CHILDREN AND COMMUNITY SERVICES BILL 2003

Committee

The Chairman of Committees (Hon George Cash) in the Chair; Hon Ljiljanna Ravlich (Parliamentary Secretary) in charge of the Bill.

Clause 8: Determining the best interests of a child -

Resumed from an earlier stage of the sitting on the amendment moved by Hon Derrick Tomlinson.

Hon BARBARA SCOTT: I support the amendment that Hon Derrick Tomlinson has moved. The explanation from the parliamentary secretary about foster carers wanting permanency seems to be a fraught argument, because we know that nothing is permanent in this life and that real stability is needed. If the parent or parents of a young child are killed in a road accident, which has certainly happened within my group of friends, permanency is not relevant; stability is needed for the child. I am surprised that the parliamentary secretary will not accept that, because in the dealings that I have with constituents and people who raise issues about care arrangements, I am told that the Department for Community Development officers continually say that it is an interim care arrangement and is not to be viewed as permanent. Certainly, foster care is not to be viewed as a permanent option and an alternative to adoption. The allegation has often been made that people foster children because they cannot adopt them. I support the amendment, and I ask the Chamber to seriously consider accepting the amendment moved by Hon Derrick Tomlinson.

Hon DERRICK TOMLINSON: Before question time, the parliamentary secretary offered by interjection to discuss this matter with me during question time in order to reach a compromise. She suggested as a possibility the phrase "permanency and stability". Bearing in mind the interests of the Foster Care Association of Western Australia, perhaps we could reach a compromise. My discussions in the past with the Foster Care Association have indicated that it is not looking for permanency; that is, never-ending care. It is looking for continuity of care. Examples were presented to me of children who were placed in the care of a foster parent making some progress in establishing stability in their lives. Then, for reasons not satisfactorily explained, the children were moved from that carer and placed with other carers. The association argued for a principle of continuity in placement. I wonder whether the parliamentary secretary would be willing to accept a compromise to replace "permanency" with the words "continuity and stability".

Hon GIZ WATSON: I have some sympathy for the amendment, as a result of the discussions we have had. When I read the Bill, it struck me that "permanency" was a strange word to use in this context. I have listened to the arguments of both sides on this issue. I indicate that at this stage I am attracted to the argument that consistency and stability are the qualities we are seeking to enshrine in this legislation. Again I take on board that foster carers have a view on this. However, that is just one view, and it should not perhaps be given weight that it does not deserve. At this stage I am sympathetic to the amendment, and I will be interested to hear the Government's response.

Hon LJILJANNA RAVLICH: According to my interpretation of the meaning of permanency and stability, I would have thought that if there were a permanent environment, stability would be an integral part of that.

Hon Derrick Tomlinson: One of the reasons that there are unstable children is that they are returned to unstable environments.

Hon LJILJANNA RAVLICH: That is the way the member interprets it. However, I would have thought that, technically, if there were a permanent living arrangement, obviously it would be more stable than one that was not permanent.

Hon Giz Watson: It might be a stable and dysfunctional state.

Hon LJILJANNA RAVLICH: I accept that.

Hon Derrick Tomlinson: Homeostatic dysfunction.

Hon LJILJANNA RAVLICH: Yes. I thank honourable members for their contribution. I will not dig my heels in on this, because I believe that continuity and stability offer an acceptable compromise in this situation. If the honourable member moves accordingly, the Government will accept that amendment.

Hon DERRICK TOMLINSON: I seek leave to alter the amendment by inserting before "stability" the words "continuity and".

Amendment, by leave, altered.

Amendment, as altered, put and passed.

Clause, as amended, put and passed.

Clause 9: Guiding principles -

Hon DERRICK TOMLINSON: I move -

> Page 10, line 24 - To delete "only be taken in respect of a child" and insert instead "be taken only".

This is not a question of principle; this is a question of good grammar. May I offer some chastisement to the parliamentary draftsman, not the parliamentary draftsman present, but Mr Greg Calcutt, if I am allowed to name him. His mother was one of the finest English teachers I knew. Her knowledge of English literature was admirable. Her command of the English language was equally admirable. She was a gentle lady with an incisive mind, who spoke with such correct grammar that I, as her senior master in school, was rather humbled by her. I am sure that she probably revolves in her grave when her son allows such infelicities to intrude into the grammar.

Hon Tom Stephens: Are you sure she's dead?

Hon DERRICK TOMLINSON: I believe so. If she is not, I am sure she would likewise be concerned.

The verb in this clause is take - shall take, taken, will be taken, shall be taken, should be taken. I am sure that you, Mr Chairman, will point out that the verb is future imperfect conditional. We then place in that verb the qualifier "only". What does it mean? The statement in the clause is "should only be taken in respect of a child in circumstances where there is no other reasonable way to safeguard and promote the child's wellbeing". Clause 32(2) states that intervention action means action that involves this, that and the other in relation to a child. Clause 32(1) states -

> If the CEO determines that action should be taken to safeguard or promote a child's wellbeing, the CEO must do any one or more of the following -

That intervention action relating to the child is listed in clause 32(2).

Hon Ljiljanna Ravlich: We agree with your amendment and we will support it.

Hon DERRICK TOMLINSON: Let me finish! I want Greg Calcutt to indelibly accept this. I have seen this so many times. One of the last things I want in this Parliament is for the parliamentary draftsman to accept that the word "only" is the qualifier on the action and relates only to the time clause; it tells us when.

Hon Ljiljanna Ravlich: Yes. Why take it out on us?

Hon DERRICK TOMLINSON: It is unnecessary to use the words "in respect of a child" in the clause, as they are contained in clause 32(2) and, therefore, redundant. The action shall be taken only in circumstances, not shall only be taken in circumstances. Shall be taken in circumstances of this and that is quite different from shall be taken only in circumstances of this and that. I suggest, for the sake of clarity as well as grammatical correctness, that the House accept my amendment.

Hon GIZ WATSON: I must rise to speak on this matter, but only to say that the clause had also struck me as ungrammatical. I will not elaborate on that, as Hon Derrick Tomlinson has covered the field. However, the amendment is very important and I will support it.

Hon LJILJANNA RAVLICH: We support this amendment.

The CHAIRMAN: Members, support seems to be breaking out!

Amendment put and passed.

Clause, as amended, put and passed.

Clause 10: Principle of child participation -

Hon DERRICK TOMLINSON: This is a very important principle and one about which I spoke during the second reading debate. I doubt that I made it clear, as the parliamentary secretary appeared to be a little confused in her response. However, it is a very important principle that a child participate. If I had my druthers, I would prefer that child protection issues be taken out of the Children's Court. I would rather separate child protection matters from criminal matters with which the Children's Court deals. If I had my druthers I would have child protection issues decided by a panel with the same authority and capacity to enforce decisions that the parliamentary secretary quite correctly pointed out is necessary. However, I would prefer that the panel look at all the principles that are now contained in the Bill, including the interests of the child. I would like to see a provision in the Bill giving an opportunity for the panel to consider each case of the Department for Community Development and the parents and the interests of the child by direct participation of the child. However, because

the child may be below the age of abstract competence, there should be before the panel in the child's place an advocate to argue the interests of the child. Unfortunately, I will not have my druthers before I leave this place. However, I hope that when the Parliament next considers the Bill, it will give consideration to separating criminal matters from childcare matters in the Children's Court.

If a child is incapable of appearing before the panel, by age, intellect or development, who will act for the child? The parliamentary secretary has already drawn attention to a later clause in the Bill which empowers the court to direct that a legal representative be appointed to represent the child. However, the legal representative would argue points of law. Considering all the principles that we have now accepted, I ask the parliamentary secretary who will act for the child?

Hon LJILJANNA RAVLICH: The principle of child participation is a new principle that is not found in current legislation.

Hon Derrick Tomlinson: A very important one.

Hon LJILJANNA RAVLICH: Yes, and we are moving forward in the right direction. The principle of participation is based on section 10 of the New South Wales Children and Young Persons (Care and Protection) Act 1998. The answer to who acts for the child is: the department.

Hon DERRICK TOMLINSON: I thank the parliamentary secretary for that response. I refer to my speech during the second reading debate in which I said that the current procedure is legalistic and adversarial; the department prosecutes the case and the parents defend the case. Now we will legislate the department to be not only the prosecutor but also the advocate of the child, which has always been so. My hope is that in the future some thought will be given to changing that situation so that the responsibilities for prosecuting the case and representing the interests of the child will be separated. I refer to not only the legal representation of the child, but also the advocate for the child's interests.

Clause put and passed.

Clause 11 put and passed.

Clause 12: Aboriginal and Torres Strait Islander child placement principle -

The CHAIRMAN: The question is that clause 12 stand as printed. Hon Derrick Tomlinson has a number of amendments to this clause. His first amendment is -

> Page 13, line 6 - To delete "**Aboriginal and Torres Strait Islander**"

I suggest that there is no need to delete those words on the basis that his amendments Nos 14/12 and 15/12 deal with that issue. If the member's amendments are agreed to, a Clerk's amendment will delete those words. That may be the principle the member wants to discuss.

Hon DERRICK TOMLINSON: If the Committee is unwilling to accept the argument that I am about to present, it was my intention to not proceed with the subsequent amendments. Exceedingly sensitive consideration must be given to this issue. All members are very familiar with the history of the care and protection of Aboriginal children under the Aborigines Protection Act 1886, the Aborigines Act 1905 and the Native Welfare Act 1936. Members are all aware of the consequences of the actions taken under those laws. They have been elaborated and reported on with perception and compassion in the "Bringing them home" report. I have no argument with what the Government is trying to do under this provision. I hope that the Government will expand its vision and look forward. I think the Government does intend to do that because the principles relating to clause 12, "Aboriginal and Torres Strait Islander child placement principle", must be linked with clause 80, "Guidelines for placement of certain children".

Clause 12 adopts the principle in clause 8(1)(j), which refers to -

> the child's cultural, ethnic or religious identity (including any need to maintain a connection with the lifestyle, culture and traditions of Aboriginal people or Torres Strait Islanders);

That signals to me that the Government is aware of the need to think beyond the confines of the respect for the cultural verities of the Aboriginal population, and to include the cultural verities of a much more diverse Australian population. We are a pluralistic, multicultural society. Increasingly, since 1966 various Asian groups have been accepted as not only migrants to Australia, but also Australian citizens. In the past five years there has been an increase in the number of families who have migrated to Australia from the Middle East and who have accepted citizenship. We have moved away from a society that was principally Anglo-Saxon during Australia's colonial period. The people who migrated to Australia post World War II were predominantly western European Christians who had cultural values similar to those of the Australian population at the time.

Certainly they spoke different languages and included a variety of religious denominations, but they were predominantly Christians whose Judeo-Christian ethics underlined the morality and mores of their society. Today we have a vastly different society that comprises people with other religious convictions and who are respected and accepted by most Australians. One of the things we have argued for in our citizenship laws is that people should not be expected to surrender their citizenship, their cultural values or their religion but instead be expected to integrate those values into the Australian community. I think the Government has accepted the principle of multiculturalism in the matters to which I have referred, and that principle should be applied to this provision.

