

CHILDREN AND COMMUNITY SERVICES BILL 2003

Second Reading

Resumed from 19 August.

HON BARBARA SCOTT (South Metropolitan) [10.02 am]: In the short time I had to speak on this matter yesterday, I remarked that I took exception to the parliamentary secretary's comment in her second reading speech that the Court Government had done little to bring forward this Bill and had done little to protect children. She said that the Bill would implement the most significant legislative changes for the protection of children in Western Australia since 1947. Although I acknowledge that this is the first major legislative change since 1947, I take exception to the following remarks in the second reading speech read by the parliamentary secretary on behalf of the Government -

It emphasises our Government's strong commitment to valuing children; improving the wellbeing of children by strengthening families, individuals and communities; and protecting children from harm.

I will spend a few moments correcting the belief in the community that, according to the Premier, this Government is passionate about children. I will argue that not the Government but the Opposition is passionate about children and their wellbeing. When the Bill was first introduced the Premier said that it contained new laws to protect children. He also said it would give a clear direction for a model of best practice. We might reasonably ask what "best practice" means in the community. I guess it suggests that the Bill can somehow vaguely be linked to a best practice regime. Perhaps it is an admission that the Bill has very little to do with best practice. That would certainly be true because it does not represent world's best practice, or even best practice in Australia. How can credit be given to this Government for best practice in protecting children when this State has no regime for mandatory reporting of child abuse? Western Australia is the only State in Australia that does not have mandatory reporting of child abuse. Without mandatory reporting, the number of substantiated child abuse cases reported is more than 1 100 a year. If we based the potential number of cases that could be reported in Western Australia on those of other States that have mandatory reporting, clearly the figure would possibly be closer to substantiated cases in other States and would rise dramatically to about 2 200. That means that at least 1 000 children in Western Australia are being abused each year and no-one is hearing their cries; yet the Premier says he is passionate about children. The Minister for Health is more concerned about hospitals than preventive medicine. This Government does not value children; it values votes. This is a Government that will spend \$10 million plus - probably up to \$14 million - and additional money on hiring generators and purchasing oil to make sure the lights do not go out while people fill out their ballot papers during the state election. How many schools could be built, how many child abuse investigations could be undertaken, how many parent health centres could be opened, and for how many years could we fund a children's commissioner for Western Australia with that money? One of the primary recommendations of the Gordon Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities was the establishment of a children's commissioner and a deputy commissioner for Aboriginal children.

I have just completed chairing the long-ranging Select Committee on Advocacy for Children (Appointment of a Commissioner for Children), which inquired into the establishment of a children's commission for Western Australia. Ever since this Government was elected in 2001 it has said that we do not need a children's commissioner in this State, and, as a result, we do not have a commissioner for children.

Hon Ljiljanna Ravlich: We are going to have one. We never said no. You just beat us to it.

Hon BARBARA SCOTT: The Labor Government did not beat the coalition to it; the parliamentary secretary should not kid herself.

Hon Ljiljanna Ravlich: Are we getting a children's commissioner? Yes we are.

Hon BARBARA SCOTT: The Government waited until the research was almost completed and a report was brought down on the select committee on advocacy for children.

Several members interjected.

The PRESIDENT: Order! The parliamentary secretaries will come to order.

Hon BARBARA SCOTT: Thank you, Mr President. The committee, which was made up of three members of this Chamber - Hon Giz Watson, Hon Kate Doust and me as chair - brought down a very credible report.

Hon Graham Giffard interjected.

Hon BARBARA SCOTT: Does Hon Graham Giffard deny that it is credible.

Hon Ljiljanna Ravlich: I think we made the announcement that we would support a commissioner before you brought down your report.

Hon BARBARA SCOTT: The Opposition bludgeoned and embarrassed the Government into making that decision. For three years the Government denied that a children's commissioner was needed in this State.

The PRESIDENT: Order, members! Hon Barbara Scott will address her remarks to the Chair and not to the interjectors opposite.

Hon BARBARA SCOTT: Thank you, Mr President. In that way a far better record of the debate will be recorded in *Hansard*. The select committee's report into the children's commissioner has set out a model for the functions and powers of the commissioner and for the elements that would go into a Bill to legislate for the establishment of a children's commissioner. The committee unanimously agreed to recommend that the Government establish a commission for children and young people in Western Australia and appoint a commissioner. The report sets out the framework and provides clear guidelines of what ought to be included in the legislation and what should be the powers and functions of the commissioner.

The Parliamentary Secretary to the Minister for Community Development, Women's Interests, Seniors and Youth gets very touchy about this issue because soon after I was given the shadow children's portfolio in 2002 I organised a children's summit in Fremantle at the University of Notre Dame that some 300 people attended, including the then Commissioner for Children from New Zealand, Hon Roger McClay. The response from the community in Western Australia to that summit was indeed overwhelming. There is no doubt that there is a mood in Western Australia for the establishment of a commissioner for children. I will read into *Hansard* some of Hon Roger McClay's address to that summit because the Government of the day must be reminded that we need to value our children. Hon Roger McClay said -

It was an Australian who, in 1999 said "Our children are like signposts to the future of our society; they tell us what we are becoming. But they are also our most precious resource for shaping the future, so we had better make sure we are nurturing them and support them to the limit of our capacity".

The Australian referred to is Hugh Mackay. Professor Fiona Stanley is a Western Australian of good repute and is recognised nationally and internationally. She keeps reminding government and opposition members of the state of the children of Western Australia. Indeed, that was the title of my summit, at which Professor Fiona Stanley was one of the guest speakers. Recently she raised issues regarding mental illness and other problems faced by children. In an interview for *The West Australian* last year she warned that we were at risk of producing a sick generation. The article states in part -

A GROWING divide between rich and poor was creating a generation of children who were sicker than their parents, . . .

Dr Stanley, who is Australian of the Year -

The article was written last year -

said rates of obesity, asthma, diabetes and mental illness among children were rising dramatically.

Twenty per cent of children aged between 5 and 18 were overweight or obese and 14 per cent suffered some sort of mental illness.

The Federal Government has launched a discussion paper to develop a national agenda for early childhood, focusing on the first five years of children's lives. Dr Stanley, head of the Telethon Institute for Child Health Research in WA, spoke at the paper's launch yesterday in Canberra.

She said socioeconomic factors played an increasing role in determining a child's prospects.

Australia was seeing the emergence of disadvantaged communities.

The problems partly were a result of a culture that had devalued parenthood.

Yesterday in my introductory remarks to the Bill I mentioned that this Government had barely put its hands in the till before the Treasurer, Mr Ripper, embarked on slashing and burning the state budget and shut down parenting centres in Western Australia. Mr McGinty, about whom I started to speak yesterday said -

Hon Nick Griffiths: It is the member for Fremantle or Hon Jim McGinty.

Hon BARBARA SCOTT: The Minister for Health, Hon Jim McGinty, the member for Fremantle, talked about bringing a cultural change to health. The cultural change about which Professor Fiona Stanley talked refers to prevention rather than trying to cure the illness. In a media statement issued on November 2003, when he cut the budget to child development centres, Hon Jim McGinty said that merging staff positions would save \$100 000. I am sure that most members of this Chamber are aware of the highly valuable work that the state child development centres have done. This Government has continually either underfunded or cut funding to them. An important role of the state child development centres - WA's top child health units - is to screen children for developmental problems. This week Mr McGinty said the cuts to the centres' 2003-04 budget would not affect services to children. Although Hon Jim McGinty, the Minister for Health, said that the budget cuts would not

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affect children, I have a table that was tabled in Parliament and a letter written on behalf of the paediatric division of the Royal Australasian College of Physicians to Hon Mr McGinty, of which I will quote only part, that claim otherwise. The letter states-

The Division is concerned that the government is directing a disproportionate share of the health budget towards acute care at the expense of world class preventable health care particularly in the early years of childhood development where the largest long term gains have been demonstrated.

We are referring to budget cuts to, not only non government organisation that provide services to children, but also the State Child Development Centre and to Health Services that are responsible for Population Health Services that include Community Health Services and Child Development Services. These cuts are to services that have the smallest proportion of the health budget and that do not have a track record of blowing the budget. The cuts come on top of a long history of reducing the Community Health budget.

Seventy per cent of childhood mortality and morbidity is preventable at a community level. The Community Child Health Team have a key role in the future success of children with varying disabilities.

...

The WA Child Health Survey identified 17% of children with a significant mental health illness, but only 2% of these children had access a specialist mental health clinic.

The author of that letter, Dr D. Silva, produced a table for the Government on the wait times at these child development centres and others the around the State. It shows how long a preschool child would have to wait for intervention and therapeutic services. I seek leave to incorporate the table into *Hansard*.

Leave granted.

