on the matter.

Mr Carpenter: Many of the points that we are addressing do not easily fit into argument under any specific clause.

Mr Pendal: It has been four months since there was a substantive debate.
Mr CARPENTER: The history of the thinking behind the register and the Government’s position on it should be clarified. The minister’s position on ministers’ responsibility to report to Parliament is good in theory. However, from watching both sides of politics in government it is only a theory. It is more often honoured in the breach. The history of politics in Western Australia in recent years demonstrates that ministers have been very reluctant to report to Parliament about problems that might arise in their portfolio areas. Some very famous historical examples come to mind of where that failure caused considerable political difficulties not only in politics but also in wider society.

It is not good enough for the general community to be reassured by a minister who says that the manager of the register will report to her and that she is answerable to the Parliament. That is the very reason people want this register to be kept separate from the responsibilities of a minister and left under the authority of an independent body that will report directly to Parliament. In my experience, ministers tend to minimise the importance of difficulties that occur within their departments. In this case we are dealing with the welfare of children. Whatever steps can be taken should be taken to maximise the protection of children and delivery of services and to ensure that associated issues are dealt with in the best possible way. Therefore I and others believe the establishment of this register, if it is to be approved - there are some very grave problems with it - should be considered only by an independent body that reports directly to the Parliament. I feel very sorry for the manager of this register under this legislation. I know what will happen. I will bet money that as sure as night follows day the manager and anyone else who has direct access to the information will become the subject of allegation and innuendo. That person will be drawn from a body of people who have worked in the area of service delivery to children, the very organisations to which people believe paedophiles are attracted. Some people believe that in almost every organisation that delivers services to children paedophiles or people who are inclined to abuse children will be found.

I guarantee that the sensitivity of this information will lead people to make serious allegations, irrespective of whether they are founded, about the people who control the register. I feel very sorry for them. It could be avoidable if it were done by an office independent of government departments.

The DEPUTY CHAIRMAN: Standing Order No 133 states that no member shall digress from the subject matter of any question under discussion. Clause 4 of this Bill will give latitude to members to have a broad debate on issues relating to this Bill. However, at present debate on clause 1 should be confined to the short title. Members have had latitude until now. Once that has been agreed it would be advantageous to move on.

Mrs PARKER: Although I accept your ruling, Madam Chairman, I must respond to the member for Willagee as he has requested. In referring to the independence of the register and its operation and how that can be best achieved, its accountability and the level of angst and concern in the community that people have about something so sensitive, I remind members that within Family and Children’s Services people have access to the Case Review Board or the consumer advocate, who will advocate on behalf of consumers who have a grievance. Outside the department cases can be taken before the Ombudsman. Members should believe, as I do, in the parliamentary process and the process of scrutiny through question time, grievances and a range of other avenues.

With regard to the amount of angst and concern in the community, this register has been in operation for some time as a pilot project, and while it has not been in full operation because some agencies have not had the necessary legislative protection to provide the register with information - for example, the Police Service - a significant amount of information has been recorded on the register. It is important to note that 2 600 names are on the register, and to date only three complaints have been made. A number of informal comments have been made by the parents of children whose names are on the register that they are grateful that we now have a mechanism that will seek to coordinate services for their children to ensure a whole-of-government response to their difficulty. The fact that only three complaints have been made indicates to me that the level of angst is more a reflection of fear of the unknown and of some of the mischievous discussions that have taken place, particularly last year during the second reading debate on this Bill.

Mr CARPENTER: What is the nature and seriousness of those three complaints?

Mrs PARKER: One complaint was from a person who had demonstrated symptoms of mental illness with regard to a concern about the information being sold to intelligence agencies. One complaint was from a person who had a record with the department for having a continually vexatious attitude; and we must consider that the department has more than 30 000 client contacts per year and that the nature of its business provides opportunity for vexatious complaints. One complaint was from a person who was extremely angry and abusive about the fact that the registration was occurring.

Mr Carpenter: Why?

Mrs PARKER: That could not be determined, because the person did not leave a name and was just abusive; that was the beginning and the end of it.

Clause put and passed.

Clause 2: Commencement -
Mr CARPENTER: Given that the register is now almost three years old, how was it set up in the first place without legislation, and why is legislation required now?

Mrs PARKER: It was not necessary to enact legislation to establish the register as a pilot project, and it has been operating in a limited form since that time, because some of the agencies have not had the protection of this legislation to allow them to provide information to the register. A significant proportion of the registrations have come from Family and Children's Services.

Mr Carpenter: Legislation was not necessary to establish the trial register, but legislation is now required because we are seeking to extend the register to other reporting agencies?

Mrs PARKER: Yes. This legislation is required in order that the eight government agencies that are listed in the legislation can be involved completely, because without this legislative protection, agencies such as the Disability Services Commission and the Police Service will not give information to the register.

Ms ANWYL: We know the names of the children against whom substantiated allegations have been made. When is the recording of the names of convicted child abusers anticipated to commence?

Mrs PARKER: The commencement date will be when the legislation has passed through this Chamber and the other place, because the police will then have the legislative protection to provide information about people who have been convicted of crimes against children.

Ms Anwyll: That cannot be reported now?

Mrs PARKER: No, and that is a limitation of the current register, which does not have the protection of this legislation.

Clause put and passed.

Clause 3 put and passed.

Clause 4: Part V111A inserted -

Mr NICHOLLS: I move -

Page 2, line 18 - To delete "Services".

The minister has referred to the fact that the name of this register will be the child protection services register and, therefore, will focus primarily on services to children who are the subject of a substantiated allegation. I clearly indicate that it should be a register of children who are victims of substantiated maltreatment, and also include the names of the alleged offenders where the maltreatment has been substantiated. That is separate from the inclusion of the names of people convicted of maltreatment. I shall deal with that issue in clause 4.

Suffice it to say, unless this amendment is supported, the minister will no doubt take the opportunity to reaffirm that it simply will be a register of services; that is, not one designed to provide a safety net or to provide better protection for children who may continue to be at risk of maltreatment, having been identified as victims in a previously substantiated maltreatment allegation. I ask members of the Committee to seriously consider whether as a Parliament we should try to provide better protection for children through this register creation and not simply, at best, to make a half-hearted attempt. The easy option is to identify the children who are substantiated victims and who have already been alleged victims. These children often do not have the ability to provide for their own protection.

On the other hand, if members support the exclusion of "services" in the title, I can only assume that they are not totally committed to the notion of providing the best possible register and function. Members would then not provide, wherever possible, assurance and further protection through the inclusion of the name of an alleged perpetrator.

Mrs PARKER: I do not support the amendment. In response to the member for Mandurah, this legislation and the register provide a safety net and better protection for children through far improved coordination of services to those in cases of established harm. Importantly, as we said from the beginning of this debate in response to issues raised by the member for Willagee, the Government is committed to supporting a central database of paedophiles; that is, convicted offenders. That would be best achieved by way of a national database. We will continue to pursue that matter through the Minister for Police. Essentially, this proposal is for a register. Again, at the recommendations of the Wood royal commission and child protection literature, we need a better coordination of services. It is important that this register have the full title of the "Child Protection Services Register".

Mr NICHOLLS: I note with interest the minister's reasons for objecting to the change; namely, that it is planned to set up a national database of paedophiles. The minister and I both know that maltreatment of children does not simply involve paedophiles preying on children. We refer to people in the home who may be in a de facto relationship, or family members in some cases, who are not necessarily preying on children because they have a sexual perversion, but nevertheless may pose
a risk because they harm children through a lack of parenting skills, through neglect or by not caring for or respecting the children under their supervision.

I note the minister's comment that this proposal is for a register of services which will somehow provide better protection for children. How will we provide better protection for children when we specifically and purposely refuse to collate information about alleged offenders? If it is okay to record the name of the alleged victim, why, pray, is it unacceptable to to record the name of the alleged offender in the same process, given that the register will be totally confidential, we are trying to protect children and we are supposedly dinkum about agency coordination?

The big issue is as follows: I refer to cases in which previous alleged offenders are not known. If one has a case of alleged maltreatment of a child involving an alleged offender who has previously been the subject of allegations involving another child, why does one continue to put the children's names on a register, but not that of the person alleged to be offending, repeatedly in some cases? Do we find it unacceptable for some reason to place those names on a register to further protect children? Why not ensure that agencies can be notified when they report that the alleged perpetrator has been previously identified in a number of different cases?

The minister and I both know that if we are to provide an effective response to protect children at risk of being maltreated, the notion of a national database of alleged offenders is absolute nonsense. I fully support the idea of a national database of people convicted of crimes against children. The minister and I also know that a substantial number of adults and juveniles in our community who allegedly commit offences, maltreat children who are not old enough to attend court and provide evidence so a court can convict. Nevertheless, these children are still being harmed in the same way by the actions of those people. The minister says that we should have a register which only coordinates the services delivered to the children being harmed, but does nothing to collate information about people doing the harm. Minister, we are talking about taking the easy option because we do not want to confront the civil liberties issues, and the problems which may arise when a person is identified as an alleged offender. We need to bite the bullet, minister - and bite it now.

Mr PENDAL: We are dealing with the amendment by the member for Mandurah to delete "services" from the title to part VIIIA. I had some sympathy for his earlier explanations for that deletion. It seems that we are creating a register primarily to assist children who are being maltreated in one form or another. It seems that the purposes of the register did not necessary require that the word "services" be used in the title of the clause. I had some sympathy for that point.

However, with the best will in the world, I could not possibly accept the argument of the member for Mandurah that a case can be mounted for a register to contain the names of alleged offenders; that is, people against whom insufficient information was gathered to mount a prosecution. The member cannot use as a throw-away line that it is merely a civil liberties argument. Nothing is "merely" a civil liberties argument. We are arguing about something utterly fundamental to our system of law - namely, the presumption of innocence. Frustrating as it must be, it is not good enough for police officers and child protection agency officers, who have their deep suspicions about the guilt of a particular alleged perpetrator, to cross the line and do at the departmental level what the courts of law are unable to do; that is, convict of their own volition. The whole principle of presumption of innocence depends upon and revolves around that one issue. It cannot be crossed; it is the Rubicon. It gets into a legal ballpark that dispenses with my rights, the minister's rights and the rights of every Western Australian to be protected against unsubstantiated allegations. There is nothing new in that; but it is so old and so well entrenched - justifiably so - that it would be a tragedy if this Committee endorsed a principle that is wrong at law, ethically and morally. That is why I said earlier that I found offensive, and I was amazed that Western Australians in a better position than I were not repelled by what the police did in all but naming the alleged Claremont serial killer. I am sure that in one television program I heard a detective say that the police had everything they needed to get this bloke, except the evidence. I am sorry, but I happen to be old fashioned enough to believe that that is the one thing needed. That is what separates us from countries in other parts of the world that have dispensed with the rule of law and have no regard or respect for - not some highfalutin term, which the member refers to rather disparagingly in terms of civil liberties - my rights and everyone's rights.

In relation to clause 1, I referred to a most unfortunate situation in which a constituent of mine was accused of sexually abusing her grandchild, and that allegation is still on the record at Princess Margaret Hospital. She objects to that and so do I. The member for Mandurah effectively wants to upgrade that allegation - that belief people have in the absence of evidence - in order to put that person's name on the very register whose detail I already fear. We will get to that matter later when we talk about the name, birth date, address and other details. That scares the living daylights out of me. I sometimes think it should be done by code but, above all else, the Committee cannot do what the member for Mandurah has suggested.

Mr NICHOLLS: I respect the views expressed by the member for South Perth. However, I wonder whether he would be so forceful in his objection if he were also to extend that notion to asking why the names of children who have not been identified through a court of law as a victim of crime should be placed on the register. It is done because usually this involves very young or young children. It also often involves people who betray the confidence of those children and harm them, even though in our court system there is not enough evidence to bring those people to trial and convict them. I concur with the notion that people should be innocent until proved guilty. However, like the current minister and the previous
minister. I have been exposed to a large number of departmental files detailing the harm that is done to children. One of my concerns is that some adults in society understand the limitations of the justice system and use quite deliberate and deceptive means to prey on children. Unless we are willing to put the welfare of those children at the highest level in our community, we might as well not worry about the register. If we say that we should not in any way identify people who have allegedly harmed a child - even if that allegation has been investigated and substantiated by the investigating group - simply because there is not enough proof to convict the person in a court of law, I have serious reservations about whether this Parliament is serious about protecting children.