Although I acknowledge the sensitivity of and the need for special provisions for Aborigines, I accept and have not sought to amend some provisions in this legislation for Aborigines. Instead of inserting clause 12 in the legislation, which relates to only one ethnic group - which is a multicultural group in the Aboriginal world, but is considered a single cultural identity of the Aboriginal and Torres Strait Islanders - and relying upon clause 80, which states that the chief executive officer will set certain guidelines, those principles can be easily incorporated in clause 12 and applied across all lifestyles, cultural traditions and cultural, ethnic and religious identities. The provision could embrace them all simply by removing from clause 12 references to Aboriginal and Torres Strait Islanders. Reference can be equally referred to other ethnic and cultural identities.

Hon LJILJANNA RAVLICH: The Government will oppose this amendment. Given the history of Aboriginal and Torres Strait Islander peoples in this country, which has been a very sad history, there is a very strong view that they should be made a special case. The honourable member will be aware that this Aboriginal and Torres Strait Islander placement principle is very similar to the principle that was inserted by an amendment into the Adoption Act. Was the honourable member involved in that debate? I thought he might have been.

Hon Derrick Tomlinson: I certainly was involved and I tried to argue the same principle then as I am arguing now.

Hon LJILJANNA RAVLICH: It has been modified, for this Bill, to cater for non-adoption placements of children in cases in which parents have not relinquished their child for adoption. This special provision is supported by many Aboriginal and Torres Strait Islander peak bodies. For example, the department has received correspondence from the executive director of the Yorganup Child Care Aboriginal Corporation, saying that that organisation strongly endorses this principle. The department has also received correspondence from the Secretariat of National Aboriginal and Islander Child Care, which is a national peak body, saying that it strongly endorses this placement principle. It is not as though the Government has not given recognition to children from what used to be called non-English-speaking backgrounds but are now called culturally and linguistically diverse backgrounds. It is not as though one has been included in the Bill and the other has not. Provision has been made for children from a CALD background, as has been rightly pointed out, at clause 80. It is very important to consider this provision within the context of the history of indigenous people in this State. Therefore, given past policies on Aboriginal children it is important that this principle specifically recognises the special needs of Aboriginal and Torres Strait Islander children in Western Australia. As much as I can understand where the honourable member is coming from, I urge members to support the Government. It would be a shame to remove this provision. Support for the amendments of Hon Derrick Tomlinson would amount to a deletion of the whole principle, and the Government cannot and will not support that.

Hon DERRICK TOMLINSON: In view of your advice, Mr Chairman, about the title being a Clerk's amendment, it would be appropriate to test the sentiment of the committee by moving the next amendment, No 14/12. I move -

Page 13, lines 9 and 10 - To delete "Aboriginal children and Torres Strait Islander".

I thank the parliamentary secretary for her explanation, and I have no argument with the principle. I agree that we must be cognisant of the history of the maltreatment of Aboriginal people, in particular Aboriginal children, in Australian and, in particular, Western Australian history. I am not arguing for the removal of the child placement principle. I am arguing for the expansion of that principle to embrace the Government's own principle of the importance of the child's cultural, ethnic and religious identity, contained in clause 9(i). I have not argued for the removal of the principle contained in clause 12(2)(b), which provides for the placement of a child with a person who is an Aboriginal or Torres Strait Islander in the child's community in accordance with local customary practice. That clause is directly relevant to the Aboriginal community, and not to similar ethnic groups resident in Australia. I have also not moved to amend or remove, at later stages in the Bill, the requirements to involve an officer who is an Aboriginal person in Aboriginal child placement. I am not sure where that comes in the Bill. I accept those principles. I am arguing for what the Government has already accepted - that the principle extend beyond the Aboriginal community. While we must be guided by history and accept the lessons of history - otherwise we will simply repeat them - we must also recognise that we are making legislation in the present that will apply in the future. The decisions we make in the present must be informed by

the past, but they must also have an eye to the future, and must also be aware of the cultural diversity of our pluralistic society. Just as the Government argued that this Bill is to replace an Act that has been in place since 1947 - for almost 50 years - it is probably likely that the legislation we enact in 2004 will be in place for another 50 years. Although it is important to learn from history, history alone should not direct the values of the legislation. The current values of society must also direct the legislation, and we must also look to the future, not merely to the past. I am not moving these amendments to remove the child placement principle. I will not move for the deletion of clause 12. I will move for the specific deletion of references to Aboriginal and Torres Strait Islanders where, by that removal, a general principle of respect for cultural verities across the total population comes to apply.

Hon GIZ WATSON: I have listened to the arguments today but also understand that the Aboriginal child placement principle has been debated in this place before, and there has been a significant amount of consultation with indigenous communities about that principle, and they are happy with it. The difference in the case of culturally and linguistically diverse communities is that their concerns will be addressed by way of regulation.

Hon Derrick Tomlinson: Not by the Parliament?

Hon GIZ WATSON: I understand that it will not be enacted by the Parliament with this Bill, but there is a provision that Parliament may see the regulations and have the ability to comment on them and disallow them if we are not happy. Perhaps in an ideal world, if the consultation with culturally and linguistically diverse communities had happened, then they would be provided for in the Bill.

Hon Derrick Tomlinson: I wonder if the minister has received any letters from the Muslim community.

Hon GIZ WATSON: I do not know. Perhaps the issue is partly a logistic one, and by saying that this has to be done by way of regulation within 12 months allows time for that consultation to take place. I would hope that the provisions would be similar to this one, because, in principle, they are good provisions. However, I would be reluctant to assume that the consultation has taken place. As much as it is difficult to have a consensus from the indigenous community, it is probably even more of a task to get some consensus on the provisions from the diverse range of ethnic representatives in Western Australia. I am reasonably comfortable that our concerns will be covered. I would have preferred to have the provision in this Bill so we could have passed it in the way that we will hopefully accept the principle of Aboriginal and Torres Strait Islander child placement. I would also argue that probably the same principles are suitable for other communities, but I would not like to second-guess that. Therefore, I do not have a problem with allowing this to happen by way of regulation, which is why I am comfortable with how it is even though the process is not exactly as I would have preferred.

Hon Derrick Tomlinson: I think they are already there.

Hon GIZ WATSON: Yes. I am flagging to the Committee that my preference is to stick with what we have and to seek some assurance from the parliamentary secretary on how the other provisions will be accommodated.

Hon LJILJANNA RAVLICH: I thank members for their contribution; however, it has not changed the Government's position. We need to be cognisant of the special needs of indigenous people, and we intend to do that by making a direct reference in the legislation to the Aboriginal and Torres Strait Islander children placement principle. I can understand the argument that if we delete the reference to Aboriginal and Torres Strait Islander children, we are left with a framework that would then incorporate all children, and the placement principle therefore would apply by automatic inclusion across all cultural groups.

Hon Derrick Tomlinson: It becomes an inclusive rather than exclusive provision.

Hon LJILJANNA RAVLICH: Yes. However, I made the point earlier that there is a lot of support for this principle and it is consistent with the recommendations of the "Bringing them home" report. Perhaps one reason is that clause 80 deals with guidelines for children from culturally and linguistically diverse backgrounds.

Hon Murray Criddle: What does that mean?

Hon LJILJANNA RAVLICH: They used to be referred to as children from a non-English speaking background, but that term has since been changed. It basically refers to all children who speak a language and are culturally diverse. There needs to be greater consultation with representatives from those cultural groups. Members attend citizenship ceremonies all the time, and I am always amazed at the number of countries from which people come to Australia. It is one of the nice things that we do as members of Parliament, and where we really see the volume and diversity of people who come into this country and seek citizenship. Of course, some people come to this country and choose not to become Australian citizens, and there are plenty of them. However, would the needs of that culturally and linguistically diverse group be the same in terms of the principles or would some of them have different principles? It is a major logistic exercise to consult widely with those groups. That can

sometimes be the case, even when consulting with peak bodies. For example, we might say that the Ethnic Communities Council is a peak body and represents ethnic communities in Western Australia; however, the reality is that it may not represent some sectors of the ethnic community. For example, I am not sure whether it represents people from the Middle East. I am also not sure whether members of the Croatian community are linked to that organisation; therefore, would we then have to consult with them separately or -

Hon Derrick Tomlinson interjected.

Hon LJILJANNA RAVLICH: No, but the point is that we cannot speak to just one peak body. There needs to be extensive consultation with some of the new migrants in particular. As Hon Derrick Tomlinson pointed out, which organisations represent the communities who migrated post-1970 and 1980 from Vietnam and the Middle East? As a part of the review in five years, the proposal is that one area that can be looked at -

Hon Derrick Tomlinson: I hope the regulations will be in place before that review.

Hon LJILJANNA RAVLICH: They will be because this Act will have to be operationalised, and the member knows very well that that cannot take five years. Having said all that, the simple fact is that we will not support the amendment.

Amendment put and negatived.

Hon DERRICK TOMLINSON: As intimated, I will not move my other amendments related to this clause.

Clause put and passed.

Clauses 13 to 15 put and passed.

Clause 16: Delegation by Minister -

Hon DERRICK TOMLINSON: Subclause (1) states -

> The Minister may delegate to the CEO any power or duty of the Minister under another provision of this Act.

Does that provision also embrace clause 20(4), which states -

> The common seal of the Ministerial Body is to be affixed to a document in the presence of the Minister, and the Minister is to sign the document to attest that the common seal was so affixed.

Hon LJILJANNA RAVLICH: The short answer is yes, it can be delegated. That function is delegated now under the Community Services Act.

Clause put and passed.

Clauses 17: Meaning of "Ministerial Body" -

Hon DERRICK TOMLINSON: This clause states -

> In this Division -
>
> **"Ministerial Body"** means the Community Development Ministerial Body established by section 18(1).

Clause 18(1) states -

> A body called the Community Development Ministerial Body is established.

Is the minister the ministerial body?

Hon LJILJANNA RAVLICH: No, she is not the body; she governs the body.

Clause put and passed.

Clause 18: The Community Development Ministerial Body -

Hon DERRICK TOMLINSON: I thank the parliamentary secretary for her answer that the ministerial body is other than the minister. Therefore, I ask with regard to subclause (1), which states, "A body called the Community Development Ministerial Body is established", who is that body?

Hon LJILJANNA RAVLICH: It is a new body.

Hon DERRICK TOMLINSON: If that is so, is this new body composed of nobody, or is this new body composed of bodies, in which case which bodies?

Hon LJILJANNA RAVLICH: I am advised that it is a legal entity governed by the minister.

Hon DERRICK TOMLINSON: The parliamentary secretary does not need to tell us that, because the clause continues by saying -

(2) The Ministerial Body is a body corporate with perpetual succession.

(3) Proceedings may be taken by or against the Ministerial Body in its corporate name.

(4) The Ministerial Body is to be governed by the Minister.

(5) The Ministerial Body is an agent of the State and has the status, immunities and privileges of the State.