The following material was incorporated -

Region	Health District/Service	Occupation	Waitlist (weeks)	Comments
South Metro	Fremantle	Clinical Psychology	28	
		Enuresis	2 to 13	
		Medical Officer	3	
		Occupational Therapy	24 to 38	
		Paediatric Medicine	6 to 24	
		Physiotherapy	3 to 28	
		Podiatry	0	
		Speech Pathologist	7 to 11	
	Armadale	Clinical Psychology	37	
		Enuresis	15	
		Medical Officer		
		Occupational Therapy	24	
		Paediatric Medicine	25	
		Physiotherapy	26	
		Podiatry	16	
		Speech Pathologist	25 to 33	
	Rockingham	Clinical Psychology	12	
		Enuresis	6	
		Medical Officer	7	
		Occupational Therapy	21 to 30	
		Paediatric Medicine	20	
		Physiotherapy	2	
		Podiatry	6	
		Speech Pathologist	34 to 55	
	Peel	Clinical Psychology	31	

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		Enuresis	16	
		Medical Officer		
		Occupational Therapy		
		Paediatric Medicine		
		Physiotherapy	10	
		Podiatry	5	
		Speech Pathologist	38	
North Metro	Koondoola Child Development	Physiotherapy	20	
		Speech Pathologist	24	
		Occupational Therapy	20	
		Paediatrician	16	
		Clinical Psychology	28	
		Medical Officer	16	
		Social Worker	12	
	Clarkson Child Development	Physiotherapy	8	
		Speech Pathologist	32	
		Occupational Therapy	12	
		Paediatrician		
		Clinical Psychology	20	
		Medical Officer		
		Social Worker	4	
	Joondalup Child Development	Physiotherapy	56	
		Speech Pathologist	28	
		Occupational Therapy	24	
		Paediatrician	24	
		Clinical Psychology	28	
		Medical Officer		
		Social Worker		

Wait times for a first Clinical Appointment by Discipline

Region	Health District/Service	Occupation	Waitlist (weeks)	Comments
Kimberley			Vary up to 3 months	Visiting Service
Pilbara & Gascoyne	Newman Health Service	Speech Pathology	12	
	Port Hedland Regional Hospital	Speech Pathology	4	
	Carnarvon Region Hospital	Speech Pathology	2	
	Exmouth District Hospital	Speech Pathology	4	
	Onslow District Hospital	Speech Pathology	4	
	Nickol Bay Hospital	Speech Pathology	7	
	Roebourne District Hospital	Speech Pathology	nil	
	Wickham District Hospital	Speech Pathology	10	
	Tom Price Hospital	Speech Pathology	8	
	Paraburdoo Hospital	Speech Pathology	4	
	Newman Health Service	Occupational Therapy	nil	
	Port Hedland Regional Hospital	Occupational Therapy	8	
	Carnarvon Regional Hospital	Occupational Therapy	2	
	Exmouth District Hospital	Occupational Therapy	4	
	Onslow District Hospital	Occupational Therapy	4	

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	Nickol Bay Hospital	Occupational Therapy	20	
	Roebourne District Hospital	Occupational Therapy	26	
	Wickham District Hospital	Occupational Therapy	20	
	Tom Price Hospital	Occupational Therapy	16	
	Paraburdoo Hospital	Occupational Therapy	20	
	Newman Health Service	Physiotherapy	12	
	Port Hedland Regional Hospital	Physiotherapy	4	
	Carnarvon Regional Hospital	Physiotherapy	nil	
	Exmouth District Hospital	Physiotherapy	4	
	Onslow District Hospital	Physiotherapy	4	
	Nickol Bay Hospital	Physiotherapy	4	
	Roebourne District Hospital	Physiotherapy	4	
	Wickham District Hospital	Physiotherapy	4	
	Tom Price Hospital	Physiotherapy	6	
	Paraburdoo Hospital	Physiotherapy	6	
	Newman Health Service	Paediatrician	4	
	Port Hedland Regional Hospital	Paediatrician	12	
	Carnarvon Regional Hospital	Paediatrician	4 to 6	
	Exmouth District Hospital	Paediatrician	4	
	Onslow District Hospital	Paediatrician	4	
	Nickol Bay Hospital	Paediatrician	4	
	Roebourne District Hospital	Paediatrician	4	
	Wickham District Hospital	Paediatrician	n/a	
	Tom Price Hospital	Paediatrician	4	
	Paraburdoo Hospital	Paediatrician	4	
Midwest&Murchison			4 to 6	
Wheatbelt				Clients referred to Perth
Goldfields & SEC		Paediatric Allied Health		
		0.3	8 to 12	
		Kindy/pp	15 to 20	
		School Aged	15 to 20	
		School Aged with disability	15 to 20	
		Speech Pathology	up to 40 weeks	
Great Southern	Great Southern	Speech Pathology	4 to 6 months	
		Occupational Therapy	3 to 4	
		Physiotherapy	3 to 4	
		Audiology	best case 3 months	
		Dietician	2	
	Central Great Southern	Occupational Therapy	3 days	
		Physiotherapy	3 days	
		Speech Pathology	15 days	

Hon BARBARA SCOTT: The table shows an alarming waitlist that I believe this Premier, who says he is passionate about children, ought to be ashamed of. He should hang his head in shame at the figures for Fremantle, Armadale, Rockingham and Peel. For instance, a parent who wants her child to see a speech pathologist in Rockingham must wait between 35 and 55 weeks. That is almost a year of a child's life. Before the child sees a speech therapist, he must see a paediatric specialist. In Rockingham there is a seven-week wait

to see a medical officer, which can be added to the 35 or 55 weeks. If the child is referred to a clinical psychologist because there is an early indication of a disordered behaviour or early signs of emotional disturbance or abuse that may lead to mental illness later, it could be another 12-week wait after the child has seen a general practitioner. If the child is under 12 years of age, it is a 20-week wait to see a paediatric specialist. If that paediatrician then recommends that the child see a speech pathologist, there is another wait of 25 weeks; for a clinical psychologist, 12 weeks; for a speech pathologist, 34 weeks; and for a clinical psychologist, 31 weeks. We are talking here about the lives of young children and the long wait lists.

Hon Derrick Tomlinson: We are talking about wait periods that are the equivalent of one-third or one-quarter of a pre-school child's life, or half in the case of a two-year-old.

Hon BARBARA SCOTT: Indeed, and this Government is bringing in a Bill and boasting that the Court Government did nothing about this and how this legislation will solve all of these problems and bring in best practice. I raise the issue of best practice because I sometimes wonder whether government members who talk about best practice understand what it really means out in the field. We have models of best practice that are working, but they are not backed up by the financial support of this Government, which says it is so committed to children. I will leave that issue of health and Dr Stanley's dire warning to this State. If any Government, which has control of the Treasury benches, is committed to children, it must redirect some of its funding into the area of health.

I will also talk briefly about a project conducted in Western Australia last year that was partly funded by the Department of Education and Training and the Government. The early development index was developed by a group of people including Dr Bret Hart, Sally Brinkman and Sally Blackmore. It is an instrument that has been trialed in Canada and determines how well children are being raised. This project was conducted last year in the north metropolitan health region. In Parliament I asked whether the Government would consider extending this project to the other regions, because it is such a good way of determining where our children are at. *The West Australian* of 26 November 2003 gave another dire warning under the headline "Dire warning for the future of WA children" following the results of the EDI instrument testing in the north metropolitan region. That article states -

Professor Stanley said the results of the ground-breaking report were frightening and showed that by the time some children started school, they were already on the way to lifelong social and educational problems, including crime and mental ill-health.

We know we can identify at-risk children at a very young age. This instrument was supported by the Government - I acknowledge its support. It is a very good instrument and its use in the north metropolitan region produced some alarming results. It identified suburb by suburb where there was a lack of intervention therapies.

Last week, I had the privilege and honour of attending the extension of that project across Australia. I congratulate the Western Australians involved in that pilot project that took up the instrument that was developed in Canada. However, did the Government respond to their call that perhaps we should test all children in this State or extend this test? No it did not. At the call of the institute, the federal Government, through the Minister for Children and Youth Affairs, Hon Larry Anthony, has taken up the project; the Australian Government is now supporting it to the tune of \$900 000. I commend Shell Australia Ltd for its support of this project; in partnership with the federal Government, it has injected \$900 000 - almost \$1 million - over four years for the development of the Australian early childhood development instrument. The good news is that the areas in Western Australia that will be taking up that project in the first instance are Carnarvon, the east metropolitan area and the Gosnells area of Perth, Kalgoorlie, Mirrabooka and Rockingham. I am delighted that Rockingham is involved because it contains a very high level of at-risk families. In fact, it is quite common for members of Parliament to call that region around Rockingham "nappy valley" because there are so many young children living there, and they are desperate for services. I have just read into Parliament the record of the inexcusably long wait list that children and parents in that region have for intervention therapeutic services.