Mr Pendal: We agree on the objectives but not on the method. Your method is unacceptably dangerous.

Mr NICHOLLS: I am not advocating that any information go on this register that is not already contained on a file within a government agency.

Mr Pendal: That is my problem. That is why my elderly lady from South Perth is in that position - unjustly accused and a government agency in a hospital keeps on file information that she allegedly interfered with her grandchild. You want to go one step further by identifying her.

Mr NICHOLLS: The flip side is a case involving a man who moved from the metropolitan area, went to a country town, got involved in a youth group and allegedly was maltreating young boys. When the investigations were being carried out, there was no link with the activities of the man in other locations in Western Australia. The investigating authorities had the capacity to proceed only on the basis of the information in that country town. If a substantiated allegation had been on the register, together with the man's name as an alleged offender, when the allegations arose in the country town, there would have been an immediate link between the allegations in that country town and those in the other locations. That would give greater protection to young people in that area.

Mrs PARKER: Members must remember that placing a child's name on the register is not a punitive measure; it is a measure by which we can better serve that child. Members must remember that. The principles of natural justice and the very foundation that these principles provide to our system of justice in Western Australia are fundamental. Although I share with the member for Mandurah the frustration of not being able to bring perpetrators to court and convict them, often because of the age of the children and their ability to testify before a court, we cannot violate the principles upon which the law operates.

Secondly, it must be remembered that the register does not replace the functions of the police or Family and Children's Services and their role in investigating allegations of child abuse. The matter raised by the member for Mandurah is a policing matter. This register in no way replaces the investigative functions of the police and Family and Children's Services when they receive complaints. The child protection protocols ensure an across-government approach, so that allegations are passed to the appropriate government body for investigation. The member for Mandurah would be aware that Family and Children's Services does not require a court decision to determine that harm has occurred to a child before it will act in a protective capacity. Although that consideration is made after a detailed assessment and on the very best of evidence that can be gathered by the professionals involved, the decision is made without the scrutiny of a court. The department has a statutory responsibility to provide care and protection for children. However, transferring to the register information from case files of agencies which have not been tested in the court flies in the face of the principle of natural justice.

Mr NICHOLLS: I commend the minister for standing by the line that she has held throughout the debate. I am interested in the minister's notion of natural justice. The police regularly release the names of people charged with an offence before they have been convicted in a court of law.

Mr Pendal: The difference is that they have been charged, which is necessary before there can be an open court hearing. The member for Mandurah proposes to name them even though they have not been charged.

Mr NICHOLLS: I raised this issue because the member believes it is okay for the police to make public the name of those who have allegedly maltreated children before they have their day in court. However, if they are found not guilty, they still carry the stigma, because it has been published in the newspapers and on television. We say that is natural justice and is part of the information system in an open and democratic society. This is a confidential register that no-one can access, yet it is okay to record it on the agency file or the Princess Margaret Hospital for Children file.

Mr Pendal: I am not saying that. I am objecting to that.

Mr NICHOLLS: Is the member for South Perth advocating that we do not record their names?

Mr Pendal: I do not know what the answer is for my constituent - a woman. I know that the current situation is unsatisfactory.

Mr NICHOLLS: If a person's name was brought up regularly, would that flag a need for a thorough investigation?

Mr Pendal: The police do that.
Mr NICHOLLS: The police do not investigate every allegation of maltreatment. They investigate only those allegations which, firstly, are deemed to be serious enough to warrant investigation, secondly, where there is likely to be evidence that could bring somebody to trial, and, thirdly, when the case warrants investigation. In Western Australia the police do not investigate the majority of allegations of maltreatment. The member for South Perth says we should not worry about those cases; we should worry only about the ones that police investigate. I commend the proposal relating to the coordination of agencies. However, we are not providing the safety net and coordinating our information where an alleged offender is identified across agencies within government. The minister is suggesting that natural justice should prohibit us from doing that, even though that term does not apply to the police who can name a person who has been charged, but has not been convicted. We accept that, but the minister does not accept the situation in which that person who is alleged to have committed the maltreatment can be recorded on a confidential register when he or she has been identified on a government file. Natural justice is not at issue here. It is just too hard, because the agencies do not want to provide the information for fear of their investigation techniques being held accountable.

Mrs PARKER: That is not the case. We have spent a great deal of time discussing these matters during and after the second reading debate and we have agreed to disagree. I appreciate the member's frustrations. Bringing to justice those who abuse our children is a vexed area. Members in this Chamber find child abuse abhorrent. The member for Mandurah said that nobody would have access to that confidential list. There will be an approved person who will have access to this information to coordinate the agencies' response to the child in need. The information will be transferred to other agencies, and that is where the issue of natural justice becomes a problem.

The member for South Perth referred to a constituent who is distressed about her name being on a file at Princess Margaret Hospital for Children. That lady's name would not appear on this register unless a conviction were upheld.

Mr Penda: I acknowledge that, but she objects to Princess Margaret hospital refusing point blank to remove her name. The hospital has taken legal advice to that effect, but the woman feels aggrieved, and I can understand her sense of anger.

Mrs PARKER: It comes down to the difficulty a professional has when dealing with a case to make judgments on how best to protect a child and whether to record that information in the interests of protecting the child, as against charges being laid. The professional needs to gather information in the course of that case management. However, when we take that information, which has not been subject to the scrutiny of the court, and transfer it to another agency, we upgrade the status of that information. That is where the problem lies. This register does not in any way weaken the role of either Family and Children's Services or the police who have a statutory responsibility to investigate. Reciprocal procedures exist to ensure that allegations are reported to the agency that has the responsibility to investigate and follow up. Where there is criminal behaviour those allegations are referred to the police. Child protection literature recommends this as a mechanism to coordinate responses in cases of substantiated harm. The aim of the register is to provide a better level of care and protection for children.

Sitting suspended from 6.00 to 7.00 pm

Mr NICHOLLS: I have outlined the reasons that I believe the amendment to remove the word "services" from the title of the register should be passed. As a Parliament, we should endeavour to provide the maximum protection to children who may be at risk of being maltreated and take every opportunity to ensure that our legislation is as positive and workable as possible. I understand the minister's view that this register largely revolves around the provision of services to children who have been the subject of a substantiated allegation of maltreatment. However, while there might be cases that community members can recall in which someone felt aggrieved because an agency recorded them as being associated with allegations of maltreatment, we have a duty to every child in our community to take every step possible to protect him or her from potential maltreatment or harm. Part of that process is to have a system that provides a child protection register in all senses of the term, and such a register would include the name of alleged offenders when the allegation has been substantiated. The minister indicated that no new information would be created to be added to the register; in fact, it would contain only information in the files of a government agency providing services or investigating allegations of maltreatment of a child or children.

The minister stated that we would be abusing the principle of natural justice in that we would somehow be infringing a person's rights by identifying them. However, the police openly provide the media with the names of individuals who have been charged with criminal acts involving children. Even if they subsequently go to trial, they have still been publicly named. We are talking about a supposedly confidential register that will be accessed only by approved personnel, who will also have access to case conference files if they are participants in such a conference.

I do not accept the minister's argument that she cannot, or that we should not, support the removal of the word "services" and subsequently the flow-on effect of having a register that is truly a child protection register as opposed to a collation of services to those children who have been selectively placed on the register, unfortunately in the absence of the names of the alleged offenders.

Mr CARPENTER: This amendment and the debate on it highlight the weakness in the way in which the Government and
the minister have approached this issue. First, the member for Mandurah's amendment is not on the list of amendments. Under other circumstances I would probably support it. However, in the context of what the Bill will achieve, it does not matter. The Bill is fundamentally flawed. The Labor Party will oppose it and I have given some of the reasons for that opposition.

It is hard to believe that the legislation introduced and debated in the Parliament in September should reappear in March along with the minister's amendments.

Mrs Parker: They were circulated.

Mr CARPENTER: When?

Mrs Parker: During the second reading debate.

Mr CARPENTER: These amendments appeared today.

Mrs Parker: They were circulated.

Mr CARPENTER: They are not on the Notice Paper. The minister presented the new amendments today, when we began dealing with the Bill in Committee. They are not on the Notice Paper.

Mrs Parker: You have had those amendments for months.

Mr CARPENTER: I received the amendments today.

Mrs Parker: They were circulated in this Chamber during the second reading debate in response to issues raised.

Mr CARPENTER: The minister has not handled this legislation well. The former minister has come forward with a whole raft of other amendments. This is a Parliament in which individual members are allowed to put forward their own amendments. However, when we collate the two sets of amendments we find that they are substantial and that they emanate from the government side of the House - one lot from the minister and one lot from the former minister. It is most regrettable that we should deal with the legislation in this way. We are dealing with legislation which is fundamentally flawed in any case, and we are presented with amendments which would substantially change the way in which the legislation would be enacted. When we deal with legislation that is so sensitive to a certain group of people, it would be preferable not to proceed in the way in which we apparently are proceeding. The debate on the amendment has projected to other amendments that the member for Mandurah has circulated today and it will probably be repeated when those amendments are dealt with point by point.

On my reading of the legislation and of the minister's amendments, the legislation is all about a register of abused children which will also include the names of people who have been convicted of abusing children. That is the thrust of the legislation. We are dealing not with the delivery of service and the purpose of the register but with the register itself. The mere existence of the register - not the delivery of services - is causing great anxiety. The amendments that have been presented today will do nothing to alleviate those concerns.

Mrs PARKER: The Opposition has had notice of the amendment since the second reading debate last year. It has had months to come forward with matters for discussion or amendment. When the member for Willagee was appointed the Opposition's spokesperson on Family and Children's Services I had my staff telephone his office and offer briefings by me, members of my staff or Family and Children's Services staff. The member's comments are completely without substance. I am sorry that so much is being repeated, but I am happy to respond to new information. The member for Willagee said that people are distressed at the very existence of the register. The people who would give the clearest measure of distress in the community are the parents or carers of the people on the register - some 2 600 of them. In respect of those 2 600 people on the register, the manager can determine that notification be deferred when that is in the best interests of the child. I am advised that about 1 per cent of notifications are deferred, but out of the 2 600 people who have been notified that their child's name is on the register there have been three complaints.

Mr CARPENTER: I do not want to divulge what is passed on at confidential briefings, but the minister is right: She offered a briefing, I accepted the offer and I was briefed. I asked about the amendments and I was told there were some minor amendments which related to punctuation. The minister can confirm that that is correct.

I take the minister's point that of the 2 600 people on the register there have been three complaints, but I do not necessarily accept that as the end of the argument. The minister will agree that it is undeniable that among people who are affected by the existence of the register there is great concern about the information that will be kept on it, the security of the register and the purposes to which it may or may not be put. I accept that the minister has had three complaints, but my office has been contacted by far more than that number of people who are involved in the issue and who are deeply concerned about potential misuse of the register. Their concerns are legitimate. It may be that 2 600 families are also concerned about the existence of the register but have not sought to complain because, after all, what good would it do? The minister has
categorised the three complaints as being one from a person with a mental illness and two others which were not worth consideration anyway. Every member of Parliament knows that a range of people who are concerned about and affected by the activities of Government do not complain to the Government because they think that there is no use in doing so. If the proposed register were to be kept in an office of children which was independent of the minister’s office, she might be the receival point of a large number of complaints. I assure the minister - I probably need not do so, because I think she accepts it as a fact - that there is great concern about the register. I do not believe the amendments that have come forward today do anything to alleviate those concerns. It is possible to do that, but we will not do it by our actions tonight.

Ms ANWYL:  For the record, I have searched through my file and I have had notice of some amendments. Some amendments have been on the Notice Paper - that has led to confusion - since we resumed this year and there appears to have been an earlier range of amendments particularly relating to the reporting agency requirements. That might help to clarify the position. Certainly, the member for Willagee did not have those amendments prior to today. Indeed, I received notice only late on Friday that the matter was to proceed this week.

