

**CHILDREN AND COMMUNITY SERVICES BILL 2003**

*Second Reading*

Resumed from 20 August.

**HON LJILJANNA RAVLICH** (East Metropolitan - Parliamentary Secretary) [3.15 pm]: When I spoke previously, I finished on a comment about the importance of community, and the widely held view that, where there is a great sense of community, children are considerably safer and there is less adverse impact on them from all sorts of behaviours. I am very mindful of the time that this debate could take in putting forward this reply, so I am keen to address the many thought-out issues presented by members in their second reading contributions.

The first question I will address is that of mandatory reporting. This issue has been the subject of considerable debate in the public arena over the past two or three months in particular. It is an issue that people are passionate about for all sorts of reasons. People feel that they can participate in the debate on mandatory reporting, and through that participation feel that they are making a contribution to protecting children. However, what is good theory does not necessarily always amount to good practice. I want to put on record that the protection of children is seen as paramount by this Government. We are in the business of working out practical solutions that work, rather than theoretical abstracts that possibly may not work. We in this place have a collective responsibility to make sure that we come up with a piece of legislation that does the job of protecting children, regardless of whether it provides for mandatory reporting. This legislation makes no apologies for not including mandatory reporting, but that is not to suggest that it will not be powerful in protecting children. The Government has not gone down the path of mandatory reporting, for the same reason the previous Government did not; that is, it is seen as a fix-it for all and does not necessarily deliver. There is a mountain of research that suggests that mandatory reporting does not do all that it promises.

Hon Derrick Tomlinson: There is a mountain of evidence to suggest that the other States support it.

Hon LJILJANNA RAVLICH: That is exactly right. I will be up-front and say that this Government has made the pragmatic policy decision that it does not necessarily want to follow what the other States of Australia and other jurisdictions in the world are doing because it is not 110 per cent foolproof that mandatory reporting is the way to go. Mandatory reporting of child abuse is a mechanism for managing the way child abuse is recorded after a child has been harmed. It is not the only available reporting strategy, and Western Australia and the United Kingdom have effective interagency protocols and professional codes of conduct.

Hon Barbara Scott: Did you explain that when you came in? Is there no reporting now?

Hon LJILJANNA RAVLICH: I am not an expert on the UK practice, but Western Australia has a very comprehensive approach to child protection that includes support services. It includes strategies to promote awareness, prevention and early intervention of child abuse. It is a fallacy to suggest that there is no reporting of child abuse. The simple fact is that there are protocols, and child abuse is reported by police, people who work in the Department of Education and Training and people operating as practitioners in this area. The notion that there is no reporting of child abuse and that people are not under an obligation to report child abuse is simply wrong, and I just want to dispel the view that -

Hon Paddy Embry: People feel that it's not reported often enough. I do not think they are saying it is not reported.

Hon LJILJANNA RAVLICH: The member is quite right; it is not mandatory to report child abuse; however, we can get into that at the committee stage of the Bill. Many people work in this field on a day-to-day basis. An interesting report headed, "Mandatory Reporting Of Child Abuse: Evidence and Options" was carried out by the Discipline of Social Work and Social Policy at the University of Western Australia for the Western Australian Child Protection Council.

Hon Derrick Tomlinson: With all due respect, that is not a very credible piece of work.

Hon LJILJANNA RAVLICH: I am referring to this report because it has been under some heavy criticism.

Hon Derrick Tomlinson: And so it should be; it isn't a very credible piece of work.

Hon LJILJANNA RAVLICH: Based on what? I do not know why the member is saying that.

Hon Barbara Scott: Have you read it?

Hon LJILJANNA RAVLICH: I have gone through this report and I am citing it because many professional experts have had input to it. If those people are wrong, I am wrong. I am not a practitioner in this area, but the one thing I do is to listen to people who are experts in the area. I do not come into this Chamber and profess to be an expert on everything, and that is the truth.

Hon Simon O'Brien interjected.

The PRESIDENT: Order, member! Hon Simon O'Brien should not get too excited.

Hon LJILJANNA RAVLICH: I could spend a lot of time going through the arguments for and against mandatory reporting. Hon Derrick Tomlinson is entitled to his opinion. There has been a lot of bashing of this report in the media; there are no two ways about it. That bashing may be as a result of the comment I made earlier; that is, that people have the view that if they report something then everyone can participate in that reporting process, and they can feel good about making that report etc. Perhaps there has been a lot of debate about this report because people feel as though they could play some role in reporting.

Hon Derrick Tomlinson: If you will allow me an hour's speech, I will tell you why it is not a credible report.