The West Australian on Monday contained an article about this project going national, which reads -

A groundbreaking WA project which found that one in four children have developmental problems by the age of five is being rolled out around the nation.

Child health expert Fiona Stanley said the new Australian Early Development Index would try to stop children going on to a lifetime of problems, including mental health problems, crime and obesity - a growing scourge among young people.

The Federal Government is kicking in \$900,000 over four years to take the early intervention system Australia-wide after reviewing the findings from the pilot program involving 4300 children in Perth's northern suburbs last year.

I am very proud of the federal coalition Government for supporting that pilot project from Perth. However, I am not very proud of the fact that at the launch I attended last Tuesday morning there was not one member of this Government - a Government that says it is so passionate about children - in attendance. Not one member of this Government was present! What an embarrassment! This is a national project that has grown out of Perth and been funded by the federal Government and Shell, and not one member of Gallop's Government, which says it is so passionate about children, bothered to attend that launch or give any encouragement to that Australia-wide project. That is a disgrace.

Hon Nick Griffiths: Can I suggest that you stay within the standing orders when you refer to members of the other place.

Hon BARBARA SCOTT: I made a generic reference to members of the Government, Mr President. Is that outside of standing orders?

The PRESIDENT: The member is outside of standing orders.

Hon BARBARA SCOTT: Thank you, Mr President. I will say it again in case members opposite did not hear: that project was started in Western Australia and has now gone national, and not one member of this State Government was at the national launch of that project to give it any encouragement. However, this Government is intent on making sure that the lights are on leading up to next year's state election; it has committed \$10 million, and probably an additional \$4 million, to generators that use oil so that people know how to fill in their ballot papers next February in case the lights go out. However, the money that is desperately needed for children -

Several members interjected.

Hon BARBARA SCOTT: This is a very cynical Government that -

Several members interjected.

Hon BARBARA SCOTT: With an additional \$14 million, this Government could be funding a lot of very good projects that we know would work for Western Australia.

I will go back to the point with which I started; that is, the cynical action of this Government. The Government has told us that the State does not need a children's commissioner and that it will do other things and spend money elsewhere. However, after being in government for three years, it announced in May, just prior to the 30 June reporting date of the Select Committee on Advocacy for Children -

Hon Ljiljanna Ravlich: You should be happy there will be a commissioner!

Hon BARBARA SCOTT: Yes, I am very happy.

Hon Ljiljanna Ravlich interjected.

The PRESIDENT: Order, members!

Hon BARBARA SCOTT: I am very proud that I bludgeoned this Government into making a decision that I knew Western Australians wanted. The Government has finally accepted that Western Australians want a children's commissioner, and that they want money spent on children.

One of the primary functions of the commissioner for children will be to help build an environment that will sustain our children's healthy growth and development. The five critical environments are the family environment, the social environment, the spiritual environment, the learning environment and the physical environment. The parliamentary secretary claims that this Bill emphasises supporting family wellbeing. However, it does not do that, and her claim is nothing more than her usual huff and bluff. Having said that, I acknowledge that there are some good things in this Bill. I also acknowledge the work done by the Court Government in looking towards bringing this Bill before Parliament.

The types of intervention available to the department will be expanded so that it will not be limited to taking children into care. Data shows that that action rarely has a good long-term outcome. I like that part of the Bill; it is very good. I appreciate the long and extensive briefing I was provided by the minister's office. I do not have a legal background, so child protection and court proceeding issues are not entirely clear to me. It is a good thing that the interventions of the department have been expanded to limit the instances in which children are taken away from their families.

In situations in which a child has had a child protection order over him or her, or has been a ward of the State, until the age of 18, the Bill provides for that person's further care once he or she reaches 18 and leaves that care, if it is felt that is needed. That is a positive step, because when our children reach 18 we do not say, "Goodbye, you are on your way." Those of us who have children over 18 years know that they often stay with us long after

they reach the age of 18. Often they need support and encouragement to go through further education and training.

Hon Dee Margetts: The federal law means that they end up staying until they are 24.

Hon BARBARA SCOTT: I do not know about that.

It is commendable that the Bill provides that children can continue to receive care after they have turned 18.

Hon Ken Travers: A lot of foster parents continue to look after their children, or keep them as a part of their family, long after they leave.

Hon BARBARA SCOTT: That is exactly what I am saying.

Hon Ken Travers: The Bill reinforces what already happens with a lot of foster parents. I know of one foster parent who still treats his foster son as his own.

Hon BARBARA SCOTT: One would hope that that would be the case for foster carers who have had children in their care for a long time.

The objects and the principles articulated in the Bill are most praiseworthy. Unfortunately, they do not seem to be enforced in the later provisions of the Bill. As I said earlier, I do not have a legal background, so I cannot definitely say that that is the case. However, it certainly appears to be.

I want to raise the issue of child participation. The principle talks about child participation and decisions affecting children, but there is nothing in the provisions of the Bill to ensure child participation. That is most important, and it is in line with my promotion and advocacy of the development of a children's commissioner for Western Australia. One of the things the commissioner must do is put in place ways and means to listen to what children have to say. By way of a most recent example, before the break we completed debate on the Human Reproductive Technology Amendment Bill. The preamble of the Human Reproductive Technology Act states -

- D. Parliament considers the freezing and storage of a human egg in the process of fertilisation or an embryo to be acceptable only:
 - (i) as a step in the process of implanting; and
 - (ii) only in extraordinary circumstances once the freezing and storage of eggs can be carried out successfully.

However, after 10 years or so of the Act being in operation, we have ended up with approximately 10 000 embryos in long-term storage. Essentially, we were relying on the integrity and goodwill of the practitioners to ensure that the principles of the Act were followed. Although I have a lot more faith in the moral integrity of our childcare workers than in some of our medical researchers, especially when it comes to this particular issue, there will be occasions when it will be very difficult to obtain a child's view on what should happen to him. It is much easier to ignore the principle and decide what is in the best interest of a particular child. This can be overcome if the principle of child participation is enforced and the department or court is required to justify its position whenever a child's wishes are overruled. The other day I was discussing, in an informal group situation, the changes that the Bill will make. One woman in the group, an associate of mine, is aged 74. I did not realise that that was her age. She told me that it is very important that children have a say in where they go in Family Court issues. She told me that when she was nine, her parents separated and divorced and that she could choose whether to live with her mother or father. She chose to live with her father, even though she loved her mother dearly. She told me that at the time she had only two dresses - a blue one and a pink one - which were washed and ironed every week. She said that her mother allowed her to wear them only on Saturdays and Sundays, whereas her father let her wear them any day. That is a light situation, but often departmental people have to consider more than a child's wishes. This Bill provides for that; however, I cannot see where the Bill enlarges on those principles and provisions.

I turn now to the issue of childcare services, about which I will raise some concerns. To set the scenario, there has been a huge shift in families and children in Western Australia. I did a little bit of research to find out the growth in child care. Historically in Western Australia, childcare services were provided primarily by individuals before a few people started childcare centres. Childcare centres in this State started in 1987. In 1988, there were 138 subsidised and commercial long day care centres. For the information of members, subsidised, community-based childcare centres were supported by the State Government. The commercial ones were for profit only and received no subsidy. There has been a total shift. The escalation in growth has been due to the Commonwealth Government extending fee relief. It was initially a childcare subsidy to commercial providers in 1991. I was quite closely involved in that debate at the time. From the point of view of families accessing child care, there may be a commercial childcare centre down the road from parents and a community

one several suburbs away. That created a dilemma, particularly in the eastern States and somewhat in Western Australia, because parents who wanted to access child care would often drive past two private centres to access a community centre, which was much cheaper. The decision was made to extend fee relief to commercial centres. That situation changed during the late 1980s and early 1990s. In Western Australia in 2004 there are 365 long day care centres and 336 family day care services, in which people look after children in their homes. There has been a huge growth in family day care and long day care. The cash rebate scheme was the first one introduced, which was later followed by fee relief.

I know that the federal Government has delivered enormous additional childcare funding. I have a copy of a media release, dated 5 December 2003, from Hon Larry Anthony, Minister for Children and Youth Affairs. He announced that the Australian Government will increase the number of childcare places and provide more help to parents who choose to be at home with their children. From January 2004 the Australian Government will provide an additional \$79.5 million over four years for an additional 10 000 places for care outside school hours and 2 500 places for family day care. Funding will be directed to existing services. The Government announced it would also support playgroups. The point I raise is that the State has the sole responsibility for regulating child care.

Part 8 of the Bill contains some very good principles. It refers to regulations that cover such issues as ventilation and playground layout. It refers to a new position of a "supervising officer" for each centre. A supervising officer cannot supervise a number of centres. However, there is nothing in the Bill that I can see - I will seek further explanation - that refers to the qualifications required. Under the Bill a supervising officer must be able to supervise and control a childcare service on a day-to-day basis. That means that the person has to be there. Traditionally, that has been the case in Western Australia.