Given that there are 2 600 children’s names on the register - there are only 37 adults’ names or convicted abusers’ names on the register - what evaluation has the department done since 1 July 1996 when children’s names started to be collected? I for one would be convinced if I could hear from the department or the minister exactly how the collection of those 2 600 names has assisted the department and other agencies in service delivery and the coordination of service delivery that the minister claims the legislation will allow.

Mrs PARKER:  The register has not been formally evaluated because it has operated in a limited framework as there is no legislative power, as I have said, for the police and the Disability Services Commission to be involved. However, the advice of the acting manager of the register is that there have been clear indications through anecdote and circumstance that improved coordination has provided a better response to a child and that, when another agency has dealt with a child, it has been able to re-evaluate the quality of the assessment of that child. I know of one instance, about which I have had discussions, in which the level of the protective requirement of the child has been upgraded. By experience, we certainly know this is achieving the goal of better protection through better coordination. A formal assessment has not been carried out in anticipation of being able to get a broader response from other agencies because of the legislation being in place.

Amendment put and negatived.

Mrs PARKER:  I move -

Page 3, line 10 - To delete "and" and insert "or".

Point of Order

Ms ANWYL:  I have a query on a matter prior to that part of the clause. I seek your guidance, Madam Deputy Chairman. It is a long clause, so we will have this difficulty.

The DEPUTY CHAIRMAN (Mrs Hodson-Thomas):  The debate should be confined to the amendment. If the minister wants to discuss that now, she may do so.

Debate Resumed

Mrs PARKER:  This amendment is to the definition of “maltreatment”. Instead of having (a), (b) and (c) the clause will read "or (c)". The amendment is merely to make the definition clearer.

Amendment put and passed.

Ms ANWYL:  This will be awkward because clause 4 is extremely long and pretty much the balance of this Bill. I had a query relating to the definition of "approved person" which falls at the beginning of proposed new section 120A, which is the interpretation clause. Within the context of who is to be an approved person, I am pleased that the definition of "reporting agency", which occurs later, will be greatly clarified by an amendment which the minister has yet to move. However, the concept of an approved person in that agency is still critical. The clause is incredibly vague. It states that an approved person "means a person who holds an office or position in the reporting agency that is prescribed, or belongs to a class that is prescribed, for the purposes of this definition". It is not acceptable that we must wait until further down the track for a regulation to set out who is prescribed. We are talking about the entire department with Family and Children's Services, the Police Service and a range of other government and non-government agencies, some of which are subject to the mandatory police clearance system. I know the minister will say that part of her mandate is to have that system strengthened through non-government agencies. A lot of work is going on in the Education Department as well as other agencies. Given that there is some concern about the access of people to the register, confidentiality and so forth, it would be desirable that there should be some clarification of an approved person. I would like to see a much clearer definition within this legislation rather than rely on some form of regulation. Given that we will not have that, I ask the minister to spend some time explaining exactly to whom it is expected that approved person status will be given.
Mrs PARKER: On the advice of parliamentary counsel this definition was left as it was and not made more specific. This was for the very reason that the class and title of such persons change. It is not usual when drafting legislation to be so specific as to give the names of the approved persons. This legislation was based on that advice and what is usual when drafting legislation. The regulations will be developed and will of course have the scrutiny of this Parliament. The member can look at who those persons will be because the regulations will prescribe the persons or class of persons to be approved. The decision on which class and which positions will make up the approved persons will be made in consultation with the departments and agencies involved. Until such time as those regulations are in place and this Parliament has had the opportunity to prescribe them, the reciprocal child protection procedures will be in place.

Ms ANWYL: That is not good enough. I have asked the minister, with respect, to give us some indication of the type of person. If I may refer to the clause notes, they read that an approved person will be the person who either makes the report to the register and/or receives information on behalf of the agency that he or she represents. Are the regulations drafted? Given the length of time surrounding this legislation, I expect that they have been drafted. Surely the minister can give some guidance as to the type of person who will be an approved person. She may take the examples of a school, a hospital and the Police Service. I would like some further clarification.

Mrs PARKER: I understand that I cannot table it during committee, but I have here a letter from the parliamentary counsel's office referring to the advice we have received regarding the definition of an approved person. Parliamentary counsel writes that he does not consider it to be an advisable course of action; that is, putting in the Act rather than the regulations the designation of many of the positions referred to bearing in mind the fact that they are liable to change over time and so on. I am quite happy to circulate that letter for the interest of the member for Kalgoorlie. The member will see on page 15 of the copy of the child protection service registered protocols document that she has in front of her the type of person who is listed as an approved officer. For example, she will see that in the Education Department school principals and district superintendents would be approved persons. In Family and Children's Services they would be senior social workers at level 5, district staff and above. In the Health Department there are a number of people and areas which would include the social work section, heads of teaching hospitals, senior social workers, clinical psychologists, the King Edward Memorial Hospital and the Princess Margaret Hospital for Children. All of those and the Ministry of Justice and the WA Police Service are listed. As I have said, they would be or would contain the anticipated approved officers. They will be confirmed in consultation after this legislation is passed in the writing of the regulations.

Mr CARPENTER: I do not want to labour the point too much but this highlights one of the difficulties people have with this legislation; that is, who we will be dealing with, who will have access to, information, who will be the reporting people, et cetera. I understand what the minister said about parliamentary counsel's advice but when dealing with legislation, a Government must take into consideration the sensitivities of people in the community who are affected and have a genuine interest in the community. I believe the minister accepts what I am saying about the concern held about the use to which this information will be put, the security of the information and the amount of access to the information. Leaving the strict definition or the prescribing of who is an approved person to regulations will further heighten community concern about the construction of this register. Given the nature of the legislation and the subject matter we are dealing with, it would have been advisable to include a clearer definition of an approved person. If I or a family member of mine were to be potentially directly affected by the construction of this register and the possible dissemination of information from it, I would like to know through legislation the kind of people who would have access to this information. I would not feel confident about the looseness of the definition and the leaving of a more specific definition of an approved person to the regulatory stage given the minister's explanation. It may well be that we have nothing to worry about but some people are very worried about this piece of legislation. It would have been simple to let people know who will be prescribed as an approved person.

Mrs PARKER: Parliamentary counsel has advised the Government not to do that. The titles of positions change and if that were to happen we would not have anyone at a suitable level of seniority in an agency who could be an approved person. Therefore, it is easier to follow the regulatory process. The regulations will come before this Parliament for scrutiny; it is not as if they will not be open to scrutiny. I will not go against the advice of parliamentary counsel in this regard.

The security of the information is a critical and serious issue. One needs to know that only authorised, approved persons can request information from the register and, on the decision of the manager, can be given information only for the case about which they inquire and which they are already managing. It is not as if an approved person can ask for information about any or all cases - he can only ask for information about the case of a child with whom he is working. There is great security. The data stored on the register are among the most securely kept government records in the country and access to the register is limited to a manager and two assistants who have been subjected to the most stringent police and departmental checks. The manager has the responsibility of determining whether an authorised official can have the material upon request.

The member for Willagee mentioned downloading information prior to the dinner break. It is not possible.

Mr Carpenter: No, I did not.
Mrs PARKER: I am sorry. Someone mentioned it.

Mr Carpenter: It was not me.

Mrs PARKER: I am sorry. A member mentioned downloading information and one should need a code. One cannot download information and it is encrypted.

Mr CARPENTER: I anticipate our being able to debate some of this in more detail when we deal with the amendments circulated by the member for Mandurah. I take the minister's point about the security of information and its being disseminated to an approved person. That is, an approved person does not obtain information about a raft of cases, only the case he has reported or has a direct interest in. I understand that but even in that instance there are reasons for concern. What is the security screening of approved persons? We still have only a relatively loose definition of an approved person and little if any explanation of the amount of security screening of an approved person and how that person's access to information will be screened. I would like the minister to address those points.

Mrs PARKER: All approved persons will be screened through the new memorandum of understanding with the National Exchange of Police Information, which is the most rigorous test in the country. I believe some of the member for Willagee's concerns relate to some irresponsible claims made last year about a list of children being made available to just about any public servant. I trust that is not the foundation of his concerns because there is no list. I have explained that it is not possible to produce a list. The claims about this list being distributed are not true. There are approved persons and members can see in the list I have circulated that they are people with a high degree of seniority in their agency and they have been screened with one of the most rigorous safety screens in the country.

Mr Carpenter: Have been or will be?

Mrs PARKER: Family and Children's Services presently screens all its staff and has upgraded its screening processes. Everyone who is an approved person has already been screened. I will not speak for the Minister for Education, but the Education Department is upgrading its screening procedures. There is a significant commitment by the Government to improve the screening process. The fact that we are the first jurisdiction in the country to sign the memorandum of understanding with NEPI is indicative of our determination to ensure that we access the best security screening information in the country.

Mr CARPENTER: I understand what the minister is saying and I will raise a couple of points. I find it difficult to believe what the minister has just said about approved persons having already been screened. A problem we have been discussing is the loose definition of an approved person. The list in the file distributed by the minister categorises approved officers and I assume these officers will be approved persons under this legislation. Is the minister telling the Chamber that in the Disability Services Commission, all social work supervisors, senior clinical psychologists, program managers, supervisors, local area coordinators; in the Education Department, all school principals and district superintendents; in the Health Department, all social work section heads, senior social workers, doctors, advanced community health nurse managers, community nursing clinical psychologists, managers and directors of nursing have all been screened? If they have, what did that screening entail?

Mrs PARKER: As I explained, people in Disability Services, for example, have not been providing information because legislation has not been in place. As I said prior to the dinner adjournment, once it is in place and the regulations set out who are the approved persons to provide the majority of registrations, certainly in Family and Children's Services, they will be screened. The others will not be providing information yet. Once the regulations set out and confirm who they are, the legislation will be in place so that they will be required to make those registrations. That screening process will take place.

Mr CARPENTER: From that reply I take it that only people in Family and Children's Services have been screened?

Mrs PARKER: I am advised that approved persons in Family and Children's Services and the Police Service have been screened. As the member for Willagee will be aware, they will be screened using the National Exchange of Police Information. We signed the agreement with NEPI only last week; we did not have access to that rigorous level of screening before. Family and Children's Services uses Interpol and the WA Police Service as the information bank. Now that we have access to NEPI we will include that.

Mr CARPENTER: I do not want to be too pedantic but we have gone from a position in which all these people have been screened, to one where not all of them have been screened; only some have been screened.

Mrs Parker: The people who are providing information have been screened.

Mr CARPENTER: For our peace of mind, what constitutes screening?

Mrs PARKER: I am advised that before we had access to NEPI the criminal record checks were done through the WA Police Service, Interpol and some eastern states checks, depending on the jurisdictions.
Mr CARPENTER: We may be reaching a position which is controversial. If the minister is saying that screening means checking whether a person has a police record, is it to see who has a conviction for some form of child abuse or are we reaching the situation the member for Mandurah seeks with his amendments whereby we are also trying to screen people against whom allegations of child abuse may have been sustained or made? As the minister will agree, there is a substantial difference in the categorisation of those types.

Mrs PARKER: The record check is against convictions only.

Mr CARPENTER: There will be a fair degree of concern about the fact that we are legitimising a process by which certain people approve of people who, on the face of it, will have access to information of a sensitive nature about children and the criteria for screening is whether they have a criminal conviction related to child abuse. We should consider that very seriously. As the minister and her officers will know, many instances of child abuse are sustained to a satisfactory level by departments such as that over which she presides; yet no criminal convictions are made. If we are to establish a screening process, which we must have, it should be more comprehensive than merely assessing whether a person has had a criminal conviction for child abuse. I urge the minister to consider that given the nature of this legislation.

Mrs PARKER: I do not have an issue with what the member is raising regarding the need for the most rigorous standard of screening. This State is the first State to have its child welfare agency sign a memorandum of understanding with the National Exchange of Police Information because of our commitment to safety screening. Western Australia led a working party from the National Ministers for Community Services Council that agreed that we must have access to a national database so that those checks were of the highest rigour. I want to see the highest test in the land applied to the people working not just with the register but also throughout the department. That is my commitment.