What the parliamentary secretary has just said is self-evident; it is stated in the Bill. What I want to know is who is the corporate body.

Hon LJILJANNA RAVLICH: It is a legal entity. With all due respect, it is like asking who is the company under the Corporations Law. It is the same sort of question. A body has been set up. It is a ministerial body. It is a legal entity that is governed by the minister.

Hon DERRICK TOMLINSON: The legal entity is the minister. The legal entity called the Community Development Ministerial Body under clause 19 has certain powers, and under clause 20 has the capacity to execute documents and to affix a common seal in the presence of the minister. Therefore, it seems to me that this legal entity called the body corporate - the ministerial body - is the minister. I want that made clear, because I think it may have some implications for who and what may be sued.

Hon LJILJANNA RAVLICH: My advisers tell me that it is not the minister but it is governed by the minister. That is the best information I have at hand, based on the legal expertise of the department. I am not exactly sure where the member is going with this. I think the member is trying to imply that instead of referring to the minister in the performance of its functions, the legal body will perform these functions. I think that is where the member is going with this.

Hon DERRICK TOMLINSON: I think where I am going is that we have a corporate body which is an agent of the State and has all the immunities and privileges of the State but which may have action taken against it by the minister or may take action against the minister, so the corporate body may then become involved in legal processes that are beyond my common intelligence. I therefore request that we defer the consideration of clause 18 while I seek some legal advice.

Further consideration of the clause postponed until after consideration of clause 251, on motion by Hon Derrick Tomlinson.

Clauses 19 to 25 put and passed.

Clause 26: Identity cards -

Hon DERRICK TOMLINSON: I move -

Page 22, line 17 - To delete "whenever asked to do so by" and insert instead "to".

The amendment provides that when a public officer who is acting with the authority of the CEO of this very powerful department interacts with a person with whom the officer has exercised, is exercising or is about to exercise a power under the Act, the authorised officer must identify himself or herself, just as other authorised officers are required to identify themselves. The clause provides that an authorised officer is required to present as proof of identity his or her identity card only whenever asked to do so. The practice should be that the authorised officer presents his or her identity card before he or she exercises or initiates the exercise of a function.

Hon LJILJANNA RAVLICH: The Government will not support this amendment because it will significantly change the meaning of the clause. Subclause (2) states -

An authorised officer must produce his or her identity card whenever asked to do so by a person in respect of whom the officer has exercised, is exercising, or is about to exercise, a power under this Act.

The amendment would unnecessarily require an authorised officer to show his or her identity card to a person on every occasion that he or she has a dealing with that person. That person may be well known to the authorised person, who may have contact with that person on many occasions during the day. The requirement that an authorised officer must formally produce his or her identity card to a person who may be very well known to that officer in any event seems to be a bit of an overkill. For that reason we will not support the amendment.

Hon DERRICK TOMLINSON: Then I assume that the parliamentary secretary does not think it necessary for police officers to wear a uniform and produce an identification badge. I suggest that although what the parliamentary secretary has said is undoubtedly true, any public officer who exercises functions of the kind that are exercised by the Department for Community Development should be required to identify himself or herself

at the beginning of the exercise of those functions and demonstrate that authorisation by producing an identity card. I have an identity card for this place, but when I walk into this place I do not need to show it, because people know me.

Hon GIZ WATSON: I believe this is a reasonable amendment. As I understand it, the intention of the amendment is to ensure that the officer produces the identity card at the outset rather than wait until he or she is asked.

Hon Derrick Tomlinson: That is correct.

Hon GIZ WATSON: That is very good. I understand what the parliamentary secretary is saying. I agree that if the officer works with a person on a regular basis it may seem excessive to require the officer to produce the identity card every time he or she has a conversation with that person, but I assume that can be dealt with by the fact that the identity card will be clipped onto the officer's clothing or be worn in some way so that it will be visible in every interaction that the person is performing in his or her official capacity. That is not an unreasonable requirement. I agree with the member's analogy with members of the Police Service. Police officers wear an identification number, unless, of course, they are dealing with protestors, when occasionally they do not wear an identification number, but that is another story. The onus should be on the authorised officer to produce the identity card rather than wait to be asked.

Sitting suspended from 6.00 to 7.30 pm

Hon DERRICK TOMLINSON: During the dinner break it was agreed after consultation that the word "display" might perhaps be more appropriate to use in subclause (2) than the word "produce". If "display" were used, the subclause would read -

> An authorised officer must display his or her identity card . . .

It then becomes a question of when the authorised officer must display his or her identity card. One would be tempted to say that it should be displayed at all times, but that would not be appropriate. I wonder whether we might delete the words "asked to do so by" and replace them with the words "dealing with". I am going through this explanation because if we can get agreement on it, I will seek permission to withdraw my amendment and move an alternative. If the alternate words were accepted, the subclause would read -

> An authorised officer must display his or her identity card whenever dealing with a person in respect of whom the officer . . .

The card would thus be displayed at all times by the officer when dealing with that person. For example, an officer could wear a badge on his lapel, have a tattoo on his cheek or have whatever was thought to be appropriate. It is an identity card that is to be displayed. It will be visible at all times to the person with whom the officer is dealing. Before moving any further, I would like to hear the parliamentary secretary's response.

Hon LJILJANNA RAVLICH: We could live with that; it would be acceptable.

Hon DERRICK TOMLINSON: I seek leave to withdraw my amendment.

Amendment, by leave, withdrawn.

Hon DERRICK TOMLINSON: I move -

> Page 22, line 16 - To delete "produce" and insert instead "display".

Amendment put and passed.

Hon DERRICK TOMLINSON: I move -

> Page 22, line 17 - To delete "asked to do so by" and insert instead "dealing with".

The effect of the amendment is that the identity card will be displayed whenever the officer is dealing with a person.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 27 put and passed.

Clause 28 postponed until after consideration of clause 251, on motion by Hon Ljiljanna Ravlich (Parliamentary Secretary).

Clauses 29 to 33 put and passed.

Clause 34: Warrant (access) -

Hon DERRICK TOMLINSON: I have a series of amendments on the supplementary notice paper to substitute the words "believes" or "belief" with the words "suspects on reasonable grounds" or "suspicion". I think I understand why the Government prefers the word "belief" to the words that are used in the Police Act as the grounds for the issue of a warrant; that is, a suspicion on reasonable grounds.

A belief is a much more subjective assessment. When dealing with children who may or may not be the subject of abuse of several kinds, or who might be in danger of abuse of those kinds, the State accepts a responsibility to intervene. Very often the State intervenes because there is an insubstantial indication that something that is going on is or may be harmful to the child. Therefore, some delicate judgments have to be made by responsible officers when making an application for a warrant to intervene in the various ways provided under a warrant. I fully appreciate the difficulty of the circumstance. However, the provisions of the Bill require an officer to seek the warrant of a magistrate. The application for a warrant is based on a belief. The magistrate must then make a judgment about a belief. Belief is an entertaining proposition. I believe that I am of reasonable fitness and weight for my age. That is an irrational belief, but I can still believe that even if it is a delusion to make me feel comfortable. I do not have to justify a belief. A belief is of that nature; it is a faith. When an officer goes to a magistrate, who has to make a decision on the issuing of a legal instrument to allow that officer to take action that intrudes on the rights and privileges of an individual, even though there are those delicacies to which I have already referred, it is still necessary for that officer to demonstrate to the magistrate that there is more than a belief and that there is some substance to the belief. Therefore, I have proposed that set of amendments to substitute the word "believes" or "belief" with the words that are in the Police Act; that is, "suspects on reasonable grounds". Then the public officer who is seeking the warrant would have to satisfy the magistrate to whom he or she is making application for the warrant that his or her suspicions are founded; that is, there are reasonable grounds or reasonable cause for suspecting that. A person does not need to demonstrate reasonable cause for a belief; all that person needs to say is, "I believe." In making an application for a warrant, the phrase "suspects on reasonable grounds" is a more rational way to go than simply an officer saying, "I believe that is happening." The officer may believe it is happening, but on what grounds does he or she believe that? If an officer has a suspicion, he or she should demonstrate the grounds for that suspicion. I would like to hear the parliamentary secretary's response before I proceed with the amendment.

Hon LJILJANNA RAVLICH: The Government will oppose this amendment. The argument that an officer does not have to show reasonable grounds for a belief is not so in our opinion. A belief must be based on reasonable grounds and the reasons for that belief must be shown. In fact, the word "suspect" has a lower threshold in terms of proof. One might argue that the two terms are interchangeable, and there may not be too much in it. However, I am advised that suspect is a lower requirement at law than is belief. For that reason, we cannot support the amendment.

Hon DERRICK TOMLINSON: I am disappointed in the parliamentary secretary's response. I thought it would be the reverse; that is, a belief is a lower order of proof than is a suspicion on reasonable grounds. If a person has a suspicion on reasonable grounds, that person would at least need to have some substantial evidence to support that suspicion. The Bill refers simply to "belief" or "believes". Clause 35(3) states -

> On an application under subsection (1) a magistrate may issue a warrant . . . if the magistrate is satisfied -
>
> (a) that there are reasonable grounds for the authorised officer to believe . . .

If the officer must demonstrate reasonable grounds, why not say up front that he or she has reasonable grounds for believing? People do not need to have reasonable grounds to believe in anything. People do not need to have reasonable grounds for believing in God. People do not need to have reasonable grounds for believing in the devil. They just believe it; it is a matter of faith. Even under subclause (3), the belief must be demonstrated on reasonable grounds. The magistrate has to accept that. I suggest that, for consistency, it would be better to use the standard in the Police Act; that is, the phrase "suspects on reasonable grounds". For that reason, I will test the mood of the Chamber and move -

> Page 29, line 10 - To delete "believes" and insert instead "suspects on reasonable grounds".

Hon BARBARA SCOTT: I support the argument and the amendment moved by Hon Derrick Tomlinson. When we deal with vulnerable children at risk, we need to ensure that the officers who interpret this legislation do so in a lawful manner. I think that the phrase "suspects on reasonable grounds" is a far better and purer way than saying, as Hon Derrick Tomlinson has said, "I believe." One of the issues that has been raised in many of the individual cases that have come before me is that the matter of belief is a subjective issue that causes some level of disenchantment with the officers of the Department for Community Development. If it is put into legal terms, the phrase "suspects on reasonable grounds" is far clearer than the subjective word "believes". Therefore,

I support the amendment moved by Hon Derrick Tomlinson and urge the Chamber to consider this important change.

Hon GIZ WATSON: I have listened to both sides of the argument and it seems to me that there is a possibility that the amendment could be amended to state "believes on reasonable grounds". It has been argued that some members want the threshold of "believes", but other members want it to be based on reasonable grounds so that the officer must argue the case. I am suggesting that that is a compromise between the two. I am not sure whether that is acceptable.