With the opening of access by the federal Government to money for private corporations providing child care, childcare centres are now listed on the stock exchange. I commend the federal Government for the increase in childcare funding. However, I remind the State Government that it is the State's responsibility to ensure that children in child care are well protected and that the programs are of best practice. In addition, the physical layout of childcare centres is inherently linked to the programs. With 55 per cent of people accessing funding in child care, there must be proper accountability. We must scrutinise these areas of the Bill very closely. This is a state responsibility. I am not sure whether we will see the detail in the regulations. I have gone through this part of the Bill very closely. As I said earlier, the principles of the Bill sound fine; they refer to the provision of staff and supervisors. Part 8 of the Bill refers more to the application process for licences, and the renewal, suspension and cancellation of licences. Those aspects do not mention children very much other than through the guiding principles, which I referred to earlier. It states that the principles of a childcare service should be to protect a child from harm. Any parent putting a child in child care would hope that the child would not be harmed. When the Premier made his announcement about this Bill in March he said the Government would protect every child who was in the care of someone other than his parents. He said he would bring in legislation that required a screening process for everybody working with children. That has not been done. It is not included in this Bill, as far as I can see. The Queensland Government gave that responsibility to its children's commissioner so that everyone who works in a child-related area - either a volunteer or paid worker - must carry a child card. The guiding principles in this Bill, which I referred to -

Hon Ljiljanna Ravlich: It may well be the responsibility of the commissioner.

Hon BARBARA SCOTT: Yes, but we do not have a children's commissioner. Yes, it may become that but the Premier said in March that legislation would be introduced. I have not seen any legislation.

The second part of the principles for child care includes respecting children's dignity and privacy. One would hope that was a given. The principles also include safeguarding and promoting children's wellbeing; providing positive experiences for children; and stimulating and developing children's creative, emotional, intellectual, physical, recreational and social potential. Childcare services should be provided in a way that involves the parents of children to whom the services are provided, as well as any other members of the community. That is a difficult point because parents who access long day care - especially working parents - find it difficult to juggle their family responsibilities, without getting involved with the committee of a childcare centre.

I make the point that the guiding principles sound sensible and fine but I do not see within the provisions of the Bill anything that gives me confidence that these sorts of things will be taken care of for the huge number of children in our State who access child care. We need to ensure in the regulations that those people who are receiving 55 per cent of the funding from the federal Government are truly accountable and can be scrutinised.

On my books I have an issue of a childcare centre being established next to a brothel. Another was established next to an abortion clinic. Both are on busy roads. We must ensure that local governments do not obtain too much control over deciding where the centres will be located. That is happening in both situations at the

moment. We are moving towards a situation in which a planning person from a council, who may know nothing about child care, will approve a childcare building as long as it meets the planning approvals process of that council. A number of centres have compromised on the issue of parking lots; they have been allowed to build on areas that should have been kept for children's play space. We need to be vigilant when huge corporations such as ABC Learning Centres Ltd and Peppercorn Management enter the market. I believe that those companies have purchased a large number of centres in this State. I asked a question last year about the number of individual operators, community-based operators and corporations that were running childcare centres in Western Australia. The minister's office was unable to answer. I find that quite puzzling. We have 365 licensed childcare centres. That is not a huge number of centres to be checked by the Department for Community Development, which is the department to which the licensing regime has moved. The department said that it could not give me the information at that time but that the information would be provided. I am still waiting. The question was asked on 17 October 2003. In providing the answer the parliamentary secretary stated -

The child-care licensing unit's current database has not been able to provide the information requested quickly or efficiently.

I hope that some efficiency will be driven into that area.

The other concern I have is that in September last year the Government abolished the Child Care Services Board, which was established in the 1980s. The board issued licences and checked that childcare centres were run according to the regulations. I will wait for some further explanation of that during the debate on the Bill; it is an issue. Some operators have raised with me their concern that we no longer have an outside body scrutinising the operation of childcare centres in this State. That role has been subsumed within the department. It may well be a separate part of the department, but the concern is that scrutiny of childcare centres by an independent statutory body is no longer provided in Western Australia.

I also hope that this Bill will bring into line the issue of creches. A young parent may go to a squash or shopping centre and place her child in a creche. I believe that the Bill and the regulations will pick up this issue, or I hope that they will. Creches do not have to operate under the childcare regulations. There is no required staff ratio or program set for creches. I have seen pictures of children sitting in creches and playing video games or watching television. There may be no limit on the time a child may be placed in a creche. Would parents want to place their children in a creche at a shopping or sports centre that had no proper program? I have made a few inquiries within my electorate.

Hon Ljiljanna Ravlich: The implication is that when parents have small children at home in the morning they must give the children a formal program. The children do not just play with their toys for a few hours; the parents give them a formal program.

Hon BARBARA SCOTT: This shows the lack of experience of the parliamentary secretary. I hope, please God, that no parent in this State with a child aged between zero and five would have a formal program at home. That is not what I am saying. I am saying that this State does not have regulations that manage creches. Creches are not compelled to comply with the childcare regulations. I will look very closely at this issue. If the Bill does not cover this issue, I will, now that I am on the Joint Standing Committee on Delegated Legislation, scrutinise the regulations very closely.

I have concerns about this Bill. The principles reflected in the Bill sound fine, but its provisions are inadequate or inappropriate and do not give our children the security and cover that the Premier has professed they deserve. The Premier and parliamentary secretary have stated that this Bill will introduce the most significant changes to child protection legislation in Western Australia. I take a broader view on child protection; it is not just about child protection orders. If we are to protect our children, we need to protect them in every place to which they go. We need to make sure that we, as the State Parliament, oversee stringent regulations to protect our children, especially when people are making money out of child care.

I also refer to a document from New South Wales headed "Best Practice Guidelines in Early Childhood Physical Environments". This document has been endorsed and accepted by New South Wales and, I understand, Queensland. The New South Wales Minister for Community Services at the time stated within the document that -

Over the past decade, we have come to recognise child care as a major factor in sustaining the well being of communities. For governments, families, and communities, child care is an important activity that reaps many benefits. Quality child care services provide children with important educational and developmental opportunities prior to their starting at school, and can cement the foundation for later life. At the same time, child care supports parents with their families and work commitments and adds

value to the infrastructure of local communities. In New South Wales alone, we care for over 120,000 children . . .

The child care environment needs to be well designed to ensure children are safe, and that they are provided with the opportunity to develop to their full potential. The Best Practice Guidelines in Early Childhood Physical Environments provide a valuable resource so that you, as child care providers, will be well informed in the design and application of your service.

Hon Nick Griffiths: What was the date of the document?

Hon BARBARA SCOTT: The first edition was published in October 1998.

Hon Nick Griffiths: Who was the minister?

Hon BARBARA SCOTT: Faye Lo Po'. The document states on page 7 -

This Best Practice Guide has been cross-referenced with the Centre Based and Mobile Child Care Services Regulation (No 2) 1996 and should be read in conjunction with the Regulation.

I am interested to know whether these sorts of requirements will be considered when the regulations are developed. I remind the parliamentary secretary of the importance of the environment that children experience. The report states that children under the age of six are constantly learning. Most learning for children takes place through play and not by sitting and playing video games or watching television. Most parents understand that if they provide a stimulating play environment for their children, they will learn lots of things.

Hon Ljiljanna Ravlich: Why is it that when they pick up bad behaviours, people say that they must have been picked up from the TV?

Hon BARBARA SCOTT: They learn some things from television, as do we all. The report also states -

All of the experiences a child has in this time contribute to the kind of people they will eventually become. Services that provide care and education for children carry enormous responsibilities to make a positive contribution to each child's development.

This is an important statement -

Many of the children attending an early childhood centre will spend the major part of their waking hours there during the most formative years of their lives. How positive the experience is will depend largely on how well the centre is planned and designed. This is because the environment needs to accommodate children aged between birth and 6 years of age.

I am not sure whether I can find the relevant passage, but the document indicated that some children spend the first five years of their lives in the same childcare centre. That places a huge onus on us as a State Parliament. If a child is to be put into child care at the age of six weeks and is to remain there until he or she goes to school, the centre must be flexible; it must have a stimulating physical environment; it must have a good program; it must be homelike. All those things must be taken into consideration. This best practice document contains a very detailed outline of the importance of the physical environment and its relationship with the program that early childhood professionals will adopt. It emphasises the importance of the inside and outside play environment. I have picked out some of its points, but I would like this document, if I may, incorporated into *Hansard* because it is far too long for me to go through.