Mr CARPENTER: I do not consider the criteria for screening at the highest level to be on the basis that a criminal conviction will disqualify a person and nothing else will.

Mrs PARKER: The person we are talking about, whether he be in Disability Services, the Education Department or Family and Children's Services, already has information about the child. He cannot receive information -

Mr Carpenter: You are changing the subject.

Mrs PARKER: I am not. It is absolutely crucial. The person already has information because he cannot receive information from the manager about a child unless that child is a case with which he is dealing and the abuse against the child is substantiated. That person already has access. That is why this Government has sought an increase in the rigour of safety screening. It is far better now than it was seven years ago. I understand Education and Health have also increased the rigour of safety screening so that we can protect our children. We must remember that. Firstly, we are the only jurisdiction in the country that has an agreement between its NEPI and its child welfare agency. The others will follow. We have pursued access to NEPI with vigour because we believe it is important.

Mr Carpenter: What does "highest rigour" in the land mean?

Mrs PARKER: It means that the quality of the information against which we can check -

Mr Carpenter: Criminal record?

Mrs PARKER: That is what I understand. Secondly, those people are already in a position in a department or agency in which they are dealing with the child.

Mr CARPENTER: I understand the minister's desire to ensure that the highest possible rigour is applied. I am saying that if the minister is relying simply on the existence or non-existence of a criminal record for child abuse, then the highest rigour is not being applied. I believe that most of the people with criminal records would be precluded through the job screening process from gaining these positions anyway.

Mrs Parker: In the past they were not even checked for that.

Mr CARPENTER: I agree, but they should have been checked for that. In the past we did not have a register like this either. I return to the concern about who will have access to this information. Most of the debate in the public arena and tonight has been focused on the manager and the two assistants as being the only people who will have access to the information because they will need to collate it. A broader concern is who will have access to the information that is passed out by the manager. Potentially a very large number of people will have access to that information. The screening process should go a bit further than simply determining whether a prospective approved person has a criminal record.

Mrs PARKER: Firstly, the approved people will be people who have a level of seniority in an agency. Secondly, the member has said that a criminal record check with NEPI is not good enough. No other test is available. We cannot deal with hearsay information.

Mr NICHOLLS: The member for Willagee correctly identified the shortcomings of our system of checking whether people
are suitable to be in these positions. The dilemma is that we do not have any other information about people who are alleged to have harmed a child and about how that allegation has been substantiated. The minister said that this is the only test that is available. It will be the only test that is available if the minister and the Government persist with their position of not recording on the register the names of alleged offenders and how those allegations have been substantiated. However, if the register were to contain the names of those people, Western Australia would have a very simple and effective means of identifying people against whom allegations of child abuse had been substantiated. The member for Willagee's point is clear. The current system of checking is deficient, because it will allow a large number of people to have access to sensitive and detailed information. The minister clearly outlined that the deficiency of the system is that the agency that is authorising an approved person may not have information on its files to substantiate whether alleged maltreatment has occurred because it does not know what information is held by other agencies in Western Australia. Therefore, we will not only deprive this State of the opportunity of identifying people who may be a threat to children or may have maltreated children, but also create a situation where the only checks that are available are the police checks in Western Australia and nationally. I commend the Government for moving to set up the protocols to allow the checks to be made nationally, but it still does not go far enough to ensure that information about children who may have been abused is not passed to people who may themselves be the subject of a substantiated allegation of child abuse.

Mrs PARKER: When an approved person contacts the manager and registers a child against whom harm has been substantiated, the manager does not give any new information to that approved person. A person in a position of seniority and responsibility who has been advised about the other agencies that are dealing with that child is not given any extra information. Rather, that person must already have had some information on file about that child in order to have been able to substantiate the harm, and that person might then, after having been advised that another agency was dealing with that child, make contact with the approved person in that agency in order to get a better picture of what was happening to that child. The person is already in a position of trust. The member for Willagee said that in the past, we have not had a register. We have had a Department for Family and Children's Services, a Department of Health and a Department of Education, where any number of people hold positions of great responsibility and trust. I am sure that every member in this Chamber who has children has entrusted those children into the care of these professionals at some time, probably every day as they go to school, and then to other agencies as the need arises.

The member for Mandurah commended the Government on its agreement with NEPI but said that is not good enough. At the moment, Australia has nothing better. That is the highest, most sophisticated and best quality information that we can access. We were able to enter into NEPI only last week. It certainly was a great step forward, and we must not underestimate it. We are talking about continual improvement in the services to protect our children. We must add to that the Federal Government's commitment to CrimTrac and the national paedophile database. Information is now beginning to come through that will be beneficial. At the time this legislation is passed and the regulations are in place, we will have the highest standard of safety screening in this nation.

Mr CARPENTER: The minister has just highlighted one of the reasons that there is concern about the establishment of this register. That concern is about what tests will be available for people who will have access to this information. The minister has just said that the best information we have so far is whether the person has a criminal record. Many people believe that is not good enough and have great concern about who will have access to the register.

Mrs Parker: What do you want?

Mr CARPENTER: I do not want the register. That is the logical progression. I have just highlighted one of the reasons that I do not want the register, and the Minister has agreed with me; namely, that the best we can do is say that a person who has a criminal record cannot have access to the register.

Mrs PARKER: The senior executives in government agencies in this State have access to the information about the child in any case. Will the member not trust the professionalism of anyone?

Mr CARPENTER: That is another interesting point. I wonder how much the minister understands her legislation. The minister has said that the approved person already has information. The approved person does not have the information. If the minister thinks that the approved person has the information, I direct her attention to clause 120J, at page 10 of the Government's own legislation. It says -

**Access for approved persons**

(1) On receiving a report in respect of a child, the manager may, if the manager is satisfied that it is in the best interests of the child to do so -

(a) notify the approved person who made the report of the existence of any other information . . .

Under the legislation, the approved person does not have the information. There are many problems with this legislation, and the Government has not come to grips with enough of them, as it should have done. The approved person does not have access to all the information. He can get it if the manager decrees that he should.
Mrs PARKER: I am advised by the acting manager that the information that might be held on file by another agency is not given out. The approved person is given the names of other agencies that he needs to contact regarding services to the child. That is how the coordination takes place.

Mr CARPENTER: The minister has told the Chamber that the approved person already has access to the information. The Bill states that the approved person does not have access to the information, but the manager can give the information to him. Either the Bill needs to be changed because it does not accord with the minister's understanding of its operation, or she needs to come to a different understanding of its operation. Clause 120J, on page 10, states -

(1) . . . if the manager is satisfied that it is in the best interests of the child to do so -

(a) notify the approved person who made the report of the existence of any other information in the register in respect of the child and permit the approved person to have access to it; . . .

It is quite clear. Therefore, the scenario could be that a principal of a school or an approved person notifies the manager that there is cause for concern about a particular child, and the manager, if he deems appropriate, can then pass on or give access to any other information about that child to that approved person. The Bill says that. That is one reason that so many people are concerned about who will gain access to this information. The focus has been on what the manager might do with all this information, whether he will sell it or something like that. However, another concern is how much information an approved person will receive and who are these approved people. What sort of screening is done on these people? We have had a loose definition of whom an approved person will be; we have been told that screening of that approved person will constitute whether that person has a criminal record of, I take it, child abuse; and because the words are already in the legislation, it has now been confirmed, contrary to the minister's earlier assertion, that that approved person can gain access to other information about a child.

Mrs PARKER: To coordinate the services delivered to children, there must be an exchange of information. I am advised by the acting manager that in practice, for example, that principal, who is an approved person, is advised of what other agency is working with the child. He can have access to the name of that agency, make contact with it, and obtain the information about the child to make a better response to the child's needs.

Mr CARPENTER: If that is the intent of the legislation, it should say that. It does not say that. The legislation does not say that the approved person can have access to other departments which may have the information; it says that the approved person can be given other information. If the legislation does not mean that, it should be amended. I have a question on approved persons. In the period that the trial register has been in operation, which I think has been from some time in 1996 until now, approximately 2 600 children's names have been placed on the register.

Mrs Parker: As I am advised, yes.

Mr CARPENTER: Can the minister tell us how many people have been given access to the names of children on that register?

Mrs Parker: No, I cannot provide that information. I do not have it with me.

Mr CARPENTER: Could the minister give a rough estimation?

Mrs Parker: I am advised that the number is approximately 150 people. The great majority of those would be approved persons from within Family and Children's Services. The others would be from Princess Margaret Hospital for Children or the police.

Mr CARPENTER: I am trying to build a picture of why so many concerns exist. The focus has been on the manager. I am now dealing with the approved persons. We have been through a process which highlights the reason that people have concerns about who the approved persons may be. We are dealing with a register which, on the minister's own account, will be safer than Fort Knox; it will be harder to decipher than the nuclear missile codes for the United States. However, when I asked the minister how many people had access to the information, she did not know and could give only a rough estimation of about 150 people. If this information is being so carefully safeguarded, as it should be because it is so sensitive, there should be precise knowledge of how many people have been given access to it and who those people are. This underscores why people are worried about this issue. About 150 people have been given information about children on this register. Have all these people been screened by the police?

Mrs Parker: Yes, I am advised that Family and Children's Services staff, the police and the Princess Margaret Hospital staff have been. We can provide the member with information about the number of people.

Mr CARPENTER: It may or may not be the case. We do not know how many people have had access to the register; an estimation can be given. From the minister's comments, we cannot be certain that every one of those persons has a police clearance, which many people do not think is enough anyway.

Mrs Parker: They have a police clearance, absolutely.
Mr CARPENTER: Every single one of them?

Mrs Parker: Yes.

Mr CARPENTER: Is the minister certain that every person who has had access to any information from that register has a police clearance?

Mrs Parker: I am advised that the people from Family and Children's Services, the Health Department and police have, yes.

Mr CARPENTER: Is it only people from those three departments who have so far been given access to the information?

Mrs PARKER: Yes. I will reiterate that we have the register in response to the need to coordinate. The need to coordinate has been a consistent theme through the literature on child protection and recommendation from the Wood royal commission.

Mr Carpenter: Did the royal commission recommend a register like this?

Mrs PARKER: It recommended a mechanism whereby there could be a transfer of information. I can obtain a relevant quote for the member a little later, if he wishes.

Mr Carpenter: I don't think the minister has answered the question.

Mrs PARKER: It did not recommend a register per se; it recommended that more effective mechanisms be put in place to coordinate the delivery of services to children who have been abused.

Mr Carpenter: It didn't recommend the establishment of a register.

Mrs PARKER: No. I said that the recommendations from the commission and in the literature on child protection suggested a mechanism to coordinate services far better to children who have been abused.

Mr Carpenter: Did the Wood royal commission recommend a register?

Mrs PARKER: No, it did not. I did not say that it recommended the establishment of a register. I have said that, in the context of the literature and the consistent theme of better communication, the Wood royal commission said there must be better coordination.

Mr Carpenter: That is a far cry from this register.

Mrs PARKER: In the second reading speech I referred to the final report on paedophilia of the New South Wales royal commission which stated that it was necessary to establish a new commission - that is, a children's commission - with appropriate powers.

Mr Carpenter: Have you established a children's commission?

Mrs PARKER: No. We have not. We will have a register. The second reading speech continued that it was necessary to establish a children's commission with appropriate powers and the capacity to oversee and coordinate the delivery of services for the protection of children from abuse, including sexual, physical and emotional abuse and neglect. The report said that it should be set up in the context of a rationalisation of the roles of existing agencies and it should have more than a mere advisory role. That is exactly the function of the register. Under this legislation, the register will have the appropriate powers and capacity to oversee and coordinate the delivery of services for the protection of children from abuse. It certainly has more than an advisory role.

Mr CARPENTER: Without wanting to labour the point, what the minister has just read out is what we recommend. The minister is dealing with the establishment of a commission for children. That is quite contrary to what we have here. To justify what she is doing in terms of the recommendation of the Wood royal commission is a little - not totally - misleading. It is a pity the various models were not run past Wood to ask the commission whether it thought this model was satisfactory. There are all sorts of problems with the way in which the register is being established. It does not accord with those recommendations; far from it. It is a long way from it.