Hon LJILJANNA RAVLICH: I cannot provide the member with an hour, but perhaps he could spend 10 minutes talking about it during members' statements, and I will be all ears! However, the point about that report is that it received many submissions. I understand that a total of 45 organisations had input to that report, which comprised six focus groups, 38 submissions and four questionnaires. A total of 88 people were involved from those organisations. A range of groups also responded, including three representative groups from Aboriginal and Torres Strait Islanders, two from health services, three from education services and eight from welfare services. A total of 66 individuals also responded; 60 through submissions, telephone calls or individual meetings, and 10 through questionnaires. However, I will not pick up every single detail in the schedule of the report. In total, 158 individuals had input to the report; that is, 158 people who deliver services, or have a direct responsibility for or may be very interested in this area. I do not know upon what criteria these people were selected. However, the simple fact is that this is not a report that somebody has just written; input has been received on this matter, and, I assume, people in the know have been targeted. It may not make a good report, but some people deem it to be a very comprehensive and indeed -

Hon Derrick Tomlinson: I certainly agree; it is a very comprehensive report.

Hon LJILJANNA RAVLICH: The judgment about whether a report is good or not may be influenced by the view people have on that issue. Those people who support mandatory reporting, for example, would probably think that this is not such a good report, because it makes some recommendations on the basis that mandatory reporting has some strengths but it certainly has some weaknesses. For example, people who have problems may not want to report their problems early on because it may result in intervention, through which they could be at risk of losing their children.

Hon Barbara Scott: Can you explain why the Government decided to have mandatory reporting only when a child has a sexually transmitted disease? It just seems incongruous.

Hon LJILJANNA RAVLICH: Child abuse happens across a range of categories. When a criminal offence has occurred against a child, it is reported to the police and, generally speaking, dealt with by the police and the Department for Community Development.

Hon Barbara Scott interjected.

Hon LJILJANNA RAVLICH: It is very noble of Hon Barbara Scott to have that view about mandatory reporting. However, the member has not given notice of any amendment on mandatory reporting insofar as this Bill is concerned. The member has not given notice of any amendments along those lines.

Hon Derrick Tomlinson: I have not spoken, so do not look at me.

Hon LJILJANNA RAVLICH: That is true, the member has not.

Hon Derrick Tomlinson: Why are you looking at me?

Hon LJILJANNA RAVLICH: The member is sitting in front of Hon Barbara Scott.

The PRESIDENT: Order! Hon Derrick Tomlinson also appears to be getting excited now.

Hon LJILJANNA RAVLICH: He always gets excited when I speak. I am a bit surprised that Hon Barbara Scott has not given notice of any amendment with regard to mandatory reporting. I am also a bit surprised that, given the strength of her feeling and the fact that she has had portfolio responsibility for community development and children for many years now, as a representative of her party, her Government did not pay any attention to the matter and go down this path. This Bill has been in the making for 17 years. The previous Government was in power for a total of eight years, and if members opposite felt so strongly about this matter, they had plenty of opportunity to bring this Bill into the Chamber and to include in that Bill mandatory reporting. The simple fact is that members opposite were not successful in the achievement of either of those two goals, and, consequently, the Gallop Government is bringing this Bill into this Parliament and it will determine the policy objective. In due course, if Hon Barbara Scott's party is ever re-elected to govern, she may have the option of setting the policy direction.

Hon Derrick Tomlinson: I won't.

Hon LJILJANNA RAVLICH: The honourable member definitely will not have that option, and it will be a sad day when he leaves. I think it is fair to say that Hon Derrick Tomlinson is a waste of talent as far as the Opposition is concerned.

Hon Derrick Tomlinson: That is right, a real waste.

Hon LJILJANNA RAVLICH: Absolutely.

Hon Nick Griffiths: But a talent nonetheless.

Hon LJILJANNA RAVLICH: Absolutely. Hon Barbara Scott mentioned the children's commissioner, a topic on which we had a very long debate. The only thing I will say about that is that the Government is looking at different models in other jurisdictions. The work of the parliamentary select committee and Hon Barbara Scott has been acknowledged. Hon Barbara Scott also made some comments about the lack of early intervention programs. In fact, she said that there are no early intervention programs. That is not correct.

Hon Barbara Scott: I did not say that. I said that parents are waiting for a long time to get their children into early intervention programs.

Hon LJILJANNA RAVLICH: The member said that there are no early intervention programs. I am very aware of what the member said, because I listened to her very intently. We do have early intervention programs. The department has established an early years strategy, which operates across 12 sites, and a further six have been invited.

The PRESIDENT: Order! Members, I interrupt the proceedings temporarily to acknowledge the members of the Student Parliament who are in the Public Gallery. The members of the Student Parliament sat in this Chamber and the other Chamber yesterday and represented individual members. We welcome them to our gallery.

[Applause.]