Hon DERRICK TOMLINSON: That is a reasonable compromise. I was trying to relate this issue to an experience. I will provide a hypothetical situation. A four-year-old girl says to her mummy, "Mummy, last night after daddy bathed me, he rubbed and touched me." The mothers thinks, "Whoops", because she is alarmed and, in a most delicate way, presses the child for more information. The child says "Daddy told me not to tell you", which simply gives the mother further cause for alarm. She wonders what she should do. She rings crisis care, or whatever it might be, tells the person on the phone what her child has told her and asks what she should do. That is nothing more than an alarmed mother seeking advice after her child has said something. Within a short time, an officer from the Department for Community Development or the Department for Family and Children Services - I will use the DCD for this hypothetical situation - is at the door, advising the father that unless he leaves the house, the children will be taken into protective care.

Hon Robyn McSweeney: You need a bit more than that.

Hon DERRICK TOMLINSON: Unfortunately, more is not needed - only a belief. The father does not want his children taken away, so he decides to go to a hotel. He rings a mate for legal advice. One should never ring a mate for legal advice. The mate says "Don't take any notice of that; they need more evidence than that." That is the sort of advice that came from Hon Robyn McSweeney's interjection. So the father returns to his home. At 11 o'clock that night, officers knock on the door and tell the father that he has contravened the department's order and the children are taken into protective care - on the basis of a belief. Then, and only then, is action taken to test the disclosure; only then is the belief tested to see whether reasonable grounds exist. That belief is fostered by the alarm of the mother. I suggest to members that that alarm is quite reasonable because of what the child said. The department, in the best interests of the child, removes the parent who it believes is offending. Only then does it seek to establish the existence of reasonable grounds; in other words, only then does it test the child's disclosure. It is because of that sort of situation that I seek something stronger than a "belief". It must be that legal term "suspicion on reasonable grounds".

Hon GIZ WATSON: Hon Derrick Tomlinson said he seeks something stronger, but I think the term he suggests has a lower threshold. He is arguing that a "belief" has a lower threshold than "suspicion". I am not convinced of that. I struggle with that. I agree with Hon Derrick Tomlinson about there being reasonable grounds - it needs to be in the Bill - but I suggest that "suspicion" has a lower threshold. As a way of progressing this matter, I suggest that we keep "belief" and insert the words "on reasonable grounds". That might go some way to accommodating Hon Derrick Tomlinson's concerns. It is not what he wants absolutely; however, it might better reflect the consensus of the Committee of the Whole, if I can suggest that. I need some guidance on how to do that.

Hon SIMON O'BRIEN: I have been listening with interest to this particular issue, and although I do not claim to have any legal qualifications, I have had a little bit to do with provisions of the law in an operational sense that provide for entry onto premises depending on the circumstances that might apply.

Hon Ljiljanna Ravlich: In what capacity?

Hon SIMON O'BRIEN: As a customs and immigration officer.

I would like to put this question to the Committee for its consideration: what is the clause trying achieve? In its entirety, it seems to achieve the objective that if an authorised officer is endeavouring to carry out an investigation pursuant to the power contained in clause 32(1)(d) - that is, he has been directed to conduct an investigation for the purpose of ascertaining whether a child may be in need of protection - that authorised officer, in the course of carrying out or seeking to carry out that investigation, can apply to a magistrate, under the terms set out in clause 120, to obtain an access warrant if any of three preconditions apply. The first is the absolute condition that an officer is denied access to a child. There are no ifs or buts about that; an officer has sought access and it has been denied. The third condition is when an officer is unable to obtain entry to a place where he suspects a child may be. It is the middle condition that Hon Derrick Tomlinson has invited us to consider, and I invite the Committee to now focus on. A magistrate can receive an application for a warrant if, in the course of an investigation referred to in clause 32(1)(d), the authorised officer believes that he will be denied such access. There is an imperative in that provision, which is contained in the phrase "will be". There is an absolute, in that the officer believes that he will be denied such access. Therefore, it is prospective that when

the authorised officer goes to the place where the child is, or is believed to be, the officer will be denied access - not might be, but will be. There are no ifs or buts about it. If the officer does not have a warrant and is merely carrying out the investigation under section 32 and he goes to the premises and is denied access to the child, what does he do then? He must go off to a magistrate and, via this clause, he refers to subclause (1)(a) because he has been denied access to the child and, therefore, has the basis to apply for a warrant.

Paragraph (b) is a different situation; it is prospective in that it has not happened yet. How can an officer know that he will be denied access? What I would respectfully suggest - I think this is what Hon Derrick Tomlinson is putting to the Committee - is that the person suspects, as he says, on reasonable grounds that he will be denied such access. He may be, but he may not be. It is an absolute in the way the paragraph is worded. If he absolutely knows that he will be denied access, and he believes it, he can get a warrant. If he thinks that it is highly likely, he cannot get a warrant; he must go to the place and go through the process of being denied access. Bear in mind that he may have no small distance to travel. I do not see why we would construct a clause that tries to guarantee access so that the authorised officer can access that child to conduct the investigation, regardless of whether access is denied or people will not even tell him where the child is and let him into the place in which he believes that child to be.

What is the logical requirement then for this intermediate paragraph (b)? I would suggest that it is a case in which an officer thinks that it is highly likely that he will need the force of a warrant, not just as a matter of course but likely. Therefore, he should be able to go to a magistrate and say that he suspects on reasonable grounds that he will be denied such access. In fact, I am surprised that the clause is expressed in the term "will"; it probably should be expressed in the words "may be". The parliamentary secretary might like to respond and say why it is so emphatic, but the point Hon Derrick Tomlinson makes is that "suspects on reasonable grounds" is the established criterion when one is requesting a magistrate to give one a warrant to exercise powers of entry. Where I disagree with the honourable member, and it might be a misunderstanding on his part -

Hon Derrick Tomlinson: That is highly likely.

Hon SIMON O'BRIEN: With respect to my colleague, and in common with, I think, Hon Giz Watson, I think that "believes" is a far higher level of requirement than merely "suspects". Belief is an absolute proven, and it must be on reasonable grounds, whereas "suspects" holds out because of other information that there is a likelihood, a strong possibility, but not an absolute probability, that a certain set of circumstances actually exists.

With that in mind I support Hon Derrick Tomlinson's amendment. I also query whether it should go a little further to say not merely that he suspects on reasonable grounds that he may be denied such access. The question then of course comes back to the Government to say what it is really trying to achieve, if it is some intermediate form of action in which the officer believes on reasonable grounds that he may get a hard time. Let us face it; to put it into a real life situation, whether he can access a child might depend on whether a certain family member is present. He may have a lot of trouble and he may have no trouble, but if there is a likelihood on reasonable grounds that he will, he may need to go armed with this warrant. At the moment I do not believe that paragraph (b), which Hon Derrick Tomlinson suggests we should fine tune, actually achieves what I am wondering the Government might want to achieve. I hope that is of some assistance.

Hon LJILJANNA RAVLICH: For the reasons that I have already outlined - that is, suspicion is a lower threshold than belief, which is generally based on reasonable grounds - there must be shown a reasonable belief as opposed to a suspicion. Some people walk around with suspicions about all sorts of things, but whether they can be substantiated or not is quite a different matter. I suppose one might argue the same for belief, but I am told that at law suspicion is a lower threshold than is belief. For that reason we will not be supporting the amendment.

Hon SIMON O'BRIEN: That is loud and clear from the parliamentary secretary, and I thank her for that. I agree with her that the term "suspects" involves a lesser degree of proof than "believes". One of the things I was asking the Government, which I will now ask the parliamentary secretary to consider if she would not mind, is what the Government is actually trying to achieve here. There is no point having paragraph (b) if in many cases an officer will have to go to a place, be denied access and then get a warrant. The provision is already there under paragraph (a) to do that. Surely what the Government and its advisers are trying to achieve is to consider the question of whether or not it is probable or highly likely that the officer will require a warrant and therefore it is better that the officer be forearmed with one. If that is not the answer and what the Government contemplates, then so be it. We will just proceed in the way in which the parliamentary secretary wants to proceed, but I just ask her to consider that aspect.

Hon LJILJANNA RAVLICH: In many cases the families are known to the authorised officer. The belief would be based on previous experience with the family, and the officer would need to stipulate to the magistrate the basis of the belief.

Hon DERRICK TOMLINSON: I concede the argument of my intellectual superiors. I seek leave to withdraw amendment No 23/34.

Amendment, by leave, withdrawn.

The CHAIRMAN: Is Hon Derrick Tomlinson moving his next amendment No A/34?

Hon DERRICK TOMLINSON: It is on the same clause. I will not be pursuing any of those amendments.

Clause put and passed.

Clauses 35 and 36 put and passed.

Clause 37: Provisional protection and care without warrant if child at immediate and substantial risk -

Hon LJILJANNA RAVLICH: I move -

Page 31, line 15 - To delete "(1)" and insert instead "(2)".

This is a minor drafting error.

Amendment put and passed.

Clause, as amended, put and passed.

Hon DERRICK TOMLINSON: I will not proceed with my proposed amendments to clauses 40 and 41.

Clauses 38 to 43 put and passed.

Clause 44: Application for protection order -

Hon DERRICK TOMLINSON: I move -

Page 37, line 26 - To delete "only".

Page 37, line 26 - To insert after "made" the word "only".

This is the grammatical matter previously agreed to by the Government and dealt with on an earlier clause.

Amendments put and passed.

Clause 44, as amended, put and passed.

Clauses 45 to 52 put and passed.

Clause 53: Provision of social services -

Hon DERRICK TOMLINSON: I move -

Page 42, line 8 - To insert after "any" the words "medical, and".

The clause refers to the child's parents being provided with any social services that the chief executive officer considers appropriate. In defining "social services" clause 3 refers to a series of matters, but leaves out medical services. It refers to therapeutic services, which might be construed as medical services. However, I want such people to be provided with medical services as well as social services.

Hon LJILJANNA RAVLICH: The Government will oppose this amendment. I understand the good intent of the honourable member in moving this amendment; I know where he is coming from in his wish to provide additional support services for people in these circumstances. However, the simple fact is that the Department for Community Development does not have responsibility for health services to the community. The Chief Executive Officer of the Department for Community Development, with all the best will in the world, cannot ensure that it will happen. Such service provision is outside his authority; he does not have the capacity. Nevertheless, that does not mean that the CEO would not refer matters or that some sort of consultation would not occur between agencies so people are appropriately referred to health services when these circumstances arise. To suggest that by inserting "medical" services into the clause in some way gives the CEO of the Department of Community Development the authority to provide those services is simply not correct.

Hon DERRICK TOMLINSON: I find that comment interesting in the light of clause 28, which we have not debated. Clause 28(1) reads -

"neglect" includes the failure by a child's parents to provide, arrange, or allow the provision of -

(a) adequate care for the child; or

(b) effective medical, therapeutic or remedial treatment for the child.

An authority is provided to intervene to protect the child when the child's parents cannot provide effective medical, therapeutic or remedial treatment. The parliamentary secretary wants to argue that the CEO of the Department for Community Development does not have that authority. The CEO has authority to intervene to ensure that the child receives those services. Clause 53 reads -

> While a protection order (supervision) is in force in respect of a child the CEO must ensure that the child or child's parents are provided with any . . .