Mrs PARKER: Commissioner Wood would have been pleased with this improvement in the coordination, whether it is put within the framework of a commission or a mechanism on which the member and I agree, to coordinate the breakdowns that occurred in response to child abuse. They were a tragedy in the State on which Commissioner Wood was reporting. That is why we have said that we do not want the independent agency to be only a watchdog; that we want a positive, constructive mechanism to work within the Government and government agencies to improve the coordination between them, and that is what this register will do.

Mr CARPENTER: I refer to what the minister has quoted from Commissioner Wood. She is establishing something that does not accord with his recommendations. She has rejected the notion of a commission for children with an overall coordinating capacity. This register is not that. The minister's understanding of how this legislation will work is demonstrably deficient, from her own words. She has told the Chamber that the people who have access to the information,
the approved persons, will not be given any information; yet this legislation quite categorically says they will. We can go on for two or three years pointing out problems with the legislation. As the night goes on, more problems will arise. A flawed system is being put in place. The objects under this legislation do not reach achievable status. That is why the minister is getting tripped up. The things the minister wants to do under this legislation will not be achieved. She wants to achieve what Wood recommended should be set up. The legislation does not do that. The minister wants a tightly regulated system where only specific information gets out to a very tiny number of people. This legislation does not achieve that. It is too wide and too loose. There are many holes and potential problems in it. Eventually the minister's explanation of the legislation will demonstrate that that is the case.

Mrs PARKER: I move -

Page 3, lines 24 to 30 and page 4, lines 1 to 8 - To delete the lines and substitute the following -

(c) the department of the Public Service principally assisting with the administration of the Education Act 1928, or an Act that replaces that Act, in relation to government schools;

(d) the department of the Public Service principally assisting with the administration of the Health Act 1911;

(e) the department of the Public Service principally assisting with the administration of the Young Offenders Act 1994;

(f) the Disability Services Commission continued by the Disability Services Act 1993;

(g) the Western Australian Alcohol and Drug Authority established under the Alcohol and Drug Authority Act 1974; or

(h) a public hospital or private hospital (as those terms are defined in the Hospitals and Health Services Act 1927) that is prescribed for the purposes of this definition.

Mr NICHOLLS: I oppose this amendment and also foreshadow that should this amendment be lost, I will seek to move to delete the words on page 4, lines 6 to 8. I do so because I believe the amendment put forward by the minister substantially narrows the agencies that will be accountable for providing information and also limits their effectiveness if we are to have in place a true accountability mechanism across government for substantiated allegations of maltreatment to be reported to the register. In this context, again, if the minister truly believes this register will provide a coordinating function, I find it difficult to accept that the amendment she has put forward does not narrow the agencies that will be required to conform to this legislation. I suggest that this is because some agencies do not wish to participate, or the minister or the Parliament feels that the current clause is too wide and will hold the majority of agencies across government accountable for their actions in substantiated cases.

The only other reason I can think of for the minister moving such an amendment is that there is a degree of reluctance among government agencies to be required to conform with the legislation; and that concerns me greatly. The bottom line is if an agency is required to respond under this legislation but it is not an agency primarily involved in investigating or responding to child maltreatment allegations, it will not matter to the agency because it will not be required to respond if it never receives, or is never directly involved with, the disclosure of an allegation. There is no justifiable reason for amending this part of clause 4 to restrict it. I urge the minister to withdraw her amendment and support my foreshadowed amendment as a way of trying to resolve the issue of who will be responsible, who will be accountable and who will be required to act in concert should the amendment be passed.

The DEPUTY CHAIRMAN (Mr Baker): I will make a procedural ruling because there are essentially two proposed amendments which to a large extent overlap and to a certain extent conflict. There are two conflicting amendments to this part of the clause. In order to preserve the rights of both members, we will use the test vote. The amendment suggested by the minister proposes to delete certain words and substitute others. The amendment proposed by the member for Mandurah also proposes to delete certain words. In order to test the committee's view, I propose the deletion of the words that the minister wishes to delete up to the point where the amendment of the member for Mandurah starts. If that deletion is agreed to, the rest of the minister's deletion will be put to the committee. If the initial deletion is negatived, the member for Mandurah remains free to move his amendment. Therefore, as a test vote, the question now before the House is that the words from page 3, line 24 down to page 4, line 5 be deleted.

Ms ANWYL: The Government's amendment is better than the provision in the Bill. I have made representations previously to the minister in my capacity as Opposition spokeswoman for Family and Children's Services. The very wide definition of "reporting agency" was totally untenable. For that reason I am pleased that the amendment is proposed today.

I ask the minister how she views the legislation operating down the track. Subclause (g) refers to the Western Australian Alcohol and Drug Authority. As minister responsible for drug strategy, she is more than aware that community drug teams
are by and large independent of government. They are contracted by government to provide drug and alcohol counselling services to the community. I would think they are not covered by this clause. Under the information relating to "approved persons", no drug and alcohol authority staff will be included in the drug service team. Will the expertise or information that may be needed to be accessed by community drug service teams be lost to the whole register system? Also, will the many community sector services which are contracted out these days fall outside the definition of "approved person"? Given that the minister has moved from the situation of prescribed classes, is she now satisfied that the full definition of "reporting agency" is likely to be static for some time?

Mrs PARKER: The member for Kalgoorlie will be aware that the community drug service teams are non-government agencies operating with funding out of the WA Drug Abuse Strategy Office. The register will reflect only the coordination of services delivered by government agencies. Therefore, community drug service teams will not be included. They will be expected to report allegations of abuse to either Family and Children's Services or to the Police Service.

In answer to the member's question about the titles in the proposed new section remaining static, we have been careful to word it in this way in the event of agency name changes.

Ms Anwyl: Is that when the super ministry becomes accountable?

Mrs PARKER: Not necessarily. It was done in response to the issues raised by the member for Kalgoorlie. We drafted the amendment in this way so that the names of the agencies may change but they will still be covered by the legislation; whereas we would normally have put the agencies' names specifically into regulations. The amendment was drafted as broadly as possible in response to the member for Kalgoorlie's amendment so that the legislation does not need to be amended when there are title or name changes. This relates to the issue raised by the member for Kalgoorlie about the "approved person" being defined in regulation and not in legislation.

Mr NICHOLLS: I still have not heard the minister provide a reasonable explanation of why the current wording of the clause does not provide for that. I am also interested to know where the Opposition stands on the issue of agencies across government being required to conform with the legislation when they are contacted, are privy to a disclosure of maltreatment, or when they have information about the ongoing potential risk of harm to a child. I am sure that all members want any government agency that becomes aware of maltreatment to a child, or receives a disclosure of maltreatment, to be required to report that information either to the register or to an agency that can follow it up in an appropriate manner. When the minister looks at the previous wording of the clause under paragraph (c), she will see that it covers the majority of agencies and does not restrict or narrow itself to the major government departments listed in the minister's amendment. I reaffirm the view that we should be trying to ensure that children do not fall between the gaps of government agencies. I fear that going down the path of this amendment will simply set up the process for a lesser number of agencies being required to conform with the legislation due to the proposed amendment and other agencies that will be virtually unaccountable or not required to conform with the requirements of the legislation when it is proclaimed.

Mrs PARKER: What is a reporting agency? To be a reporting agency, it must have some involvement in child protection matters. Of course, we are reporting only substantiated cases of abuse. If other government agencies become aware of abuse, their responsibility is to report those allegations either to Family and Children's Services or to the Police Service, which would then become the reporting agency.

Mr Nicholls: What legislation requires those agencies to report that information to Family and Children's Services or to any other agency? I am unaware of any other legislation that requires those agencies to pass on that information.

Mrs PARKER: What sort of agency is the member talking about?

Mr NICHOLLS: The Bill refers to -

(c) any -

(i) department of the Public Service;
(ii) public hospital or private hospital . . .
(iii) agency, authority or instrumentality of the Crown in right of the State; or
(iv) body, whether corporate or unincorporate, that provides medical, counselling, support or other services to the community under an arrangement with the State . . .

The minister proposes that we remove all that and list five or six agencies instead. The suggestion is a substantial narrowing of the number of agencies that will be held accountable. It also makes me wonder how the minister can provide a cross-government role with only a narrow band of agencies that are required to perform under the legislation.

Mrs PARKER: I have outlined the agencies that are part of the reciprocal child protection procedures. In the second reading debate the member for Kalgoorlie said that the definition was too broad and that we should clarify the intent of the
legislation, and that was to coordinate service delivery across agencies that were directly or indirectly involved in child protection. The definition clarifies the intent of the legislation. As to other government agencies not having the legislative requirement to report, that is correct, but there is a moral duty to report. As I have said, a reporting agency is only an agency that has capacity to substantiate that harm has occurred to a child. I do not know what sort of agencies the member for Mandurah is talking about, but I suggest that they do not have capacity to substantiate that harm. Their responsibility is to refer their concerns to Family and Children's Services or the police so that substantiation can take place and a report can be made.

Dr TURNBULL: The vast majority of members on the government side of the House recognise that the Bill is an attempt to put in place across all departments a new system to register that a child is in danger. Mention is made of the departments which might come into contact with such a child and, as the minister has said, have capacity to substantiate that the child is in danger. Although it could be viewed as a restrictive way of listing such matters, it is very wise to list the departments concerned. As the minister has said, the member for Kalgoorlie was concerned that the Bill should clearly define which departments have that responsibility. Parliament must consider that the laws that we set down are open to review at any time if someone considers that those laws might not be wide enough or that they do not fulfil their role. As we are considering a new process, it is wise to ensure that we define clearly which are the reporting agencies, just as it is important that we define clearly who are the approved persons. It is an important amendment and I support it.

Ms ANWYL: It is a difficult debate because we keep introducing other issues, but that is unavoidable; I am not criticising members. A moment ago I asked the minister about community drug service teams. The Alcohol and Drug Authority is a specified agency. It comprises community drug service teams which will have daily contact with children and adults when abuse may or may not be occurring. That opens a Pandora's box. The Bill was not designed to introduce a system of mandatory reporting across agencies. The fact that we do not openly discuss mandatory reporting makes the matter more complex.

Mrs Parker: It was raised by the member for Bassendean in the second reading debate.

Ms ANWYL: I understand the Government's position. Previous Governments have taken positions on mandatory reporting, which is a controversial issue, as the minister would agree.

Mrs Parker: There have been two reports in Western Australia in recent times. One was the family task force, and the other was chaired by a then member of the House, Carmen Lawrence. It recommended against mandatory reporting. The member for Thornlie was executive officer to that committee as well.

Ms ANWYL: The member for Thornlie might have been a committee member.

Mrs Parker: They recommended against mandatory reporting. As I have said, the member for Bassendean raised the matter during the second reading debate.

Ms ANWYL: Some comments by the member for Mandurah would extend beyond what appears to be the scope of the legislation and start to impose a statutory duty to report. I hope that if we witnessed something, were aware of something or received disclosures from children, as individuals, members of Parliament, or members of certain professions, we would take the necessary action and report the matter to the relevant authorities; namely, the Police Service or Family and Children's Services. We know that that does not always happen.

I want to be clear about the Opposition's position. It has concerns about the legislation and therefore does not support it as a whole. However, I am more comfortable with the narrower focus of the agencies. To that extent I support the amendment. Nevertheless, other interesting questions have been posed by the member for Mandurah. Given that the Government has a preoccupation with tendering out community sector services and that there is a tendency towards non-government agencies being increasingly involved in the delivery of community sector services, will the minister comment on how she envisages the issue progressing?

Mrs PARKER: For a long time non-government organisations have had a duty of care and daily responsibility for children in this State. The first examples that come to mind are private schools and child care. The community drug service team draws up a list of established activities that have care of children who are not part of the government system. That is a fine balance. Clearly, if there are concerns about the safety of a child, those agencies, whether they be private schools, child care centres or community drug service teams, have a responsibility to refer them to the statutory authorities that have responsibility for the investigation of that child abuse; that is, Family and Children's Services or the Police Service.