In 1999 I travelled to northern Italy with a group of people from Western Australia who were involved in child care and early childhood development and learning. We went to Reggio Emilia and attended a two week conference there. People in Western Australia are now promoting and suggesting that they are running Reggio programs, which is very good practice for early childhood development and learning. They are excellent programs. About 29 kindergarten programs in the northern Italian regional town of Reggio Emilia are funded entirely through the local government authority and parent fees. They are considered world's best practice. We must be sure of what we are doing when we place children in long day care, family day care, creches and after-school care. I commend the Government for bringing in after-school regulations, which were long overdue. It was a concern of mine that a child could be taken from school to an after-school care place.

The provision of childcare facilities has grown enormously because of demand. It might grow to the point at which there are co-located childcare facilities. It is an emerging interest. However, I will return to the statement that is made in this document that some children will spend up to five years in the same childcare centre. The physical environment of the centre and the provision of programs, food, cleanliness, health requirements and the opportunity for children to learn independence, such as looking after their own equipment and that sort of thing, are vitally important. This document goes into all those requirements in great detail. I recommend the document to the department and I recommend that Western Australia look at adopting its approach. The department has

adopted the policies in other documents, such as those for the licensing process. One document refers to furniture and play equipment and to a design and planning checklist.

On that note I reiterate that we in this State Parliament have a huge responsibility for children. I welcome this Bill. However, I have some reservations. I am very critical of a very cynical Government that says it is passionate about children but has done very little other than talk and is quite prepared to put \$14 million into having the lights on during the next state election campaign rather than put money into early intervention programs and best practice documents that could ensure that children are provided with the very best learning situation from their early days.

Finally, I acknowledge Prue Walsh, who has put together these documents with the Department for Community Development. Prue Walsh was one of my guest speakers at the summit in 2002. She is a play-environment specialist. She really knows how to plan an early childhood centre. She is working right around Australia and in other countries as a consultant. I can vouch for these documents.

I will leave my other remarks until we get to the detail of the Bill. I hope that the principles of the Bill can be enshrined in the provisions of the Bill. I am not sure about that at this time. I seek leave to have the document incorporated.

The DEPUTY PRESIDENT (Hon Simon O'Brien): The member seeks leave. To clarify the position, has the member sought leave to table the document?

Hon Ljiljanna Ravlich: I understood the member wanted to have it incorporated in *Hansard*.

Hon Norman Moore: It would make *Hansard* seven inches thick!

The DEPUTY PRESIDENT: The document is tabled.

[See paper No 2475.]

HON DERRICK TOMLINSON (East Metropolitan) [11.08 am]: Those of us who have children would say that they are most important things in our lives. Although that sounds platitudinous, we would say, as has been said from the other side by Hon Kate Doust, it is true. I do not mind putting on the public record that the people I love most are my daughter, my two sons and their mothers. I must confess I was a bit alarmed to read in the biographical register of parliamentary members, which was launched on Wednesday evening, that my first wife has a son she does not know about and my second wife has a daughter she does not know about. I acknowledge paternity of two sons and a daughter. However, somewhere there is a son I do not know about. There is also a mother, a lady whom I obviously know but whom I have not acknowledged. I do hope that mother and her son come forward, but please not until after 22 May, because I owe them both an apology!

That aside, we do love our children. Even those of us who do not have children would say that children are the most important - I cannot think of the word, but they are not possessions; they are the most important things in our lives. Children are our embodiment of our own aspirations for the future. I do not present that merely as a platitude. We love our children. However, there are times that we do them harm: we act in anger, we act in selfishness and we do them harm. Most of the time, it is a passing harm. Indelibly printed in my memory is the red shape imprint of my hand on my three-year-old son's bottom. I have regretted that ever since, but, of course, it did not do him any enduring damage. I regret those things that I have done that have caused enduring hurt to my children, and it is the only thing in my life that I regret. Most of us, because we love our children, try not to do enduring harm. In fact, we dedicate our lives to fostering their futures because their futures are our future.

Regrettably, there are some mothers and some fathers who do not care because they are incapable of caring. Some do not care because they are afflicted with substance abuse in alcoholism and drug taking or because they do not have the capacity to care. We all know some of those parents - fortunately, they are in the minority. When a child has the unfortunate circumstance to be the child of parents who care not, who have parents who harm them and deliberately damage them and their futures, we collectively have a responsibility to intervene. Therefore, the State has established mechanisms of child care. I avoid saying child welfare because of connotations of that expression, but it is for the welfare and wellbeing of children. When parents neglect their responsibilities, or do not love enough to care, the State steps in. Regrettably, when the State steps in, it does so in a bureaucratic and legalistic manner. The State's intervention in the care of children is wrapped up in laws of procedure, ostensibly to protect the interests of the child.

Throughout the history of this Parliament, when it has legislated for the care of children, it has made consistent mistakes. What did the Parliament do with the Adoption of Children Act of 1896? That Act was a reaction to child farming in the goldfields and was designed to protect children, but we enshrouded the process of adoption in shame and secrecy. The legislators established by law the stigma of bastardy, and adoption since then has been associated with the stigma of bastardy. A cautious step was taken in 1994 towards changing that situation. I am pleased to say that in 2004 we made a much bolder step towards removing that approach. The stigma

remains, though, and I sincerely hope that when the Act is reviewed in a future Parliament, the final bold steps will be taken to remove the stigma of shame and secrecy from adoption.

One of the very first acts of this Parliament to care for children was to enact mistakes. It is all very well to say that in hindsight. I think at the time the legislators were probably motivated by the best interests of the child, just as they were in 1905 when this Parliament legislated the Aborigines Act and made every Aboriginal child under the age of 16 years a ward of the Chief Protector of Aborigines. That Chief Protector of Aborigines, acting in the best interests of the child, had absolute discretion about the life of every Aboriginal child in Western Australia under the age of 16 years. An Aboriginal child was a person born of an Aboriginal mother, although not necessarily an Aboriginal father. The Chief Protector had the right, without consultation with the parents, to remove children from their parents, their families and their communities and to place them in a school, mission or settlement. This was all done in the best interests of the child. The education that that Chief Protector was obliged to provide under the Aborigines Act of 1905 was education at the discretion of the Chief Protector. He chose what would be the education of those children. Under that 1905 Act, which was established to protect the interests of Aborigines, and Aboriginal children in particular, some of the most inhumane crimes were perpetrated against Western Australian people in recorded history.

Through the Native Administration Act of 1936, the Chief Protector of Aborigines became the Commissioner of Native Welfare. Aboriginal children up to the age of 21 years became wards of the commissioner, who had all the powers of the Chief Protector of Aborigines. He had power even to the point of deciding whom or whether they might marry. He had power to decide not simply where, how or why they would live, but whether they would marry. If they had children, the commissioner had the power - the authority - through an Act of this Parliament to take those children and separate that family in the best interests of the child. That continued until 1967. I was 16 years of age at that time. That is well and truly within living memory. The 1947 Child Welfare Act simply replicated those powers that the commissioner for Aborigines had over Aboriginal children in the powers that the commissioner for child welfare had over non-Aboriginal children. At any time the commissioner had the power to seize the child, to separate the family, to deny access by mother or father to son or daughter or by son or daughter to mother or father, and to make decisions about the child's welfare and the child's wellbeing, all in the best interests of the child.

Just as in 1896 the legislators enshrouded the Adoption of Children Act with stigma, so in 1947 they enshrouded the Child Welfare Act with stigma. A child who was seized under the Child Welfare Act 1947 was declared to be a neglected child. The parents were taken before the Children's Court and charged with neglect. The irony of that of course is that, at that time, for many of them it was not neglect; it was incapacity. They could not afford to care for their children; they were destitute. However, the power existed. Just as in 1994 and 2004 we have progressively improved the Adoption Act, so in 2004 we are progressively improving the Child Welfare Act. As in 1994, we are too conservative. When the good intentions of the Bill before us are stripped away, what are we left with? We are left with procedures for snatching children. Yes, those procedures for snatching children are shrouded in legalistic procedures, and checks and balances are built into those legalistic procedures to protect the best interests of the child. In fact, clause 7 of the Bill states -

Principle that best interests of child paramount

In performing a function or exercising a power under this Act in relation to a child, a person or the Court must regard the best interests of the child as the paramount consideration.

I cannot argue against that. Just as every parent has a responsibility to act in the best interests of their children, so the State can step in and act in loco parentis. The State or the State's instrumentalities must have as the paramount consideration the best interests of the child. That is a totally defensible statement, but translating that into practice is the challenge that has not been met through this Bill. The Bill states very laudable principles but, after stating the laudable principles, it goes on to establish legalistic procedures that do not embody those principles. That is why I am at a bit of a loss about supporting this Bill. Without doubt it is better than the 1947 Act. Without doubt it brings together four pieces of legislation into one and makes it manageable legislation. In that respect, yes, there is a move forward.

Hon Ljiljanna Ravlich: It's taken only 17 years!