Therefore, it is a question not of providing, but ensuring the services are provided. This is consistent with the argument presented on clause 28.

Hon LJILJANNA RAVLICH: The simple explanation is that the department links to, and does not provide, medical services. The protection order (supervision) is a new order. Children who may be the subject of a protection order (supervision) are not within the agency's guardianship.

Hon BARBARA SCOTT: It concerns me that the Department for Community Development could adopt the view expressed by the parliamentary secretary. Interagency cooperation is under consideration regarding the best interests of a child. If the department cannot ensure that therapeutic or health services are delivered to a child in its care, it would be a dereliction of its duty. I support the amendment proposed by Hon Derrick Tomlinson.

Hon LJILJANNA RAVLICH: The only comment I add is that parents under this order are still legally responsible for the child. Therefore, it is not the same as a protection order that is time limited or a protection order in which the child is under the age of 18 years and under the department's care.

Amendment put and negatived.

Clause put and passed.

Hon DERRICK TOMLINSON: To expedite proceedings, the matters I address in my amendment to clause 61 have been dealt with already. The Chamber has accepted the Government's point; therefore, I will not proceed with my amendments to clause 61.

Clauses 54 to 77 put and passed.

Clause 78: CEO to prepare Charter of Rights -

Hon BARBARA SCOTT: I will not move the amendment I had foreshadowed. Can the parliamentary secretary explain what the charter of rights will involve, what will be included in that charter of rights and whether any work has been done on it?

Hon LJILJANNA RAVLICH: The charter of rights will be based on models from other jurisdictions and also on our own specific needs, but one of the examples that has been provided is the Queensland model for a child in care. It basically addresses the need for a safe and stable living environment; the need for culturally appropriate services; the need to be consulted and involved in consultation with the decision-making process; the right to privacy; regular review circumstances; the requirement for dental, medical and therapeutic attention as needed; appropriate education and job training; as well as transitional support for leaving care.

Hon Derrick Tomlinson interjected.

Hon LJILJANNA RAVLICH: I note Hon Derrick Tomlinson's intervention. He should not forget that we are dealing with children in care. This charter of rights deals with the rights of children in care. The rights of children in care are covered by two types of orders, as I have previously explained: the protection order that is time-limited, in which the department has the legal responsibility for a child for a period up to two years but for which there can be an extension not exceeding two years; or the protection order for a child up until the age of 18. It does not cover the two new orders. The clause that we dealt with in which that medical provision did not apply relates to the protection order (supervision), which is a new order, and also the protection order (enduring parental responsibility), which is also a new order.

Hon BARBARA SCOTT: I am familiar with what has happened in Queensland and what has been lifted from the Queensland Act. I am still not clear about what the charter of rights will spell out. When will we see the charter of rights for children? The parliamentary secretary has referred to medical care and whatever, but what are the rights the Government is planning to put into a charter of rights for children in the CEO's care?

Hon LJILJANNA RAVLICH: There will be a charter of rights within a year of proclamation. Work has already commenced in consultation with key bodies.

Hon BARBARA SCOTT: That does not answer my question. I have studied the Queensland legislation and the report into the care of children with protection orders over them. It still does not tell me what this Government is going to put into a charter of rights. I know that within 12 months the Government will prepare a charter of rights, but at this point of the discussion the Chamber deserves an explanation about the sort of things the Government is planning to put into a charter of rights for children.

Hon LJILJANNA RAVLICH: The honourable member is asking me to advise specifically what will be put in the charter of rights before the consultation process has concluded and before the departmental experts have worked on the charter of rights. I do not know how the member would do it were she in government. Maybe she would just put together the charter of rights and then go out and consult. That is not what this Government is going to do. The honourable member is asking me specifically what will be included in this charter of rights and I have said that I do not know the detail, but the framework for a Western Australian charter of rights for children in care will be modelled on what has been put together in another jurisdiction. The member is asking me for specific details; I do not have that information.

Hon BARBARA SCOTT: Does the parliamentary secretary have a set of guiding principles? Will it include whether the children are satisfied with particular carers or will they have rights to education and health care? The department must have a set of guiding principles in mind. I know this has been lifted from the Queensland legislation, but the parliamentary secretary must be able to provide a reasonable explanation of why that has been done.

Hon LJILJANNA RAVLICH: I have already explained the broad framework of the model that was put together in Queensland. The member will note that clause 78(5) states that the charter of rights must be laid before each House of the Parliament by the minister within six sitting days after the charter is published by the CEO.

Clause put and passed.

Clause 79 put and passed.

Clause 80: Guidelines for placement of certain children -

Hon DERRICK TOMLINSON: My objection to this clause was dependent on the debate we had earlier in this session relating to the charter for Aboriginal children. Since the charter for Aboriginal children applies, clause 80 becomes necessary.

Clause put and passed.

Clauses 81 and 82 put and passed.

Clause 83: Inspection of place where child living -

Hon DERRICK TOMLINSON: Before moving my amendment I would like to hear the parliamentary secretary's explanation about why the Government wants the authority to enter at any time. I would have thought any reasonable time to inspect the place in which a child was living would be sufficient, but it may be that there are circumstances in which officers may want to enter the home at an unreasonable time with an element of surprise. Before I move my amendment I will listen to the parliamentary secretary's explanation about why it should be "at any time" rather than "at any reasonable time".

Hon LJILJANNA RAVLICH: We will oppose the amendment to be moved by Hon Derrick Tomlinson. It is important that the department has the flexibility to enter a place at any time, because family crises can occur after normal working hours and often do. As has been said to me, parents do not harm children only within a nine to five working day. Harm can be caused to children 24 hours a day and, in those circumstances, departmental officers must be able to have access.

Hon DERRICK TOMLINSON: I will not proceed with my amendment. However, the parliamentary secretary failed in her explanation. It is necessary for officers to have authority to enter at any time if they believe that a child's wellbeing might be under some threat. If that is the case, there are many other clauses to which we have agreed that could deal with that. This is about inspecting a place in which a child is living and making inquiries about a child's wellbeing. Any reasonable time would have been appropriate, but I will not press the matter.

Clause put and passed.

Clauses 84 to 89 put and passed.

Clause 90: Review of care plan -

Hon LJILJANNA RAVLICH: I move -

Page 59, after line 5 - To insert -

(d) any other person considered by the CEO to have a direct and significant interest in the wellbeing of the child.

This amendment is to ensure that all parties are involved in the review of a care plan. It provides consistency with clauses 39(4), 89(6) and 93(1).

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 91 and 92 put and passed.

Clause 93: Initial review -

Hon LJILJANNA RAVLICH: I move -

Page 60, after line 25 - To insert -

(c) any carer of the child; or

This is consequential to the previous amendments in the Legislative Assembly to clauses 39(4) and 89(6).

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 94 to 100 put and passed.

Clause 101: Failing to protect child from significant harm -

Hon LJILJANNA RAVLICH: I would like to postpone clause 101 until after clause 251.

Hon Derrick Tomlinson: Why?

Hon LJILJANNA RAVLICH: It is a consequential amendment. Clause 28 was postponed earlier. This is one of the clauses affected, together with schedule 2, so we will address that when we get to it.

Further consideration of the clause postponed until after consideration of clause 251, on motion by Hon Ljiljanna Ravlich (Parliamentary Secretary).

Clauses 102 to 104 put and passed.

Clause 105: Terms used in this Subdivision -

Hon BARBARA SCOTT: I move -

Page 68, after line 5 - To insert -

(d) at the time the act was done, it is in the best interests of the child.

Situations can vary greatly and action taken at the time an act is done could be in the best interests of the child. I might be walking down the street and see a drunken father bash his five-year-old son. Should I pull out my phone and phone the police and watch while the child is seriously injured or dies? Do I risk life and limb and tackle the drunken man, who is much bigger and nastier than I am, or do I grab the child and run to my car and drive to the nearest hospital because I am fit and fast and the father is too drunk to catch me? A different interpretation of "at the time of the act, it is in the best interests of the child" can be applied to various situations. Perhaps if I chose to grab the child and run to my car and drive to the nearest hospital, I might be in a lot of trouble. However, I would not be charged; I might even be awarded for my bravery. That is a different situation that we need to consider.

Hon LJILJANNA RAVLICH: The Government will not accept this amendment. Reference to the best interests of the child is superfluous. It is covered in the principle that in performing a function, irrespective of what function it is, or exercising a power, irrespective of what power we are talking about, under this Act a person or the court must regard the best interests of the child as of paramount consideration. This amendment is unnecessary. I am advised that, according to drafting convention, when a matter is covered in the principle there is no requirement to repeat that principle and make continuous reference to it within the body of the legislation.

Amendment put and negatived.

Hon DERRICK TOMLINSON: We might be able to circumvent a lot of unnecessary debate if the parliamentary secretary can satisfy my concern.

The DEPUTY CHAIRMAN (Hon Simon O'Brien): Order! Before we do that, it is best that we deal with clause 105 first.

Hon DERRICK TOMLINSON: I am dealing with clause 105. Clause 105 defines the terms used in this subdivision; for example, "child" means a child who is the subject of a placement arrangement, and "place of residence" is defined as the place in which a child lives under a placement arrangement. Clauses 106 to 110 set in place a series of offences relating to the children as defined in clause 105. My concern when I read clauses 106, 107 and so on was the comparability of the new offences that are to be created or of the offences that will be reaffirmed, because they probably already exist in legislation, with the offences of kidnapping, deprivation of liberty and child stealing under the Criminal Code. Kidnapping carries a penalty of imprisonment for 20 years, deprivation of liberty under section 333 of the Criminal Code carries a penalty of imprisonment for 10 years, and child stealing under section 343 of the Criminal Code carries a penalty of imprisonment for 20 years. I anticipate that the parliamentary secretary will argue that this new set of offences relates to particular circumstances, particular children and people who offend against this legislation rather than who act criminally under the terms of the Criminal Code. If the parliamentary secretary can persuade me of that, I will not proceed with my amendments to clauses 106 and 107 to make the penalties for the offences comparable with similar penalties for similar offences under the Criminal Code.

Hon LJILJANNA RAVLICH: I am advised that the penalties are considerably greater than what we currently have.

Hon Derrick Tomlinson: They are not comparable with kidnapping; one year versus 20 years.

Hon LJILJANNA RAVLICH: They relate specifically to circumstances under this legislation. I am advised that in setting these penalties, a number of comparisons were made. A list of Acts was researched and the penalty provisions within them compared to see how this legislation lined up against them.

Hon DERRICK TOMLINSON: I had hoped that the parliamentary secretary would talk about the differences in the offences rather than the different penalties.

Hon Ljiljanna Ravlich: We have not dealt with clause 105.

Hon DERRICK TOMLINSON: In that case, we will extend the debate.

Hon Ljiljanna Ravlich: I am just not sure what the member is getting at.

Clause put and passed.