Mr NICHOLLS: I seek to create a process by which government agencies are required to report to the register disclosures, allegations or beliefs of children being maltreated. Mandatory reporting is not supported because in its true form, as was adopted mostly throughout the United States, it required large sections of the community to report any suggestion or belief they may hold that a child was at risk of or possibly being abused. It ties up a huge amount of resources to investigate the reports and overloads the system so that we cannot comprehensively and efficiently identify cases that need to be investigated and those that are child-concern reports.
The issue of mandatory reporting has created a dilemma in this sector whereby people apply that glib term to anything that may require agencies to report to a register. We already have a proposal to establish a register and the resources are available; therefore, I do not see that a requirement for government agencies to notify the register of child maltreatment allegations is an onerous task or something that will overload our investigatory system. It would provide a safety net to ensure that disclosures of children at risk of or possibly being harmed do not lie in the too-hard basket and that agencies, whether Main Roads or the Department of the Environment, have the responsibility of reporting a disclosure to the register. That does not mean they must undertake an investigation if they are not equipped to do so. It does not mean that every allegation must be formally investigated or that we must set up a huge infrastructure.

If on the other hand the minister suggests that by reporting all allegations to the register the system will be overloaded, then we have a problem within the Public Service because many of those allegations are not being reported, assessed or acted on. That is what I want to avoid with my efforts to extend the register to one of collated information of children who have been or are being harmed, when allegations have been substantiated, and of alleged offenders who have been identified in substantiated cases. If we do not have an across-government requirement, agencies will abrogate their responsibility because they do not come under the Act. That is the last thing we want.

Mrs PARKER: I said in my second reading speech -

Mandatory reporting has resulted in frequent and unnecessary investigation and often has fuelled alienation of the child welfare agency as coercive and intrusive. In Western Australia the reporting rate by education, health and welfare professionals is either equal to, or higher than, those in other States that have mandatory reporting. Those are interesting comparisons. No evidence is available to support the presumption that mandatory reporting reduces the incidence of child maltreatment.

Under the existing protocols the Government established in 1996 all relevant government departments and agencies are required to report all allegations of child abuse to Family and Children's Services or to the police for appropriate action. I said that all relevant government agencies are included in this legislation. The reporting agency must be able to provide a substantiated case of abuse. I am not sure how Main Roads could become a reporting agency. Clearly people both in government and in non-government agencies have a moral responsibility to report their concerns and allegations to those relevant departments - police and Family and Children's Services - for appropriate action.

Mr NICHOLLS: The minister can refer to her second reading speech as much as she likes. Mandatory reporting is not supported because of resourcing. I foreshadowed my argument because it is my intention to move that the register be notified of all child maltreatment allegations, irrespective of whether they are deemed to be substantiated, simply as a check and balance against the data held on the register so that a more comprehensive record can be kept and possibly far more effective protection given to the child. There is no doubt that if the legislation remains as it is a limited number of allegations will be notified to the register. A large majority of the allegations will be dismissed on the basis that they are not substantiated. There will be no check and balance and a narrow band of agencies will be authorised to report as opposed to having an obligation for all agencies across government to notify the register of any child maltreatment allegation.

Mrs PARKER: The member for Mandurah and I have a difference of opinion regarding whether we would put allegations onto this register. I made it clear at all stages in the debate that the Government would not support putting allegations onto the register. We had that debate earlier.

Mr Nicholls: I do not support that either.

Mrs PARKER: The member for Mandurah referred to all government agencies being able to report allegations to the register and referred particularly to Main Roads. We will agree to disagree on that. The Department of Family and Children's Services is the statutory body that has the responsibility for investigating all allegations. The register does not have a mandate to investigate allegations. It has a mandate to coordinate the service delivery to children when it has been established that harm has occurred. The investigation of allegations is the function of Family and Children's Services and the police.

Dr Turnbull: That explanation was clear and it has been my understanding also.

Amendment put and passed.

Mr NICHOLLS: I move -

Page 5, line 13 - To delete the word "excluding" and substitute the word "including".

Proposed subparagraph (i) would then read -

the maltreatment or suspected maltreatment of a child, including information that identifies or is likely to identify a person as a person suspected of being responsible for the maltreatment or suspected of maltreatment; or
This amendment will achieve what I believe should be a function of this register; namely, to contain information identifying the alleged perpetrator of maltreatment when that allegation has been substantiated. I have listened to the minister's explanation of why this should not happen, and to the debate about how this register will provide a safety net for children. I have contemplated the loss of opportunities should this function not be included. I do not support the minister's argument that natural justice will preclude the inclusion of information about alleged perpetrators. I do not support the notion that the register that is proposed in this legislation will provide a coordinated and centralised process for identifying children who may be at risk and also people who may be a threat to children, albeit that they have not been convicted of a criminal offence in respect of harming a child. A large number of children are harmed by people in our community who are not subsequently convicted of a criminal offence. A large number of people who move through our community and have a close liaison with children may have been the subject of allegations of child abuse. This legislation provides no way of effectively identifying those alleged offenders.

This amendment is simple and straightforward. It will provide the legislative basis for the register to contain the names of alleged offenders when the maltreatment has been substantiated. It will also provide a remedy for the issue raised earlier about checks on people who may not be suitable to hold positions that are critical to the protection of children. It may also provide an effective way for the police to further their investigations if allegations of criminal activity have been made previously but no evidence is available to support a conviction.

Mrs PARKER: We had this discussion during the debate on the title of the Bill. The Government does not support the inclusion in this legislation of the names of alleged offenders. The member for Mandurah said that this is a simple amendment. It is a very significant and breathtaking amendment. We have already had a debate about whether we will challenge the principles of natural justice and the presumption of innocence. This amendment is not simple and will have a significant impact, and the Government does not support it.

Mr NICHOLLS: This amendment goes to the heart of my objection to this legislation. If we are genuine about protecting children in Western Australia against potential harm and about identifying individuals who are a risk to children, I suggest there is a strong case for arguing that natural justice should be infringed. If this register is to remain confidential, as the minister has said continually, and if the only information that will be contained on it is information that is already on government agency files, then the Minister's stance suggests that she is unwilling to go the next step of protecting children from risk of harm. The minister is refusing to accept the notion that the names of alleged perpetrators should be placed on the register. A number of children are maltreated in this State by people who move around the community and are quite proficient at circumventing the requirements for evidence with which the police are required to comply in order to obtain a conviction. The minister will know also that in many cases, the children who are maltreated are too young to provide credible evidence in a court of law, and in the absence of other evidence that will satisfy a court, the alleged offender will get off scot-free. The child who has been the subject of that maltreatment often lives with that for the rest of his or her life. The reason that a number of young adults seek a remedy in the courts some 10, 15 or 20 years after the maltreatment has occurred is that when that maltreatment occurred they were too young to give credible evidence to the court. The problem that we face is that the alleged perpetrator often remains unidentified within our community and is a risk to other children.

If the minister genuinely wants to protect children from harm, she should be arguing that the names of alleged offenders should be included, rather than steadfastly objecting to the identification of these people. Without the identification of an alleged offender, this register is very much a toothless tiger, and there is no avenue to coordinate that information across government. The minister's arguments that oppose the identification of an alleged offender are based on a weak premise and do not put the interests of children at the highest point of the argument. It simply gets back to putting it in the too-hard basket. It takes the easy route out, because the children who are the victims literally cannot take action to object or protect themselves, and they are often in a situation in which they cannot do anything to change their current living arrangements or environment.

Mr PENDAL: I reiterate something that I said earlier about this matter which is before the committee. I understand that the member is motivated by the best intentions. His view is that if any way can be found to entrap a suspected child molester, the ends justify the means. To some extent I understand that. However, in the final analysis, if that view were applied to our system of justice, innocent people would be entrapped. It may also be at risk and also people who may be a threat to children, albeit that they have not been convicted of a criminal offence. A large number of people who move through our community and have a close liaison with children may have been the subject of allegations of child abuse. This legislation provides no way of effectively identifying those alleged offenders.

The member's argument placed a great deal of store on the capacity of a court not to put too much emphasis on the evidence of a person of tender years. There are good reasons for that, which have been borne out in all sorts of appeals in this country and in liberal democracies around the world. By and large, a child can make assumptions and judgments against a person of a more mature background. Therefore, a court must take into account whether that is a mature view and judgment made by that child. I recall that several years ago in this Parliament we were considering a Bill which dealt with whether a child should be saved from the humiliation of appearing directly in front of an accused. The idea was to minimise trauma. Methods of hearing evidence by video were implemented. To this day, apparently, evidence is sometimes given behind a screen, thereby minimising the chance of trauma to a young witness by not being confronted by an accused. Many people find that a worrying trend as well, because one of our long-established principles of justice is that every accused is entitled...
to meet his or her accuser. That very meeting of two people in that admittedly traumatic circumstance is intended to put both of them to a test.

Similar to the member for Mandurah and, I suspect, every member in this Chamber, I have no desire to protect a guilty person, especially one who is involved in the maltreatment of a child. By the same token, this Chamber must be careful - I think the Government is being careful in this instance - to ensure that the tests that have been established over decades must be passed before a person's name is entered into, as in this case, a register. To do what the member for Mandurah desires would turn on its head everything that this Parliament stands for with respect to the onus being on the authorities to prove beyond a reasonable doubt in a court of law that a person is guilty. When that is done, that is the occasion on which a person's name can properly be entered into a register. It should not be done simply because a frustrated policeman or child welfare officer feels in his or her bones that a person is guilty. That is not good enough. Other civilisations and countries have fallen on their knees with those reduced tests. It would be a grave error if this Chamber went down that path. I am pleased that the Government is resisting that.

Mr NICOLLS: I respect the view of the member for South Perth and his attitude that all matters of guilt should be determined in a court of law. In a model society, we would all agree with that. However, children are currently removed from their parents and made wards of the State without the matter going through the court or guilt being proved -

Ms Anwyl: Without criminal charges.

Mrs Parker: It must go to court.

Mr NICOLLS: Without criminal charges, thank you. A care and protection order goes to the Children's Court. However, we do not require a process of criminal charges against parents being brought before a court to identify whether they are a danger or a risk to the children. As members of Parliament, we can freely authorise a process in our society whereby a department can institute the law, remove children from their parents, in some cases permanently, without criminal charges being laid against those parents who have the potential to harm their children and who are deemed to be a risk to their welfare. The folly of the member's argument is that only people who commit criminal activities and who are found guilty in a court of law are a threat to children. That is not the case. We are dealing with people whose actions, or lack of action, can seriously jeopardise the welfare and safety of a child. If that is the case, they are a threat to other children, in some cases siblings, with whom they may come into contact. I am not referring simply to cases of sexual maltreatment, which is the normal understanding in the community when dealing with child abuse. I am talking about cases of neglect and physical maltreatment.

Mr Pendal interjected.

Mr NICOLLS: Yes. Although I am aware of the need to have stringent controls on this information, the minister has clearly explained that only substantiated cases of maltreatment will be recorded on the register. We are not talking about a flippant process whereby a person says that because he is disenchanted, he will put somebody's name on the register. However, if this Chamber accepts that a child's name will be placed on the register because he has been identified as a victim of a substantiated child maltreatment allegation, why is it not acceptable to also include the name of the person who is alleged to have committed that maltreatment?

Mr Pendal: I refer to clause 120F. I and some other members take exception to the fact that the name, the sex, the date of birth and the address of the child is to be recorded.

Mr NICOLLS: Therefore, we should seek to amend that clause to ensure only the bare essential information is recorded. If we want to provide a safety net, a process that coordinates across government all our efforts to protect children wherever possible against harm, this amendment should be supported by everybody. I intend to call for a division on this amendment should another member support my foreshadowed amendment. It is fundamental to the process across government of protecting children within Western Australia and to my objections to the Bill as it is drafted.

Ms ANWYL: I refer to what has been said by the previous couple of speakers. This information is already in the grasp of the department and/or whichever agency may be making the report of the substantiated allegation. The information on the identity of the alleged abuser is already there. That name is already in a file somewhere. I have difficulty with the idea that because all the information about the children is already within someone's knowledge, it is okay to put it on the list; yet for the adults we hesitate and have a different concept of natural justice or other reasons that that information about the alleged abuser, the substantiated abuser, or whatever language we might like to use, cannot be exchanged. The information on the child and the alleged abuser is already located somewhere within government files. As has been adverted to before, if that information exists in non-government agencies' files, it will not be part of this whole process, but it will be for government agencies. I seek the minister's clarification on why we have the separate rules in relation to the child and the alleged abuser.