Hon DERRICK TOMLINSON: It has taken only 17 years! It took us only 100 years to do something about the Adoption of Children Act! Yes, it does take a long time. After 17 years, we got it wrong, and I will not try to score cheap points and say that this Government did this or that Government did not do that. In fact, in the process of reform or of rewriting this legislation, certainly for the past eight years, regardless of who has been the minister and who has occupied the Treasury bench, the well-intentioned officers of the then Family and Children's Services and the current Department for Community Development have worked earnestly to produce good legislation. It is not a question of cheap political points: "Who was your minister? You did nothing for eight years!" In eight years, people have been endeavouring to produce good legislation. The legislation states

the principles that guide child care and protection. Those principles are strongly guided by the United Nations' Convention on the Rights of the Child. The UN Convention on the Rights of the Child was a controversial initiative when it was adopted by the Australian Government, not by the Commonwealth Parliament. It was controversial. There are those who still say that some aspects of the Convention on the Rights of the Child are irrelevant to Australia. I hope so. I hope it is not necessary for us to say that, at birth, every child will have a name, every child will be registered and every child will have acknowledged parents. I hope it is unnecessary, and I hope it continues to be unnecessary, to say that in Australia. Regrettably, in some parts of the world it is necessary for that to be said and done, because it has not been done. I hope it is unnecessary in Australia, and in Western Australia in particular, to say that every child has a right to 12 years of education without cost. Recently, I was in East Timor, and I only wish that every child in East Timor had a right to not only education, but also a school to attend, a teacher to teach, books to read, radios to listen to and musical instruments to play. The situation in East Timor demonstrates that it is necessary for that to be said elsewhere. Although I know that some aspects of the United Nations Convention on the Rights of the Child are seemingly inapplicable in Australia, and certainly Western Australia, I hope that continues in future. Some aspects of the Convention on the Rights of the Child are restated in this Bill. I have already referred to clause 7 in which the rights of the child in all dealings under this legislation are considered to be paramount. Article 3 of the United Nations convention states -

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

I cannot take any exception to that statement as it is translated into this legislation or as it is in the United Nations charter. What is missing from the Bill is the following provision from article 3 -

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

Although it is not stated as a principle in the Bill, it might be argued that it is embodied in the procedures of the Bill. Let me consider the procedures of the Bill for taking a child into care and protection. A decision is made unilaterally by the chief executive officer of the department, under authority delegated to an authorised person, to take the child into protection. Within 48 hours, the child must be brought before the Children's Court and a legal application made for the care and protection of the child, in which application the rights of the parents are respected by the requirement that they must be represented. The prosecutor - if I can use that word - is the department - perhaps the Minister for Housing and Works could provide me with a better term. However, the person who pursues the claim is the department, so we set up an adversarial -

Hon Ljiljanna Ravlich: It cannot be just children. The child must be at risk of harm or significant harm.

Hon DERRICK TOMLINSON: We will get to that in the detail of the Bill, but yes. I have no objection to the notion that if there are reasonable grounds for suspecting that a child is at risk of sexual, physical, emotional or psychological harm, then intervention is justified.

Hon Ljiljanna Ravlich: It's a bit different from your amendment -

Hon DERRICK TOMLINSON: Let us worry about the amendments when we get to them, because I am agreeing with the parliamentary secretary. In the best interests of the child, when it can be demonstrated that there is a risk of harm, then there is a right to intervene. We then set up an adversarial procedure in the courts and put a legalistic procedure in place, in which we say the rights of the parents and the rights of the child will be respected. However, eventually it comes down to a legal decision. Are we really translating the principle into practice? No; we are translating the principle into the procedure that has operated since 1947, and that has not been changed.

We then go to the principle of child participation under clause 10(1), which states -

If a decision under this Act is likely to have a significant impact on a child's life then, for the purpose of ensuring that the child is able to participate in the decision-making process, the child should be given -

- (a) adequate information, in a manner and language that the child can understand, about -
 - (i) the decision to be made;
 - (ii) the reasons for the Department's involvement;
 - (iii) the ways in which the child can participate in the decision-making process; and
 - (iv) any relevant complaint or review procedures;

That attempts to embody article 12 of the United Nations Convention on the Rights of the Child, which reads -

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

I think that is found in clause 10 of the Bill. However, what is not found there is the following from article 12 -

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

We have an adversarial court - the department versus the parent - in which the child is the object of contention and the claim, on the part of the department, that the child is in imminent danger of harm from sexual, physical, emotional or psychological abuse. That is the charge being made. The parents are defending the charge but the object is the child. Who represents the child? When is the child given the opportunity to be heard? If the child is incapable of understanding, who then represents the interests of the child? Is it the department that is pursuing the complaint about the child? Is it the parents who are defending the complaint against them about the child?

Hon Ljiljanna Ravlich: May I just interrupt the honourable member -

Hon DERRICK TOMLINSON: No. Let me continue. The parliamentary secretary has her chance to reply; please use it.

Hon Ljiljanna Ravlich: All right. I will let you go. Go!

Hon DERRICK TOMLINSON: May I have my time wound back because of that inappropriate interjection?

Who represents the child? What is missing from this Bill is the child's representative. Who is the child's advocate? Hon Barbara Scott talked about a commissioner for children. "A Vision for Children in Western Australia" talks about the need for a children and young persons' commissioner and the need for a children's advocate. When a child is the object of contention between two parties - one being a government department and the other being the parents - there should be a third representative who is the representative of the interests of the child. That person should be the advocate for the child. I did contemplate an amendment to create a position of advocate but I cannot because that would impose a cost upon the State. As such, I cannot move an amendment. It is a flaw in the Bill; it is another instance in which the authors of the Bill have started with a set of commendable and laudable intentions as statements of principle but, in the translation, lose sight of the principle. I do not want to say that is because someone instructed them that this was to be done with the least cost. That is probably nonsense. The laudable intention is not translated into practice.

I have proposed a series of amendments to the Bill, which will be debated when we consider the Bill in detail. The parliamentary secretary has indicated that my amendments may be flawed. When one sits as a private member in front of a word processor one does what one thinks is right. I do not have access to legal advice or parliamentary counsel. As the parliamentary secretary has already indicated, we will probably argue about the language of some of those amendments. That is what the committee stage of the Bill is about. Even with those amendments I am at a loss to know what to recommend about this Bill. It is to be lauded and applauded for at least attempting to make progress away from legislation that is old and inadequate; laws that do not reflect contemporary values. It should be applauded for that but condemned for its failure. The principles are not transferred into practice. It simply continues the old processes that we have condemned as inappropriate to modern values and practices; it continues those old values and practices. It is a bit like the curate's egg - good in parts. Do we pass the legislation because of its good parts and hope that the bad parts will be amended in time or do we say that it is not the role of this Parliament to make second-best legislation and that it is the role of this Parliament to make laws for the good order and government of Western Australia? Regrettably, we do not have time to do that.

I received a letter dated 16 June 2004 from Judge Hal Jackson, the Independent Chairperson of the Ministerial Advisory Council on Child Protection. Judge Jackson encourages the passage of the Bill and hopes that it will be proceeded with quickly. He states -

The Council has closely followed the passage of the new Children and Community Services Act 2003 through the Legislative Assembly and urges members of the Legislative Council to support its passage through the Upper House. This is not to say that individual Council members may not have reservations about particular aspects of the new legislation. However, the existing legislation is more than 50 years old and passing the new legislation will bring Western Australia into the new century and align our State with other States in the Commonwealth of Australia.

I wrote in reply to Judge Jackson and told him that I agreed with him; we have reservations and I am eager to see this legislation brought on. My reply was sent to Judge Jackson a few days after receipt of the letter on 16 June. I do not have a copy of my letter with me to quote but if members want me to, I will obtain a copy. I told him that there were currently 51 Bills on the notice paper and, at the time, we had three sitting weeks left before the end of the autumn session. I doubted very much whether the Bill would be raised for debate in the session. The Bill was presented to the House and second read in November 2003. Since November 2003 when the parliamentary secretary made the second reading speech, the Bill was not raised again by the Government. It was not brought forward for debate or given the opportunity for members who might have reservations about provisions of the Bill to express those reservations. I had hoped that the Government would bring it on early. I had hoped that the Government would bring it on at least before the end of the autumn session so that the Bill could be referred to a committee to review it. The Bill needs to be reviewed. It needs a panel beating to have some of the rough edges removed. Here we are, 25 days before the end of this session of Parliament, and we are being asked to pass inadequate legislation. I will reserve my judgment until the Committee of the Whole, when we will see how far the Government is prepared to go in modifying the legislation. I accept the criticism that the wording of my amendments may not express their intentions adequately. I am sure that we can negotiate compromises. I will reserve my decision about the Bill until after the Committee of the Whole.