Clause 106: Removing child from State -

Hon DERRICK TOMLINSON: This clause outlines an offence: a person must not, without lawful authority, remove a child, or cause or permit a child to be removed, from the State. Under this clause, the child is the subject of a placement. Will the parliamentary secretary explain to me the difference between the sentence "without lawful authority, remove a child, or cause or permit a child to be removed, from the State" and section 332 of the Criminal Code, headed "Kidnapping", which states -

> (1) For the purposes of this section and section 333, a person who deprives another person of personal liberty -
>
> (a) by taking the other person away or enticing the other person away;
>
> (b) by confining or detaining the other person . . .
>
> is said to detain that other person.

That is kidnapping. The section also outlines the offence in terms of gaining a benefit, causing detriment, preventing or hindering, or compelling the doing of an act, all of which could apply to taking a child who is in placement out of the State. I think I know the difference. I was hoping that the parliamentary secretary would confirm what I believe, so that we would not have to go through this debate about comparability of penalties.

Hon TOM STEPHENS: I hope the parliamentary secretary will not mind me giving an example. I am aware that right beside the Western Australian border near the township of Kununurra there are children on placement orders whose carers from time to time drift in and out across the border of the Northern Territory and Western Australia, even though they might be under a placement arrangement with the Department for Community Development. That is hardly kidnapping. The provision is crafted in such a way - and I think the honourable member knows it is crafted in such a way - so as to avoid that being categorised as kidnapping or being

comparable with kidnapping when we are trying to encourage placement arrangements to satisfy normal care and custody requirements for children.

Hon LJILJANNA RAVLICH: It is sometimes a bit hard when a number of conversations are feeding in.

Hon Derrick Tomlinson: I was listening to Hon Tom Stephens.

Hon LJILJANNA RAVLICH: The department wants to work with parents and does not want to put them in jail. We are talking about parents in this situation; that is, a parent might take off interstate with a child without advising the department. This often relates to parents taking children after access. In other words, they are involved in an illegal act. These penalties are specifically designed for this legislation, but they have been compared with penalties in other Acts. The penalty of $24 000 and imprisonment for two years was considered to be reasonable. A penalty of 20 years imprisonment for removing a child from the State seemed a bit extreme. I understand that a number of the member's amendments consider imposing a penalty of that magnitude. We consider that to be extreme; therefore, we will not support those amendments.

Hon DERRICK TOMLINSON: I would not argue with anything the parliamentary secretary said had she satisfied me that the offences for which those penalties are imposed are any less heinous than the offence of kidnapping. I was much more persuaded by the example given by the minister; that is, of children in a placement arrangement close to a border and the department encouraging people to respect that placement, without imposing a draconian penalty. Perhaps the minister might follow up his argument, as it seems to be something that the parliamentary secretary does not want to address. What are the characteristics of the criminal offence of kidnapping that make it different from taking a child without consent across the border?

Hon LJILJANNA RAVLICH: My learned colleague obviously has come across cases such as those to which Hon Derrick Tomlinson has alluded. Certainly I have not come across such cases first-hand. If the member is asking us to compare the penalties for the two offences, I am sorry but I do not have a copy of the Criminal Code with me, otherwise we could probably have provided that answer for the member.

Hon DERRICK TOMLINSON: Let us create a hypothetical. A person is married to a Malaysian citizen and they are resident in Western Australia. The Malaysian citizen either has dual citizenship or is a permanent resident married to an Australian citizen. They have a child. For some reason, the child is put in some placement. Let us say that the father, the Malaysian citizen, takes the child out of the State without authority and transports the child to Malaysia and there uses every legal artifice available to him to prevent the return of the child. He may be driven by malice, he may be driven by the desire to get some sort of benefit, financial or otherwise, for himself, or he may simply want custody of his child. How is that different from kidnapping? If the parliamentary secretary can satisfy me that that is different from kidnapping as it applies under this Bill, the argument of penalties disappears. I am quite willing to accept that what the parliamentary secretary has said is so. For comparable offences, the penalties that the Government proposes are reasonable penalties. If, however, there is no distinction between this offence and kidnapping, why is the penalty for one offence imprisonment for one year and the other penalty imprisonment for 20 years? It is a substantial difference if there is no difference in the original crime.

Hon LJILJANNA RAVLICH: I am advised that this clause specifically relates to a child in care. There are plenty of circumstances in which a parent might illegally take a child across the border. The member has cited an extreme case. I remember a not dissimilar case in which a local woman married an Indonesian prince who took their two children to Indonesia. It might have been a different country but, given his power, it was almost impossible to get those children back into Australia. Under those circumstances, it could be defined as kidnapping and so the criminal law would apply. However, do we want to impose on a person who, for example, illegally took a child, with the child's consent because he or she wanted to go with daddy for a three, six or nine-month holiday in Queensland, and who did not abide by his legal obligations, the same penalty that would apply to somebody who kidnapped a child? Do we really want legislation that would put that parent in prison for 20 years? That is one of the problems in legislating. We are talking about two extreme cases. The proposal put forward by Hon Derrick Tomlinson would capture the father who took his daughter to Queensland for a few weeks, because he might be unhappy about his access rights or whatever. It would be an illegal act but, under the provisions that the member is seeking to introduce, the father would have to serve 20 years in prison. With that explanation, I hope the member will not proceed with his amendments. I think there is a danger that they could inadvertently capture a number of people in the net. It seems to be a pretty heavy penalty for those people who breach the law but not to the extreme extent.

Hon DERRICK TOMLINSON: I think the parliamentary secretary cannot say that these are offences of a different order. One offence falls under a piece of legislation that does not have the criminal characteristics and the criminal intent associated with the Criminal Code. The nature of the lower order of offences against a child in care is such that the penalties are appropriate. They are not penalties that should be compared with those for a

higher order criminal offence that has different characteristics. If that is the intention of the parliamentary secretary - I do not want to put words in her mouth - I am quite happy to proceed.

Hon LJILJANNA RAVLICH: The answer is yes. I will provide the member with an example of what happens in other States. Queensland is the only State that provides a penalty for the offence under its Child Protection Act 1999. The penalty is a maximum fine of $11 250 or 18 months imprisonment. In fact, none of the other States has a penalty for removing a child from the State.

Hon George Cash: Why is that? It is because kidnapping is a different offence. You have tried to say that they are both the same offence, and they are not. The elements of kidnapping are quite different from the elements that have to be proved in removing a child in care from a State.

Hon LJILJANNA RAVLICH: We agree with that.

Hon George Cash: It is not a case of agreeing with that, just because you want to. You have tried to join the two. You cannot do it; they are different offences and, as a result, they attract different penalties. One has a criminal element of taking someone without his or her consent.

Hon LJILJANNA RAVLICH: I did not try to join the two. I think the member is trying to join the two.

Hon Derrick Tomlinson: No; I asked you to separate the two.

Hon LJILJANNA RAVLICH: Hon Derrick Tomlinson asked me to separate the two.

Hon Tom Stephens: That is not the same as your joining the two.

Hon LJILJANNA RAVLICH: No; the member has asked me to separate the two.

Hon DERRICK TOMLINSON: I was absolutely persuaded until the parliamentary secretary brought in the spurious business of comparisons among the States and what some States have done and what other States have not done. At the beginning of this debate the parliamentary secretary made the point that we are not interested in what happens in other States; we are dealing with something that is appropriate to Western Australia. I think Hon George Cash, by interjection, has given the answer that the parliamentary secretary was unable to give me. Therefore, I will not proceed with these amendments.

Clause put and passed.

Clause 107: Removing child from place of residence -

Hon DERRICK TOMLINSON: I will not proceed with my amendment.

Clause put and passed.

Clauses 108 to 139 put and passed.

Clause 140: Access to written report -

Hon LJILJANNA RAVLICH: I move -

> Page 87, line 16 - To delete “unless it makes an order” and insert instead “subject to the terms of any order made”.
>
> Page 87, line 21 - To insert after “report” -
>
> , or a specified part of the report,
>
> Page 87, line 23 - To insert after “report” -
>
> , or the specified part,

These are minor amendments requested by the current President of the Children’s Court. The first amendment allows for the court to order that a copy of a court report not be given to a party if special circumstances exist.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 141 to 160 put and passed.

Clause 161: Notification of decision to transfer -

Hon LJILJANNA RAVLICH: I move -

> Page 102, line 8 - To insert after “21” -
>
> working

The amendment corrects a drafting error and ensures consistency with other provisions.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 162 to 198 put and passed.

Clause 199: Guiding principles -

Hon BARBARA SCOTT: I move -

Page 125, after line 31 - To insert -

(ii) reflects best practice in the care and education of young children; and

The guiding principles of this Bill are to protect the child from harm, respect the child's dignity and privacy, safeguard and promote the child's wellbeing, provide positive experiences for children and stimulate and develop the child's creative, emotional, intellectual, physical, recreational and social potential, as well as the principle that childcare services should be provided in a way that involves parents of the children and reflects the diverse nature of the community. What the guiding principles do not do in my view is to give any guarantee that we must insist that child care in Western Australia reflects the very best practice in the care and education of our young children. I am very concerned that although we would all agree with these motherhood statements in the guiding principles that protect the child and respect the child's dignity, in my second reading contribution I made the point that some children will spend five and up to six years at one centre from the time that the child is six months to the time the child enters school. It is very important that we put into practice all the guiding principles, but I have a concern that the Bill in its guiding principles is not articulating what most parents would be looking for when they are looking for an appropriate childcare centre; that is, that the program reflects the best practice in the care and education of young children. Just to say that it stimulates and develops the child's creative, emotional, intellectual, physical, recreational and social potential is not sufficient to guarantee to parents that when they are putting a child into a childcare centre at the age of two to five years or whatever age the child is, there will be a guarantee that best practice is implemented. That is the reason I have moved this amendment.

Hon LJILJANNA RAVLICH: At first blush we could not accept this amendment because in the definition of child care the member is focusing on zero to six years, whereas child care technically covers zero to 12 years.

Hon Barbara Scott: It is up to 13 years.

Hon LJILJANNA RAVLICH: Okay. I am advised that this will be reflected in the regulations. However, we could accept this amendment provided the amendment contains reference to recreation, so that it would read "reflects best practice in the care and education and recreation of young children". I do not know whether that would be acceptable to Hon Giz Watson, but we would accept it. I wonder whether Hon Barbara Scott might, in moving her amendment, make the appropriate amendment to it so that it may be accommodated.

Hon BARBARA SCOTT: I appreciate that what the parliamentary secretary has done is to take the scope of the wide range of children in care; that is, to take in after school care that takes in children up to 13 years. I accept that. In framing this amendment I have included those children in my range as well, because unless care does reflect the best care and education of young children, parents would need to be concerned. Certainly recreation is a part of that care, and would encompass out-of-school care programs. I did not mean to exclude them. I will amend my amendment by deleting "and" in the first instance and inserting ",", and inserting after "education" the words "and recreation".

Amendment, by leave, altered.

The DEPUTY CHAIRMAN (Hon Adele Farina): The amendment now reads -

(ii) reflects best practice in the care, education and recreation of young children; and

Amendment, as altered, put and passed.

Clause, as amended, put and passed.

Clauses 200 to 203 put and passed.