Mrs PARKER: We have had this debate about the allegations from the very beginning of this committee stage. I have made the position of the Government clear. As to putting the name of the child on the register but not that of the alleged perpetrator, the child's name is not on the register for a punitive reason; it is there and can go on the register only when the
amendment of this nature. It is so we can better coordinate the services to that child. The problem with recording the allegation - I will not repeat myself unnecessarily because I have said this previously when talking about the issues of natural justice - is that once we start to transfer that information, we give credibility to the accusation, and that is where there is a significant problem with issues of natural justice and the presumption of innocence. For that reason, the children's names go on the register, and only when an offender has been convicted in a court will that name go onto the register.

Mr Nicholls: My intention is to seek to amend this legislation so this information is not freely available, and the only information provided back to agencies is where there is a match, either of the alleged offender or the alleged victim of maltreatment. If I heard the minister correctly tonight, when we talk about protecting children against those people who have made threats to them, she said that approximately 2 600 children are currently identified on the register, and I think she said that 37 people have been identified as being convicted of criminal offences. I suggest to the minister that if there are 2 600 substantiated cases of maltreatment in this State and only 37 people are identified as being a risk to children, we are extremely naive or the system is deficient.

The minister can argue until this Parliament falls down that natural justice is a process that should definitely be regarded as being of a higher value than protecting children from those who are a potential threat to them. Across the community most people would support the notion that we must do our utmost to protect children from those who may pose that threat. I understand the argument being put forward that these people have not been convicted; however, I reiterate - I am sure the advisers will confirm this - that a number of children are maltreated through processes that are not deemed to be criminal acts, as such, but nonetheless are a risk to their safety and their lives, in some cases, particularly when talking about neglect and young children. I reject the notion that natural justice is a barrier to record these names and the premises on which the minister is trying to defend this Bill. I object to the exclusion of alleged offenders in substantiated cases and to the notion that somehow we are providing a better child protection service and coordinating our efforts to protect children against risk when purposely we do not include possibly the greatest threat to children's safety, the alleged offenders.

Mrs Parker: There are few convicted persons on the register because the police are not providing the information as they do not have the protection of this legislation.

Mr Carpenter: We are focusing on the amendment that has been suggested by the member for Mandurah. In its raw form, the amendment would go in the direction that we indicated we thought the legislation should go in; that is, the focus should be more on the offender than on the person who has been offended against. The dilemma that arises is that this amendment would substantially change the nature of this legislation. If we are seriously to consider an amendment like this and the concepts and impacts that go with it, we need a much more sustained debate which should be the subject of legislation on its own, rather than an amendment that comes forward when very few members are in the Chamber. For that reason, we have a problem with the foreshadowed amendment. At the moment in the British Parliament, legislation is being introduced which will require a similar, although not exactly the same, recording of offenders against whom these sorts of allegations have been sustained without a conviction necessarily having been recorded.

The screening process we referred to earlier applies to those people applying for work involving contact with children. Everyone recognises there is a great difficulty in getting convictions in respect of crimes against children, especially very young children. A very intense debate is underway in Britain about the merits or otherwise of this development and the civil liberties issues. That relates to persons against whom allegations have been substantiated.

If this amendment were passed, we would be several steps past that. As the minister has said, the allegation of maltreatment must be substantiated in order to be recorded on the register. However, the allegation of maltreatment by a particular person does not need to be substantiated. It could be very easy to determine whether a three-year-old girl had been raped. Therefore, an allegation of maltreatment can be easily substantiated in that case. However, determining the person responsible for that act is a different matter. Four or five people might be under suspicion of having committed the offence. Under this amendment it would be possible for all four or five people to find themselves on the register because they are suspected - that is the wording - of being responsible for a confirmed case of maltreatment. We must be very careful in going that far.

We must debate the whole concept of offenders appearing on registers and at what point we draw the line. We cannot do that now while we are making amendments on the run.

The Opposition agrees that if there is a register it should focus on the offenders. It is the point to which we go in creating that register that becomes the critical question. That has been the nature of the debate between the member for Mandurah and the member for South Perth. There are good points on both sides and that is why we have this moral dilemma. The United States has faced the same dilemma.

We would be causing a huge shift by allowing people who are merely suspected of a confirmed case of maltreatment to appear on a register. Who has access to that information? Why do they have access and to whom can they pass that information without penalty? We have not touched on that issue in this debate. Some serious difficulties arise with an amendment of this nature.
Mr NICHOLLS: I am disappointed at what I believe the member for Willagee is foreshadowing; that is, that the Opposition will not support my amendment. I am also intrigued that the member makes reference to needing to debate the issue. That is exactly what we are doing, albeit I concur with his view that a substantial debate specifically on this issue would be helpful. However, when I look at this Bill I see that there are limited opportunities to move amendments that would effectively provide for something different and still be in line with the legislation before the Committee. I make no secret of the fact, and I have stated in the second reading debate and many times tonight, that I believe alleged offenders in cases of substantiated maltreatment of children should have their names recorded on the register. I understand the dilemma that that may pose in that people may feel aggrieved or that natural justice may not result. However, I stress that if allegations were made to separate agencies over a period of, say, 12 or 24 months, and a particular name arose on a number of occasions, that would give rise to the agencies involved having a close look at the involvement of that individual or individuals.

I agree with the member that we must be very careful about the breadth of the net. However, I make it clear that we are talking about maltreatment of a child. If a child has been maltreated and if there is enough information to substantiate that that maltreatment occurred and to identify an alleged offender, I do not see the basis of the argument that that person's name should not be on the register because the name is on the departmental files and would remain there. Obviously without the Opposition's support this amendment will not be passed. This clause is fundamental to my objection and it is the reason that I oppose the legislation. I do not oppose the creation of a register but this legislation will not facilitate the establishment of the protections we are suggesting will be afforded by the creation of a register.

Mr CARPENTER: When reading legislation we must look at what the words say not what we think they should say. If we were to pass this amendment, it would have a profound effect on the legislation. I refer the minister to proposed new section 120D(1)(a)(i), which provides -

(i) the maltreatment or suspected maltreatment of a child, excluding information that identifies or is likely to identify a person as a person suspected of being responsible for maltreatment or suspected maltreatment;

Are we dealing with substantiated maltreatment or suspected maltreatment?

Mrs PARKER: It refers to a situation in which maltreatment of a child has not yet occurred but there are historical reasons to suspect that it will occur. A woman might have had a number of children taken for care and protection reasons, give birth to another child and not indicate in any way that she has changed her capacity to provide care and protection. The definition clauses refer to "maltreatment" and the notes I provided explain that the definition of maltreatment includes acts which result in physical or emotional harm, but also circumstances in which there is strong evidence that the acts are likely to lead to physical or emotional harm; that is, where there is a history of previous abuse of a child or siblings. The guidelines to be developed after this legislation is passed will be devised in consultation with reporting agencies. They will include more detailed descriptions of child maltreatment. Although I do not think that the particular phrase the member referred to is relevant to the member for Mandurah's amendment, if the member wants to debate that, we can debate it outside the consideration of this amendment. I seek the Chair's ruling on that, so that we can progress the legislation. Certainly suspected maltreatment is where there is a grave risk, possibly because of historical evidence.

Mr CARPENTER: I am sorry that the clarity of my understanding is not perfect. The minister and I agree that this is a considerable amendment. It is a one-word amendment lodged in a paragraph.

Mrs Parker: Are you considering supporting the amendment?

Mr CARPENTER: I want to know what will be the impact of the amendment. There is a great deal of doubt about its impact. Part of that doubt is because of the paragraph of which the amendment will be part.

Mrs Parker: I understood you to say that the impact of this amendment would be profound. I do not know a lot about the debate that is going on in Britain at the moment, but I understand that debate is on lesser proposals than that which is being proposed by the member for Mandurah. That debate about those lesser proposals has caused very considerable community response. Whatever we talk about within this legislation, the fundamental change that is achieved by the member for Mandurah's amendment is to change "excluding" to "including" information that identifies or is likely to identify a person as a person suspected of being responsible for the maltreatment or suspected maltreatment. I understood you to say that would achieve a profound change in the legislation which would reverberate through the community. I am a little confused about where you are coming from now if from that position of profound change you are talking about some consideration of the adoption of that amendment. It may be because it is late at night, but I am a little confused.

Mr CARPENTER: Let me try to put it simply. My understanding of the proposed amendment is that it would have a profound impact.

Mrs Parker: That is right, and I clearly understood that you opposed that amendment.
Mr CARPENTER: What I am trying to determine is how profound. I want to know whether under that amendment a person who is suspected of being responsible for suspected maltreatment - and the minister has referred to potential maltreatment -

Mrs Parker: You are talking about including on the register -

Mr CARPENTER: I had better finish the sentence for the benefit of Hansard. If this amendment were to be accepted, would we have a situation in which a person who is suspected of being responsible for suspected maltreatment would have his or her name included on the register?

Mrs PARKER: I understood the member to have a very clear position on the member for Mandurah's amendment.

Mr Carpenter: It sounds as though you do not want to answer my question.

Mrs PARKER: Not at all. I just cannot work out why the member is asking the question and where is the point. Whether the inclusion of the information identifying the person relates to a person suspected of being responsible for the maltreatment or suspected maltreatment, the member is still talking about the inclusion of the name of a person against whom an allegation has been made and not tested in a court. We will go right through the debate that has been going on consistently throughout the evening. We have been talking about the principles of natural justice and the presumption of innocence. The member for Mandurah's amendment fundamentally changes the clause of the Bill and as a result the whole of the Bill. It would include information about persons as described to the member.

Mr CARPENTER: I am trying to determine whether only substantiated cases of maltreatment will be recorded on this register. If this amendment were put through, it would have an impact on the names on the register. Will it be suspected maltreatment cases, as is written in this paragraph, or only substantiated cases?

Mrs PARKER: I will refer the member for Willagee to the definition at the beginning of the Bill. The definition of "maltreatment" on page 3, line 5 reads -

"maltreatment" means -

(a) an act or course of conduct that results, or is likely to result, in significant physical or psychological harm to a child;

I have already been over that. The explanatory notes that have been provided to the member explain that the Bill defines the meaning of maltreatment to include not only acts which result in harm but also circumstances where there is strong evidence that the acts are likely to lead to physical or emotion harm; that is, where there is a history of previous abuse to the particular child or sibling. When the member raises the issue of maltreatment, I direct his attention to the definition of "maltreatment" as provided at the beginning of the Bill.

Ms ANWYL: The difficulty is that proposed section 120D(1)(a)(i) and (ii) refers to information that would be already held in the department immediately before the commencement of the Act. It is not so much about what will happen down the track but how the information that is already in the department will get onto this register. There are 2 600 children's names already recorded. Some of those children are recorded because of their suspected maltreatment, as the minister has already outlined, and some of them are not. The minister might agree with me that paragraph (a) refers to how information that is already within the domain of a department will be dealt with. It is confusing if we then talk about how people in the future may get onto the register because this paragraph deals with what is there now.

Mr Nicholls: My intention would be to change the legislation so that the same rules apply to future substantiated allegations.

Ms ANWYL: A further difficulty is created because, of course, as members have acknowledged, the member for Mandurah's amendment is significant. The first notice of it that many of us had was today. That is creating some difficulties in obtaining a position.

Mr Nicholls: This amendment has been foreshadowed since I spoke in the second reading debate by the strong stance I have taken on the identification of offenders. Therefore, this is not something that has just come out of the blue. Members have had a chance to think about it. I grant you that the wording is new.

Ms ANWYL: My difficulty is that the second reading debate was about six months ago. I do not know what everybody else's memory is like but I do not carry this information in my head.

Paragraph (a) relates to the 2 600 children already on the register. If the Act came into being tomorrow, I presume the minister would not be talking about a significant inclusion of other existing names of children onto the register.

Mrs Parker: I do not understand the point.