HON GIZ WATSON (North Metropolitan) [11.52 am]: The Greens (WA) support this Bill. It is a good piece of legislation, and certainly one that has been a long time in the making. It will replace Acts that are well and truly out-of-date, such as the Child Welfare Act 1947. Hon Derrick Tomlinson raised the issue of the Bill's timing, and whether it would benefit from a committee inquiry. I have some sympathy for that view. If we were not dealing with this Bill so late in Parliament's term, the Greens probably would have supported the Bill being referred to a committee, because we must get this type of legislation right. I listened with great interest to both previous speakers, particularly to Hon Derrick Tomlinson's comments that, if we as a Parliament have a duty, it is to protect those members of the community who need our protection the most.

Child welfare and protection is a highly contentious and emotive issue in the community. It is also highly complex. It is my feeling that very few people who abuse children - whether it be sexually, physically, psychologically or emotionally - are genuinely bad or evil people. There are reasons people find themselves in circumstances in which they cannot cope. Some often have their own history of abuse, and replicate that behaviour. Obviously that is totally unacceptable, and it is damaging not only to the children whom they abuse, but also to themselves, the rest of the family, and the community as a whole. I was very pleased to be reminded of the context and history of those issues in Western Australia. It is not a particularly good history, to say the least. For indigenous Australians it has been a tragic, appalling and damaging history.

Hon Derrick Tomlinson: Equally so for migrant children.

Hon GIZ WATSON: I do not know about equally -

Hon Derrick Tomlinson: It is, without doubt, equally so.

Hon GIZ WATSON: It is not terribly constructive to compare who has had the worst time. Indigenous Australians have suffered over more generations. I do not know whether the consequences are equally as tragic and whether they have had the same long-term impact. Indigenous Australians have suffered over many generations. Many of the issues that arise in indigenous communities are a result, at the very least, of misguided, if not incorrect, approaches of Governments and departments that separated children from their families. That is obvious with hindsight. It is crucial that we are aware of that history, because it colours how departments work. It also explains why families are so sensitive about separation issues and about who has the power to separate families and when. Of course, for many Aboriginal Australians it also colours their attitude to authority and, hence, a lot of other issues, such as criminal behaviour, substance abuse et cetera. Once people have an embedded distrust of both the police and welfare authorities - whatever their particular incarnation - that stays with them and is passed on from generation to generation. There is no doubt that we are still experiencing the consequences of past child welfare laws in this State.

However, to go back to the issue of the timing of the Bill, the Greens believe strongly that this Bill should be passed as soon as possible, once it has gone through proper debate in this place. I would have supported the referral of the Bill to a committee, because some panel beating would have been useful.

Another point I want to make is that because this legislation deals with an area that is contentious, complex and controversial, I have very much relied on the advice of various organisations that work within the area of child protection. I do not claim to be an expert in this area at all. I consulted a whole range of organisations about whether they are happy with the Bill and whether it strikes the right balance. Such organisations include those that act in the child welfare area, not for profit organisations, and those in the legal area, such as Youth Legal Services and Legal Aid, et cetera. By and large, the feedback I received indicated that this legislation is an

enormous step forward and that the Bill should be supported and passed. When I consider the Bill in more detail, I will raise some of the areas in which it can be improved. The other organisation I particularly wanted to mention was the WA Council of Social Services. Obviously, as a peak organisation, it represents the views of a lot of not for profit organisations that work in the interests of children.

The fact that we as a Parliament and a community need to legislate for the State's role in protecting children is, in itself, an indictment on the failure of the community to self-regulate. In an ideal world, children would be so valued and would have such an extensive network of support from their parents, extended family, friends, and community, that we would not need the State to play the role that it does in our society of having to step in and remove children from certain circumstances. I am not trying to paint a picture of an ideal "other" society that does things perfectly. However, culturally and intellectually it is a very interesting concept to engage. Why are we in a situation in which the State is given the difficult role of having to make decisions and judgments about when it is in the best interests to remove a child from a certain situation? I acknowledge that, in the seven years that I have been in Parliament, some of the most contentious issues raised with me by my constituents have concerned child welfare. There have been strenuous objections to the intervention of the State - the Department for Community Development, or whatever the department was called at the time - in removing children, for example. I found those to be the most challenging issues to try to understand and to balance with competing issues. Any mistake in judgment about a vulnerable person, whether a child or a person with disabilities, that results in a person being further injured or even killed creates a huge burden for someone to carry. In my experience, the department's caseworkers and employees have an emotionally demanding and difficult job. They must deal with difficult issues and traumatised people. By and large, they do a very good job. I would not want their job for quids, because we ask a lot of them.

Hon Derrick Tomlinson: By and large they do.

Hon GIZ WATSON: By and large they do. I am not saying that criticism cannot be made; some criticism is valid. I acknowledge that just as we ask the Police Service to do jobs that we would not want to do, the same is true for the Department for Community Development. I acknowledge that, by and large, their efforts are well intended.

I refer next to the style of this legislation. I have read and been briefed on this Bill. It is a very prescriptive Bill. It is almost like a procedure manual. I assessed whether this was the best approach to this area of law. There is a philosophical question about whether one prefers detailed, prescriptive legislative regimes, which spell out all relevant powers, principles and procedures, or a more sparse outline, which leaves the courts to interpret and flesh out the scheme. I support the approach that has been taken with this Bill. I believe that it should guard against an inappropriate ethos developing over time within DCD that could create an invisible but powerful value system that would not be appropriate or in the interests of the community as a whole. In saying that, I reiterate that most DCD workers do a good job under very difficult circumstances. The work is often unpleasant and judgmental. It is easily second-guessed and criticised by people outside the department. The work is also often underresourced. In this case I support this approach being taken, and I support the passage of the legislation.

I will talk about a few areas of the Bill. The first is the complaints and appeals mechanisms. This issue has been raised with me through constituent inquiries. DCD currently reviews its own decisions. If I have identified one systemic problem in the cases that have been brought to my attention, it is that. This issue will hopefully be addressed by the passage of the State Administrative Tribunal Bill, which is strongly supported by the Greens (WA). If that Bill were passed, it would enable the State Administrative Tribunal to review those decisions. Clause 92 provides for a review of case planning by a case review panel. This panel must have not less than three members appointed by the chief executive officer. Officers cannot be on the case review panel. That is one tier of review. Once the State Administrative Tribunal Bill has completed its passage through this House, it will be able to provide for a second tier of review. I have every confidence that the Bill will pass this House.

Hon Derrick Tomlinson: What if it doesn't?

Hon GIZ WATSON: That is a good question. If it does not, that tier of review will not be available. I trust that it will pass through this House, in the fullness of time. We strongly endorse that change. It will go a long way towards addressing some of the specific complaints of which I am aware. I hope that it will provide the degree of independence that was lacking in the past.

The second issue I raise relates to financial assistance, which comes under clause 233 in part 9 of the Bill. Clause 233 will replace provisions of the Welfare and Assistance Act 1961. The Western Australian Council of Social Service raised a concern with me on the general issue of the diminishing role of the State Government in providing financial assistance to those in financial crisis, such as homeless people. This issue clearly relates to the people who will be affected by this legislation. It is my understanding that there was some discussion that this matter would be dealt with in the regulations. Although it does not clearly state that within the Bill, from

discussions with advisers on this matter I believe that there is a possibility for regulations on the provision of financial assistance to be developed. During the consultation process leading up to the drafting of the Bill, WACOSS understood - I believe this was in 2002 - that the department's position was that the principles and processes, such as those for developing eligibility criteria in partnership, could and would be developed through regulations. However, the legislation firmly places the authority with the CEO and does not refer to guidance being provided by regulations. I ask the parliamentary secretary to respond to this issue in her response to the second reading debate.

Hon Ljiljanna Ravlich interjected.

Hon GIZ WATSON: I hope it is possible to have on the record some indication that a consultation process will occur with that sector and that regulations might be a good mechanism to enable everybody to be clearer about financial assistance. Procedures and guidelines would be useful.

Supervision provisions are contained within clauses 47 to 53. An interesting issue has been raised with me. I understand the supervision provisions allow direction to be given for such things as mandatory parenting and anger management courses. I think we all agree that such programs are important and useful in trying to address people's behaviour. The question is whether requiring a parent or parents to attend compulsory parenting courses will be effective and will work. It is my understanding from people who work in this area that coercion is not the way to get people to change their behaviour. They must have their own motivation to change. It is similar with some of the offender behaviour programs in prisons. Prisoners go to the courses to tick the box to say that they have done them and therefore they are eligible for parole or whatever. However, because the motivation is not there and they have not attended of their own free will, they are very unlikely to take the content of programs on board and genuinely address the issues.

Hon Derrick Tomlinson: It is a bit like being charged with the possession of drugs. You are either charged and prosecuted or you have a 10-day counselling session.

Hon GIZ WATSON: Perhaps. Fortunately we are not discussing drugs here.

Hon Derrick Tomlinson: It is a nice principle, though, is it not?

Hon Nick Griffiths: A principle initiated by your Government.

The DEPUTY PRESIDENT (Hon Simon O'Brien): Order! Hon Giz Watson has the call.