Clause 204: Further information relevant to application -

Hon BARBARA SCOTT: This clause deals with the application to the chief executive officer for a licence and the documents and information that will be required before a person can run a childcare centre. In my contribution to the second reading debate, I alluded to my concerns about the changed situation in Western Australia and how a number of corporate people are moving in and buying up a large number of centres that, in

the past, have been well run by individual operators. I do not have a problem with private childcare operators; however, I have a problem when large corporate entities move into this area of care - 55 per cent of their funding comes from the federal Government - with an inappropriate level of accountability. It is that level of accountability that I am seeking to change. The change that I have proposed is at page 127, line 14. Clause 204(2) states that the supervising officer "may" do any of the following. I want to delete "may" and insert "must". If a company, corporate entity or a person wants to apply for a childcare licence, the CEO can ask the applicant to -

(a) undergo an oral or written assessment as to his or her knowledge and understanding of -

(i) the operation of this Part and the regulations; and

(ii) the field of child development;

(b) undergo a medical, psychiatric or psychological test or examination specified by the CEO;

I suggest to the committee that rather than the CEO having the choice to do any of those things, he or she "must" make an applicant undergo all of those things. Rather than using the word "may" on line 14, I am seeking to insert the word "must".

Hon LJILJANNA RAVLICH: This would be quite onerous. I do not think that anyone would be able to obtain a childcare licence under such a proposal. Clause 203 requires that a person make an application for a licence. That application must be in writing, and it must be accompanied by any relevant documents and a prescribed fee. The CEO may ask the applicant for additional documentation that he or she considers relevant to making a decision on the application. Clause 204(2) reads -

> Without limiting subsection . . . for the purpose of deciding whether or not an individual applicant or a nominated supervising officer is a fit and proper person to provide or be involved in the provision of a child care service, the CEO may ask the applicant or nominated supervising officer to do any or all of the following -

Hon Barbara Scott is basically saying that the CEO must ask applicants to undergo an oral or written assessment as to his or her knowledge and understanding of the operations of this part and the regulations - that is done now - and medical, psychiatric or psychological tests or examinations specified by the CEO. Further, they will also have to provide a reference or report as specified by the CEO. Apart from anything else, that will take discretion away from the CEO. The member is working from the lowest point; that is, she is basically saying that anyone who makes an application for a licence must be a bad person and, therefore, they should jump through all of the hoops. The member wants to ensure that it is mandatory to undertake all the tests. The Government does not agree with that because, apart from anything else, it is too unrealistic.

Hon BARBARA SCOTT: Again, I state my serious alarm and concern that anyone has the ability to apply for a childcare licence in this State. We are talking about the care and education of very young children. Most of these young children probably spend more waking hours of the day at a childcare centre than they do at home. Surely that has to be of paramount importance and interest to this State Government? Surely the CEO should at least guarantee that the person applying for a licence understands the regulations? We have not even seen the regulations because they are yet to be devised. Certainly, an applicant should have knowledge of the regulations. In addition, he or she should have an understanding of child development. As the parliamentary secretary stated, maybe there is no need for applicants to undergo the tests and examinations as outlined in proposed paragraph (b). One would hope that an applicant is a stable person.

Hon Ljiljanna Ravlich: They would have to undergo them under your amendment. You are now admitting that there may be no need for them to do that.

Hon BARBARA SCOTT: Madam Deputy Chairman (Hon Adele Farina), if I can, I will alter my amendment to read that, in the first instance, an applicant must do the first two things; that is, undergo an oral or written assessment as to his or her knowledge and understanding of the regulations, and an understanding of the field of child development. My concern is that corporations from the eastern States are already buying up centres in this State without any interest in or knowledge about child care and without any care and concern for our children. They are operating those centres for a profit. They should have a minimum understanding of child development and of childcare centre operations and regulations. If I may, I will alter my amendment. I am not sure how to do that, so I will ask advice from the Chair. Certainly, they should be required to do the things outlined in proposed subparagraphs (i) and (ii).

The DEPUTY CHAIRMAN: I do not see any problem with the member moving that amendment. However, the member will also need to move subsequent amendments to deal with words in between paragraphs (a) and (b),

because her intention is that there be a "may" rather than a "must". The member may need time to draft an amendment.

Hon Barbara Scott: It is quite simple.

The DEPUTY CHAIRMAN (Hon Adele Farina): With respect, I do not think it will be simple because the member will need to insert some substantial words between paragraphs (a) and (b) to achieve her intention.

Hon LJILJANNA RAVLICH: The Government would find it acceptable for "must" to apply to paragraph (a), and "may" to apply to paragraphs (b) and (c).

The DEPUTY CHAIRMAN: I suggest that the following words be deleted after line 14 -

> , the CEO may ask the applicant or nominated supervising officer to do any or all of the following

Paragraph (a) would then have these words inserted -

> the CEO must ask the applicant or nominated supervising officer to

Paragraphs (b) and (c) would need to repeat that phrase. It would involve some repetition.

Hon Tom Stephens: I think you have it right, Madam Deputy Chair.

The DEPUTY CHAIRMAN: I think I have it. The amendment would change paragraph (a) to read -

> the CEO must ask the applicant or the nominated supervising officer to undergo an oral or written assessment . . .

I do not think we need "to do the following". Paragraph (b) will read -

> the CEO may ask the applicant or the nominated supervising officer to undergo a medical, psychiatric or psychological test . . .

Paragraph (c) would read -

> the CEO may ask the applicant or the nominated supervising officer to provide a reference or report . . .

Hon LJILJANNA RAVLICH: The Government finds the proposed amendments acceptable.

Hon BARBARA SCOTT: I find the proposed amendments to be quite acceptable. However, with paragraph (c), one would expect the chief executive officer to want a reference indicating that the supervising officer is an appropriate person to be running a childcare centre. I seek "must" for paragraphs (a) and (c), and "may" for paragraph (b).

The DEPUTY CHAIRMAN: Is that acceptable to the parliamentary secretary?

Hon LJILJANNA RAVLICH: Yes.

The DEPUTY CHAIRMAN: The question is to delete the following words at page 127, line 14 after "child care service" -

> , the CEO may ask the applicant or nominated supervising officer to do any or all of the following

Amendment put and passed.

The DEPUTY CHAIRMAN: The question is to insert after (a) and before "undergo an oral", the following -

> the CEO must ask the applicant or nominated supervising officer to

Amendment put and passed.

The DEPUTY CHAIRMAN: The next amendment is to insert after (b) and before "undergo a medical", the following -

> the CEO may ask the applicant or nominated supervising officer to

Amendment put and passed.

The DEPUTY CHAIRMAN: The next question is to insert after (c) and before "provide", the following -

> the CEO must ask the applicant or nominated supervising officer to

Amendment put and passed.

Hon BARBARA SCOTT: I move -

> Page 127, after line 23 - To insert -

(d) provide proof of an early childhood education qualification equivalent to that of an early Childhood Teacher.

I move this amendment because this provision deals with the chief executive officer's consideration of applicants to run a childcare centre. I am pleased that the amendment I proposed earlier has tightened up that situation. Still, a person with no prior experience in child care or education will be allowed to run a centre as a supervising officer. It will relate to not only the owner, but also the supervising officer. As we do not have regulations before us, I am not convinced that the regulations will require that the person at the centre all the time supervising the provision of a good program have necessary qualifications. The person will be required to undergo a written or oral test concerning his or her knowledge of the regulations and the field of child development. However, to me, that is no guarantee. When a child is placed in child care for up to five years, the supervising person at that centre must have knowledge of best practice in child care and education. This involves long-day care or after-school care in the main. No requirements are involved. The CEO may ask such people to undergo a psychiatric test. One would hope that a psychologically balanced person will run a childcare centre. My amendment requires proof of a qualification.

I inform the Chamber that New Zealand has a legislative requirement that all people in charge of childcare centres are four-year trained early childhood persons. That is a very good move. I ask only that a person be required to have the equivalent of an early childhood qualification. This will guarantee that children placed in long-day care for long or short periods after school will at least have a qualified person supervising their activities. The companies and owners of these childcare centres will be required to have such people in the centre. If the Chamber is not aware, one of the main concerns in child care currently is the lack of qualified staff. Very young people are employed in child care with no experience or expertise. If we do not guarantee in the guiding principles of the legislation enacted by this place at least a minimum standard for a supervising person, we would be derelict in our duty of care to children.

The DEPUTY CHAIRMAN: Having had a closer look at this matter, I point out a problem with the way we have amended earlier paragraphs. Clause 202 deals with either an individual or a body corporate. It may be a little difficult for a body corporate to undergo a medical or psychiatric examination. It probably is why "may" was used rather than "must" in the first place.

Hon LJILJANNA RAVLICH: The provision deals with a nominated supervising officer. I am advised that that is not the body corporate itself. That should overcome that problem.

Hon GIZ WATSON: One can still have "may" in relation to that provision.

The DEPUTY CHAIRMAN: Yes. I was concerned that a body corporate could apply for the licence. I accept that the words at the beginning of clause 204 cover that aspect. I seek clarification from Hon Barbara Scott about whether she is proposing that proposed paragraph (d) contain a "may" or a "must". I am assuming that she wants it to be a "must", but I need clarification of that.

Hon BARBARA SCOTT: I would like it to be a "must". Elsewhere in this legislation it refers to the supervising officer perhaps being allowed to disappear off the premises to do other things. That is of concern to me because the legislation allows for the supervising officer not to be there all the time. Unless the regulations contain some requirement that the supervising officer or another equivalent person be there, it will be of grave concern that up to 60 children could be at a centre without a supervising officer with any qualifications that are appropriate for the children within his or her care.

Hon LJILJANNA RAVLICH: I thank you, Madam Deputy Chairman, for picking up that potential difficulty. It is much appreciated. We accept the word "must". We are really trying to accommodate the amendment that is before us, because we understand this is an area about which the honourable member feels passionately, and she has made a good contribution to this debate. I am advised that the amendment before us, in which there would be a requirement for proof of an early childhood education equivalent to that of an early childhood education teacher, is seen to be too restrictive because we are dealing with a range of children from age zero up to 13. A qualification equivalent to an early childhood teacher may be okay to deal with children from age zero up to six, but it is probably limiting in dealing with children from age six up to 13. However, we would accept an amendment that read -

> Provide proof of qualifications relevant to care, education, early childhood education or recreation of young children.

That would accommodate early childhood education and education for that broader group from the ages of six to 13 years. If honourable members could live with that, we will try to accommodate that amendment.

Hon BARBARA SCOTT: I thank the parliamentary secretary for her cooperation. The point of the exercise is that in the main we are looking at childcare licences for long day care.

Hon Ljiljanna Ravlich: No.

Hon BARBARA SCOTT: After-school care is a different issue, in that most of it is community run. I am not sure that after-school care requires a supervising officer to be there at all times. Maybe the parliamentary secretary can answer that. Does the Act require an after-school care supervising officer to have a licence?

Hon Ljiljanna Ravlich: Yes.