Ms ANWYL: I may be wrong; that is why I ask the minister if she agrees. Proposed section 120D(1)(a) states -

The register is to contain -
(a) any relevant information, as determined by the manager, held in the Department immediately before the commencement of the Child Welfare Amendment Act 1998 concerning -

Subparagraphs (i) and (ii) state the types of information, but I am trying to clarify for the record whether we are discussing only information already on the register. We know of 2,600 on the register.

Mrs Parker: Yes, we are.

Ms ANWYL: It might assist if we realise that we are not looking to extend that class in paragraph (a) any further than that which is already contained in the register.

Mrs PARKER: The member for Kalgoorlie has now made herself clear. I am not sure if proposed section 120D(1)(a) is relevant to the amendment that we are discussing at the time, and I seek the ruling of the Chair on that matter. However, it states that any relevant information, as determined by the manager, held in the department immediately before the commencement of the Child Welfare Amendment Act relates to the information already on the register.

Mr CARPENTER: It is important to the debate on this amendment because we would be including the names of people suspected of being responsible for the suspected maltreatment of children. Is that correct?

Mrs Parker: Yes.

Mr CARPENTER: Suspected maltreatment to me does not read as substantiated maltreatment.

Mrs Parker: I have explained that by referring the member to the definition of "maltreatment", that there is that opportunity.

Mr CARPENTER: The definition of "suspected" is more the issue than the definition of "maltreatment".

Mrs Parker: If you are talking about the amendment, and if you are asking whether the proposed amendment will mean that alleged offenders of suspected historical abuse will be recorded on the register, the answer is yes, it would.

Mr CARPENTER: Will the minister read her notes again?

Mrs Parker: If you are asking whether the proposed amendment, and I trust that is the context in which you are asking the question -

Mr CARPENTER: Yes, it is.

Mrs Parker: - means that the names of alleged offenders of that suspected historical abuse and the allegations against those people would go on the register under the amendment proposed by the member for Mandurah, the answer is yes, they would. 

Amendment put and negatived.

Mr NICHOLLS: I am very disappointed that the support was not forthcoming for the other amendment. However, I move -

Page 6, lines 10 to 20 - To delete the lines.

Effectively, subclause (4) allows for the names of a convicted minor to be removed from the register in its current form after a person has committed the offence on the basis that that offence may have been committed when the person was of young age, or at the request of the person to have that issue heard by a judge under the minister's foreshadowed amendment. The research clearly indicates that a person who commences abusive activity or behaviour towards other children at a young age is likely to continue that behaviour on into adulthood. While I understand that this provision is to try to assist those young people who may be caught up in offences, such as carnal knowledge whereby both parties are under legitimate age, or where a trivial offence has occurred, I do not accept the notion that carnal knowledge involving two consenting minors is a case of maltreatment when we are talking about substantiating maltreatment. However, I concur that if we are serious about identifying those people who may pose a risk to children in the future and who have been convicted of a criminal offence that involves harm to a child or children, their names should not be removed from the register. Further, the Bill provides for a situation whereby a person on spent convictions may have his conviction removed from the police record, but would remain on this register. I believe the same applies to a person irrespective of whether he committed the offence when he was under 18 years of age or over 18 years, and I therefore totally reject the notion that this provision would remain in this Bill. I trust that the Opposition may in its wisdom decide to support this amendment.

The DEPUTY CHAIRMAN (Mrs Hodson-Thomas): The Chair has noticed conflicting amendments to this part of the clause. We will use a test vote in order to preserve the rights of both members. The amendment of the member for Mandurah proposes to delete certain lines. The two amendments proposed by the minister commence part way through the lines proposed to be deleted by the member for Mandurah. In order to test the Committee's view, I will propose the deletion of the words the member for Mandurah wishes to delete up to the point where the minister's amendment starts. If that deletion is agreed to, the rest of the deletion of the member for Mandurah will be put to the Committee. If the initial deletion is negatived, the minister will be free to move her amendment.
Ms ANWYL: I speak to all three amendments - it does not make much difference - but the change from the manager having discretion to a judge of a Children's Court, effectively the presiding judge of the Children's Court, is clearly more appropriate. We are dealing with a complex balancing of competing interests because there are some general concepts in the law that a person under 18 years of age convicted of offences is to be treated differently from a person over 18 years, and effectively this whole section is about allowing removal from the register of an offender's name. Let us remember that we are talking about convicted offenders. This is the removal of the convicted offender's name from the register when the offence is committed while the person was under 18 years of age. Some discretion will be applied by the Children's Court judge. I for one have a great deal of faith in the ability of a Children's Court judge to make a proper decision on such matters. I find more satisfaction in the knowledge that a judge, rather than the register manager, will make the decision.

I am aware of the criminal law system for spent convictions; I am sure the minister is also aware of this system in the context of other debates. Adults can make application for a spent conviction, but they must wait 10 years before they can apply to a court. The level of the court to which they apply depends on the seriousness of the charge: that is, a magistrate may have some discretion on a minor matter, and a District Court judge would consider more serious matters like child maltreatment. That is the procedure for adults and convictions in general. Specific provisions of this Bill relate to the interaction with spent convictions. I note that the short title of the Bill indicates that it will consequentially amend the Spent Convictions Act. I make that comment as it is difficult to run together the various procedures in law relating to these provisions.

The member for Mandurah made some persuasive arguments that some convictions may be recorded for a juvenile which relate to the propensity for that juvenile to offend in adult life, and therefore to place children at risk. This matter relates to the difficulty in balancing the competing rights of individuals in our society. Although the declaration of the Bill is to protect and coordinate service delivery to children, some anomalies appear to be present. How is it anticipated that the system will operate? Will the department be represented at a court hearing? Will a legal representative of the department be before the judge of the court who must make the decision? Can we be told whether any of the 37 convictions now on the register relate to juveniles? So we can have some idea of the scope with which we are dealing, what percentage of offences recorded against children in the State are committed by juveniles?

Mrs PARKER: I will not respond to the spent convictions issues raised by the member for Kalgoorlie as they relate to proposed section 120E. In the interests of progressing the debate, we need to talk to the amendment before us. I take on board the comments of the member for Kalgoorlie regarding my proposed amendment to delete "manager" and insert "judge". The removal of a person's name as a convicted offender would be the exception rather than the rule. I have provided explanatory notes to members of the Opposition and the member for Mandurah. The anticipated examples in which a judge would consider deletion under this provision would be, for example, a carnal knowledge conviction in which the act occurred between youths of similar age, and with consent. However, the judge would clearly have regard to the person's age when he or she committed the offence, and the nature and seriousness of the offence. Where a significant age difference, serious assault or violence is involved, the record will remain. I concur with the comments of the member for Kalgoorlie that a judge will have criteria on which to exercise his or her assessment on the application by the person to have a name removed.

I do not support the amendment as proposed by the member for Mandurah. I urge support for my amendment to delete "manager" and insert "judge". In answer to the questions from the member for Kalgoorlie, the department will not be represented at a hearing; also, I am advised that none of the registrations of convicted perpetrators of child abuse involve a juvenile.

Mr NICHOLLS: I concur with the view of the member for Kalgoorlie that it would be far better for a judge to exercise the discretion than a manager. However, if we want to exercise some prerogative about young offenders being placed on the register, it should be exercised at the time the young person is convicted. If it were the view of the judge hearing the evidence of the case, I would not object to the judge indicating that the name of the young offender should not be placed on the register. The offence would not, in the judge's view, present any potential harm or risk of harm to a child.

However, a body of evidence clearly suggests that young people under the age of 18 years who engage in offences against other children continue that behaviour when they enter adulthood. Generally, the rate of successful rehabilitation with these people is not high. Therefore, the minister's argument is suspect about not supporting an amendment to delete the ability to remove from the register the names of people once they reach the age of 18 years. If one were to extend that view, following the natural justice argument, why would every person not have a chance to appear before a judge and appeal against his or her name appearing on the register? Why do we say that once a perpetrator attains the age of 18 years, he or she is no longer a risk? The purported reason is that the offence was committed at a young age, and the young person did not know what he or she was doing and upon reaching adulthood, the threat no longer exists. I would like the minister to contemplate research which indicates that the younger the age at which offenders start to offend, particularly with sexual maltreatment of other children, the greater their propensity to continue offending into adulthood. If the minister has evidence that that is not the case, I will gladly reconsider my amendment.

Mrs PARKER: In response to the comments by the member for Mandurah, I do not dispute that children who offend as
juveniles may continue a pattern of offending into adulthood. For that reason, the names of convicted offenders will remain on the register unless an application is made on appeal to have the names removed. I explained a moment ago the conditions under which a judge might consider removing a name. The judge would take into account the nature and seriousness of the offence, and the person's age when the offence was committed. It was envisaged that a judge might consider removing a name from the register in the case of a carnal knowledge conviction when the act occurred between youths of like age with consent. In cases involving violence, an age difference or serious assault, the record would remain. In principle, this legislation provides that the successful conviction of a juvenile who has abused children will go on the register but, in some cases, an appeal can be made to a judge and the matter can be reconsidered.

**Amendment put and negatived.**

Mrs PARKER: I move -

Page 6, line 12 - To delete "the manager" and insert "a Judge".

Page 6, lines 13 to 20 - To delete the lines and substitute the following -

(a) on the application of the person; and

(b) having regard to -

(i) the person's age when the person committed the offence; and

(ii) the nature and seriousness of the offence,

order the removal of the information relating to the offence from the register; and the manager shall comply with any such order.

**Amendments put and passed.**

**Progress reported.**

*House adjourned at 10.06 pm*

For Legislation Committee proceedings on the Court Security and Custodial Services Bill, see page 6567.
GOVERNMENT DEPARTMENTS AND AGENCIES - CREDIT CARD EXPENDITURE

1504. Mr CARPENTER to the Minister for Health:

(1) Will the Minister state the total expenditure on Government credit cards in the Minister's office for the following financial years -
   (a) 1996-97; and
   (b) 1997-98?

(2) For each individual credit card holder in the Minister's office, will the Minister advise -
   (a) the name and position of the card-holder;
   (b) the credit limit on the card; and
   (c) the total expenditure on that card in -
      (i) 1996-97; and
      (ii) 1997-98?

Mr DAY replied:

(1) (a) 1996-97 $5,252.20
     (b) 1997-98 $32,329.56

(2) (i) 1996-97
       WESTPAC CREDIT CARDS
       (a) Name and Position  (b) Credit Limit  (c) Total Expenditure
       Hon.R Wiese, Minister  $5,000       $4,839.30
       P Middleton, Chief of Staff $5,000       317.00
       Hon. J Day, Minister    $5,000       3.75
       P Wren, Executive Officer $5,000       92.15

       (ii) 1997-98
       WESTPAC CREDIT CARDS
       (a) Name and Position  (b) Credit Limit  (c) Total Expenditure
       Hon.J Day, Minister    $5,000       637.20
       P Wren, Executive Officer $5,000        56.10

       ANZ VISA CARDS
       Hon.J Day, Minister    $20,000       2,641.30
       R Guszka, Admin. Assistant $ 5,000       212.18
       J Kennedy, Appointments Sec. $ 5,000        95.50
       M Malarkey, Admin. Assistant $ 5,000       7,141.37
       K Newman, Executive Officer $10,000       2,253.17
       H Raykos, Liaison Officer $ 5,000          Nil
       R Reid, Chief of Staff   $10,000       1,481.45
       M Thompson, Media Secretary $ 5,000         Nil
       D Stratton, Liaison Officer $ 5,000         Nil
       P Wren, Executive Officer $ 5,000         Nil

       AMEX CORPORATE CARD
       Hon. J Day, Minister    $20,000       5.00
       J Kennedy, Appointments Sec. $ 5,000         Nil
       K Newman, Executive Officer $10,000       2,769.81
       G Power, Policy Officer  $ 5,000       294.22
       R Reid, Chief of Staff   $10,000       13,226.26
       P Wren, Executive Officer $10,000       1,643.00

FOOD, GENETICALLY MODIFIED

1929. Dr CONSTABLE to the Minister for Health:

(1) What is the Department of Health's definition of "genetically modified food"?