Hon GIZ WATSON: Thank you, Mr Deputy President.

The second issue of these supervisory provisions is that they tend to blur two issues. The supervision clauses of the Bill appear to have been designed to force recalcitrant parents to act. The argument can be put that since it represents a major shift in state intervention in family life it should be reconsidered by a process of public participation and discussion conducted on a non-partisan basis, with the results brought to Parliament for its consideration of what might be done. As I understand it, it is an untested, novel approach. I do not know enough about this area of the management of offenders to know whether it will achieve what the Bill is designed to achieve. I am not seeking an amendment to the Bill, although it has been suggested to me that the provisions should be struck out. I do not feel that strongly about it, but I do sound a note of caution as to how this new category of supervised protection will work. Perhaps the parliamentary secretary will comment on that.

With clause 28 I am not completely comfortable with the dichotomy between the key criteria of when a child is "in need of protection" from sexual abuse, when only harm needs to be shown, and other types of abuse, including neglect, which is the failure by a child's parents to provide adequate care and so on, when significant harm has to be shown. I think Hon Derrick Tomlinson has an amendment on the supplementary notice paper. I will be interested to look at this clause in more depth when we get to it. Although in many cases sexual abuse might be thought to be more abhorrent and harmful than other abuse, especially in the longer term, I am not sure that the argument is rational or has been adequately thought through, and surely the court in every case should, and I suspect will in the event, have to assess the extent of harm and make an order only if the harm warrants it in all the circumstances. A single, uniform criterion of significant harm would be appropriate as the one yardstick for the court to use. I am no expert in this area. This is advice that I have received from someone who works in the area of family law and who obviously has some knowledge of cases that come before the courts. I have some sympathy for the amendments that are on the supplementary notice paper. I seek some feedback from the parliamentary secretary on those aspects of clause 28.

Clause 80 relates to the charter of rights for children in care. It supports the requirements for the chief executive officer to develop a charter of rights for children in care and guidance for making placements for children from culturally and linguistically diverse backgrounds. I wonder whether the guidelines should be extended so that, as a matter of good, transparent and accountable administration, they extend to all placements. I am not quite sure

why the guidelines, as I understand them, are couched in terms of a particular subset of children. Could it not apply across the board?

I appreciate the issue raised by Hon Derrick Tomlinson on the child advocate in court. We debated the issue at some length in the Select Committee on Advocacy for Children. I hope that in the not too distant future when we do have a commissioner for children, as the position is now uniform policy in all parties in this State -

Hon Derrick Tomlinson: Does your party support it?

Hon GIZ WATSON: Yes. I hope that will be one of the roles that the commissioner can play.

I support Hon Barbara Scott's comments on concerns about the privatisation of child care. It is not an issue I have looked at in any great depth in relation to this Bill. However, philosophically and in principle the Greens (WA) do not support the privatisation of what we would consider to be an almost essential service. When a profit motive is involved in the provision of a significant service to children, we must be very sure that we set in place principles and requirements that ensure that the industry genuinely addresses the educational and behavioural needs of children. That is absolutely critical. I am not necessarily saying that state-funded and state-run child care has always been a shining beacon, but at least when the State had that role, and it was recognised as a role of the State to provide that service for the community, there was ownership of it and the balancing of the best interests of the child. I am really concerned at the way in which this has gone. The feedback I have had is that such a financial investment is really about returning money for shareholders. That could well be at odds with the best outcome for the child. I am not pointing my finger at any particular organisation, but the whole area of child care is, quite frankly, a mess in Australia. We know that not enough child care is available at a reasonable price. It has largely been driven by a federal agenda. It is a scandal that affects many families and many women particularly. They cannot access reliable, good quality child care, which affects a whole lot of other decisions about what else they can do with their careers and their other commitments in life. Child care is a vital community service. I confess that I have not looked in detail at what this Bill does, although I understand it is about specific requirements for the provision of child care, which is an improvement, but we have a long way to go.

I wish to make two final comments. One is to acknowledge that the feedback I have had from individuals and organisations to whom I have spoken is that the consultation process that took place with the drafting of this Bill has been very good. By and large people feel that they have been consulted. I particularly note that indigenous organisations are very happy that they were fully involved in the process. The Yorganup Aboriginal Child Care Corporation particularly made that comment.

To conclude, we will support the Bill. We will listen with interest to the proposed amendments, some of which I have some sympathy for, but we will be interested to hear the detail of the Government's response. However this Bill is implemented, I make the point that resourcing will be a vital issue. Bringing the laws up to more contemporary practices of child protection and replacing an Act that is 50 years out of date is important, but another major issue will be the resources to put this all into effect. A particular example, and one impacting outside the department, is who will pay for the legal representation of children as ordered by the Children's Court pursuant to clause 148. In the Family Court, the court requests the Legal Aid Commission to appoint a child representative. In most cases, Legal Aid does so. The Family Court has no funding to do this. Legal Aid badgers the Commonwealth and State Governments for extra funds for the purpose, but, to a significant extent, draws on its general funding, so that other deserving applicants in other categories of cases, for example criminal cases, suffer. The Legal Aid Commission will rarely agree to fund parents responding to care and protection proceedings, and then only at a rate below all other rates. This shows the priority given to these cases, despite the fact that they rend families asunder and determine the fate of children in dire straits. Further, and of direct relevance to this Bill, at present Legal Aid will represent children in only a minority of care and protection cases, and in particular only when they are old enough to give instructions. I expect a substantial increase in the draw on Legal Aid funds as the Children's Court will be able to order, rather than request, the representation of children. I want some assurance that the Government will provide the necessary financial resources, and not force Legal Aid to fund cases at a level completely outside its control.

Hon Derrick Tomlinson: It will need human resources, too.

Hon GIZ WATSON: It will also need human resources. The Government should not rob Legal Aid of funds available to other deserving applicants. This is a very important point, because justice can be done only if the resources are provided to give fair access to the courts and the processes established by the Bill before the House. It is well known in legal circles, particularly in community legal services, that many deserving cases involving children and family matters do not get the legal assistance they should. In the cases that have been brought to me, in my capacity as the member for the North Metropolitan Province, it is an added burden and injustice that these people are unable to get legal representation. In one particular case a mother who is seeking to be reunited with her children is not able to get legal assistance. For a person who is deeply distressed and in a

whole range of dire circumstances, this usually compounds into financial and housing issues as well as the emotional trauma of being, in her view, unjustly separated from her children. On top of that she cannot obtain legal assistance.

Hon Derrick Tomlinson: She must argue her own case in court.

Hon GIZ WATSON: She must argue her own case in the court and I am sure all of us would recognise that she is not in the best circumstances to do so, because she is emotional. A person needs a very clear space to advance legal arguments in a court against, I assume, the legal representatives from, in this case, the Department for Community Development.

Hon Derrick Tomlinson: Even in the sympathetic Children's Court?

Hon GIZ WATSON: Even in the sympathetic Children's Court. It is vital that we recognise that making the laws significantly better but not providing a means for people to access redress is doing only half the job. In a wealthy State in a wealthy country, if we cannot afford to provide the means of access to justice for the people who most need it and can least afford to pay for it, we are failing them badly. We are also failing the children in the cases that I am thinking of. It is vital that there be some commitment that Legal Aid will be able to provide the service it should in such cases. With those comments, the Greens (WA) will support the Bill.

HON LJILJANNA RAVLICH (East Metropolitan - Parliamentary Secretary) [12.26 pm]: I begin by congratulating all members on their contributions to this debate. It is clear to me that members have a genuine passion for this area, and are genuinely committed to reform and a brighter future for Western Australian children. As has already been mentioned by a number of speakers, this Bill has been in the making for a very long time. One might ask questions about why it has taken so long. Seventeen years seems an inordinate length of time for a Bill to take to reach this point. Nevertheless, it is here and it is a substantial reform and improvement. I fully concur with the comments of Hon Derrick Tomlinson, that it is not a perfect piece of legislation. In fact, if it were a perfect piece of legislation, and if everybody could agree to the last finite detail about such a complex issue as children and community development, I would be concerned, given the changing nature of our society.

Members might note that the title of this Bill changed during its passage through the other place. Originally the title was to be the Children and Community Development Bill 2003. Through an amendment, the title was subsequently changed to the Children and Community Services Bill 2003. To me that is a little disappointing, because the original argument for the use of the word "development" rather than "services" in the title is very clear. Good community is central to the wellbeing of children. Some of the studies I have looked at make it quite clear that children need to live in caring communities, in which a sense of community is recognised by the participants. Children need to live in communities in which people care for one another, keep an eye out for other people's children and have a sense of safety. All these things go into the pot for making a better community. It is a fairly compelling argument that if better communities can be created, risks to children and all participants of that community in a more global sense will be diminished.

Debate interrupted, pursuant to sessional orders.