Hon BARBARA SCOTT: Okay. My only concern is that it may water down the requirement for a long day care supervisor to have a diploma in recreation.

Hon LJILJANNA RAVLICH: It will be covered in the regulations. I am advised that there will be 300 outside school hours care providers by the end of the year. That is why it is important that we have an amendment that picks up those kids aged up to 13.

Hon Barbara Scott: That is fine.

The DEPUTY CHAIRMAN (Hon Adele Farina): Can I seek some clarification as to precisely what is being moved at this point?

Hon TOM STEPHENS: Madam Deputy Chairman, while that is being moved, you have probably picked up that there is a drafting problem on the basis of what is being proposed by the honourable member. The words that are being supplied eventually need to have inserted in front of them the words that we have previously inserted.

The DEPUTY CHAIRMAN: That is correct.

Hon TOM STEPHENS: It has not been picked up yet.

The DEPUTY CHAIRMAN: It has.

Hon TOM STEPHENS: It has not been verbalised but it might have been picked up.

Hon LJILJANNA RAVLICH: It has. We agreed to "must".

The DEPUTY CHAIRMAN: I think we have some other problems as well.

Hon BARBARA SCOTT: As I understand it, my amendment would now read that a supervising officer would be required to provide proof of qualifications relevant to care, education, early childhood education or recreation of young children.

The DEPUTY CHAIRMAN: Would you please repeat that?

Hon BARBARA SCOTT: Either an early childhood education qualification, equivalent to that of an early childhood teacher or -

The DEPUTY CHAIRMAN: Do you have that in writing?

Hon BARBARA SCOTT: I am just adding "or recreation". Can I explain that I am concerned that for children in long day care we could end up with a young person with a diploma of recreation - nothing more - being a supervising officer of 60 children, all day, five days a week? I would be happy if the amendment read -

> Provide proof of an early childhood education qualification equal to that of an early childhood teacher or a recreation qualification equal to a teacher's qualification.

Hon LJILJANNA RAVLICH: I am sorry, but that is not acceptable to us. The amendment that we have put on the Table is the only compromise that is acceptable to us. The honourable member is free to move her original amendment and we will vote against it.

Hon BARBARA SCOTT: This is the piece of paper I have received from them, which states that the supervising -

The DEPUTY CHAIRMAN: Do not worry about the words at the beginning. I just want to know -

Hon BARBARA SCOTT: Members in the Chamber need to understand that we are talking about a supervising officer of a childcare centre that could have up to 60 children, five days a week from eight o'clock in the morning to six o'clock at night. The Government now wants to move that the CEO can request that that supervising officer provide proof of qualifications relevant to care, education, early childhood education or recreation of young children.

Hon LJILJANNA RAVLICH: I thought we had already gone through that.

Hon BARBARA SCOTT: I have just got this piece of paper from the minister.

Hon LJILJANNA RAVLICH: No, it was from me. I am not a minister.

The DEPUTY CHAIRMAN: Order, members! Clearly there is not agreement on a form of words. Is Hon Barbara Scott not proposing to move the words that are being provided by the parliamentary secretary?

Hon BARBARA SCOTT: I am a little unclear. I got a piece of paper from the minister -

The DEPUTY CHAIRMAN: No. You got it from the parliamentary secretary.

Hon BARBARA SCOTT: I apologise. My only concern is, depending on where we put the commas, that an untrained recreation officer who could get a job at a council running after-school programs could become the supervising officer of a long day care centre. That is not satisfactory.

The DEPUTY CHAIRMAN: Can I just clarify things for members? This clause deals with the CEO requesting information. In this instance he would be requesting proof of various qualifications. It does not deal with anything beyond the provision of the documentation.

Hon BARBARA SCOTT: The Bill provides that the CEO "may" ask. I am seeking to have the wording changed so that he "must" request proof of a qualification. We are talking about the supervising officer, not the licence applicant.

Hon LJILJANNA RAVLICH: I do not want to add any comments. For whatever reason, the minister finds the inclusion of a qualification in recreation to be offensive. We have tried to accommodate the amendment by including reference to an early childhood qualification specifically in addition to a general education qualification. The agreed position is before you, Madam Chair. If it is not acceptable to the honourable member we will have to oppose the honourable member's original amendment.

Hon TOM STEPHENS: I hope Hon Barbara Scott will find this helpful. I do not think she heard the assurance given to her across the Chamber by the parliamentary secretary as she took advice on this question; namely, the point Hon Barbara Scott is trying to make is intended to be picked up in the regulations. As the parliamentary secretary said, her amendment will not achieve as good an outcome as that which is proposed to be in the regulations once the Bill is passed. I hope I do not have that wrong. I do not think the member heard it when it was said.

Hon BARBARA SCOTT: Will the parliamentary secretary read out my amendment that she will accept?

Hon Ljiljanna Ravlich: I would love to but I do not have it.

The DEPUTY CHAIRMAN: Hon Barbara Scott has already moved her initial amendment, which reads -

> Page 127, after line 23 - To insert -
>
> (d) provide proof of an early childhood education qualification equivalent to that of an early childhood teacher.

If the member wishes to amend that she will need to withdraw that amendment before moving a fresh amendment.

Hon BARBARA SCOTT: I am quite happy to accept the parliamentary secretary's proposal that I have in front of me; that is, to satisfy my concern about a supervising officer being a fit and proper person - in addition to understanding regulations and something about childhood development - he or she is to provide proof of qualifications relevant to care, education, early childhood education or recreation of young children.

The DEPUTY CHAIRMAN: Is leave granted for the member to withdraw her initial amendment?

Amendment, by leave, withdrawn.

Hon BARBARA SCOTT: I move -

> Page 127, after line 23 - To insert -
>
> (d) the CEO must ask the applicant or nominated supervising officer to provide proof of qualification relevant to care, education, early childhood education or recreation of young children.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 205 put and passed.

Clause 206: General restrictions on grant of licence -

Hon BARBARA SCOTT: I move -

> Page 128, line 25 - To insert after "purpose" -
>
> and meets Australian Standards for physical requirements indoors and outdoors

In my speech during the second reading debate, I detailed the importance of a physical environment for childcare centres and the dependence on a physical environment in programs offered to children. At that time I tabled a document that referred to physical requirements for indoors and outdoors for childcare centres. It is important

that one of the changes we make in this important Bill for children be in line with the current changes and trends in the huge growth in child care in this State. With the increasing number of licences requiring approval from local governments, it is important that minimal space not be allocated for children. As I said in the second reading debate, it is very common for councils on the eastern seaboard to allow childcare licence applicants to compromise the amount of space in areas in which children can play given that every childcare centre is required to provide a number of parking bays commensurate with the number of children they cater for. The space for children in some centres is being compromised. That is of major concern when children up to five years of age are in a centre and when plans are made for some children to spend all day at the centre. The physical environment requirements have been set out in a document to which I referred in my second reading speech and an Australian standard covers it, although it is not in legislation. I am asking that we provide in legislation for childcare places to meet Australian standards indoors and outdoors.

Hon LJILJANNA RAVLICH: The Government opposes this amendment because the Australian standards that apply today might not necessarily be the standards that we will want to meet in the future. In fact, higher standards might apply. This issue will be accommodated in regulations. Clause 232 on page 141 of the Bill deals with regulations. Clause 232(m) deals with the regulation of the building and other physical environment requirements for the provision of childcare services. I understand that that will include requirements for both indoor and outdoor environments. I am also advised that extensive consultation will occur with the sector during the drafting of those regulations. In view of those points, the Government will not accept the amendment.

Hon BARBARA SCOTT: I find it unacceptable that the parliamentary secretary can say that the Government will not pass anything that meets Australian standards because those standards might change. Of course the Australian standards might change. That is why I have referred to them.

Hon Ljiljanna Ravlich: You would then be locked into a lower standard.

Hon BARBARA SCOTT: The Australian standards will hopefully move with the times and be reviewed. I am not comfortable or satisfied with this being done by way of regulation. Clause 206(2)(b) states -

> the place at which the child care service is, or child care services are, to be provided is suitable for that purpose;

There is nothing prescriptive. Can the parliamentary secretary describe what is suitable? What do we understand to be suitable?

Hon GIZ WATSON: I understand the intention of the member's amendment and am sympathetic to it. However, as a builder, I am not sure whether we are referring to specific Australian standards. Do those standards relate to the provision of physical spaces for education? If they do, the amendment does not say that. It just says "for physical requirements indoors and outdoors". As I say, I am not opposed to the sentiment of the amendment and am actually quite supportive of it; however, I am not sure whether it addresses that issue. We might have to say something like that it is the Australian standards in relation to the provision of the physical requirements for the education of children. I suggest that this wording is perhaps a little too loose. I am not opposed to including some requirement, but I am concerned that the words are not quite precise enough.

Hon BARBARA SCOTT: As I understand it, there are set space requirements for children in child care. I stand to be corrected. I understand that the regulations provide acceptable standards for indoor and outdoor space for each child in preprimary and childcare centres. If that is not the case, I will not pursue the amendment.

Hon Ljiljanna Ravlich: That is the case, for both indoors and outdoors.

Hon BARBARA SCOTT: As an Australian standard?

Hon LJILJANNA RAVLICH: I have been advised that Western Australia has the highest ratio of space per child, both indoors and outdoors, so if there is an Australian standard, we are obviously exceeding it. However, under the member's proposal, we would have to increase the number of children in the childcare facility; otherwise we would be in breach of the Act because we would not be meeting the Australian standard. That is the problem with the amendment that the member is proposing. That is where the problem would kick in.

Hon GIZ WATSON: That does not make any sense either. Having had to meet Australian standards, one can meet them or do better. Just because a standard has been met does not mean that a higher level cannot be provided. For example, a building must have a certain number of windows, but it could have more. We will shortly run out of time in the debate this evening. I wonder whether this amendment could be revisited and made more precise. There may be a way to make it acceptable. We will not complete consideration of the Bill tonight. Perhaps we could postpone the clause and consider a different form of wording of the amendment. I think the intention is fine, but I do not think the words are quite right.

Hon LJILJANNA RAVLICH: That is not our preference. Our preference is to deal with the clause. This issue will be dealt with through regulations, which will pick up all sorts of things in terms of building codes and a range of issues that relate to physical requirements, both indoors and outdoors. A regulation specifically relates to that. Our preference is to deal with this matter now.

Hon BARBARA SCOTT: I ask for clarification. If we are not talking about an Australian standard, we have a minimum Western Australian standard; that is, a minimum requirement per child. My concern is that that is not detailed in the Bill. If we cannot have the Australian standard in the Bill, can we have the minimum Western Australian standard, which I know is a good standard? I do not want people coming into this State and breaking that standard. Subclause (2) states -

> The CEO must not grant a licence unless the CEO is satisfied that -
>
> . . .
>
> (b) the place at which the child care service is, or child care services are, to be provided is suitable for that purpose;

That is too broad. I am asking that we at least put into the Bill a provision that states that the minimum Western Australian requirement must be met.

Debate interrupted, pursuant to standing orders.

House adjourned at 9.58 pm