Hon LJILJANNA RAVLICH: The department has also expanded the best beginnings home visiting service and the Aboriginal early years support service.

The member also raised the closure of the parenting information centres. Yes, the parenting information centres were closed, but they were closed because they did not provide the flexibility that is often required in rural and remote locations, particularly those with high Aboriginal populations. However, I am happy to announce that the 14 parenting services that are located across the State continue to provide a free lending service on a wide range of parenting issues and offer courses, workshops and the like. Therefore, to suggest that the parenting information centres have been taken out of the system and nothing has been put back to provide services to parents is less than fair. In addition, other parenting services are being provided, which include early years services, best beginnings, parent link services, best start and other Aboriginal parenting support services.

Hon Barbara Scott also raised the issue that the child screening legislation has not been presented to the Parliament yet. Members opposite had plenty of time to do that during their time in government, yet no such legislation was presented by them. The Government has made a commitment to this legislation and is working towards it. Legislation to provide for criminal record screening for people who work with children is being drafted, and the member will see it, whereas we never saw it when members opposite were in government.

Hon Barbara Scott interjected.

Hon LJILJANNA RAVLICH: The member is hopeless! Hon Barbara Scott is critical of this Government because something does not exist, yet her Government had no intention of introducing it. For goodness sake! The member really tests my patience. I am a pretty patient person, but the member really takes the cake. Sometimes I think Hon Barbara Scott should not even come to work but should just keep sleeping for the rest of the day, because half the time she is just a distraction here.

Hon Barbara Scott also raised the issue that there is nothing in the provisions of the Bill, other than the principles, to ensure child participation. There are many examples of child participation in the Bill, particularly clauses 10 and 72; and I could go on. She also made the allegation that the Bill will do nothing to support family wellbeing. That is not the case. The Bill will do a lot to support family wellbeing, as evidenced in numerous clauses. Given that Hon Barbara Scott is the opposition spokesperson and lead speaker on this issue, had she done her homework she might have noticed that the Bill will do a lot to support family wellbeing. Clause 21(1) provides that the functions of the CEO include -

- (a) to consider and initiate, or to assist in, the provision of social services to children, other individuals, families and communities;

The Bill contains a plethora of clauses that deal with the provision of family support and wellbeing.

I acknowledge that Hon Barbara Scott has a long history of involvement in the childcare area. It is an area of interest to her and obviously also an area of expertise.

Hon Paddy Embry: She is pretty experienced. She has raised a few children of her own.

Hon LJILJANNA RAVLICH: I know that she has raised a few children of her own. That is commendable, and I am sure they are fine upstanding citizens.

Hon Paddy Embry: Yes, a credit to society.

Hon LJILJANNA RAVLICH: The member also raised the issue that the Bill does not specify any qualifications for the supervising officer. All aspects of the staffing requirements, including qualifications, will be prescribed by regulation. Clauses 248 and 232(i) contain provisions with regard to regulation-making powers.

The member also raised the issue that she believes that the physical layout of childcare centres is inherently linked to the programs, yet no details have been specified. As is the case with the previous issue, this will also be dealt with by regulation. The member also raised the issue of the screening of people who provide childcare services. The current regulatory requirement for the screening of all childcare workers, licensees and residents of family day care homes will apply. There will also be a regulatory requirements to notify allegations of abuse, neglect or assault, including sexual abuse against a licensee, permit-holder, staff member or resident of family day care homes.

The member raised a number of other issues. I will not deal with all of them now, if that is okay with the member, because I am sure they will come up during the committee stage. The member asked specific questions about the licensing application process, childcare centre locations, the history of childcare provision, and the current number of licensed childcare services. Apparently the information that the member quoted with regard to the current number of childcare services is incorrect.

Hon Barbara Scott: I was presented with that information in answer to a question that I asked in the Parliament.

Hon LJILJANNA RAVLICH: The information that I have before me - the member might seek some clarification in relation to that - is that as at 30 June 2003 there were 495 licensed childcare centres, not 365, as the member quoted, and also that there were 893 licensed family day carers, not 336, as the member quoted. In addition, there are nine licensed outside school hours care services and 193 registered outside school hours care services.

Hon Barbara Scott also expressed some concern about the lack of independent advice and the fact that the childcare services board no longer exists. I think Western Australia was the last State to have a board that was responsible for the licensing of child care. The Government considered that the liability of individual board members was particularly high given the increasingly litigious environment in which child care is operating, so the Government has created a childcare advisory committee that will report directly to the minister on a range of matters regarding quality child care and related regulatory responsibilities.

Hon Derrick Tomlinson raised a number of interesting issues. He argued that the Bill establishes legalistic procedures that do not embody the principle that the best interests of the child must be paramount, and that a decision will be able to be made unilaterally by the chief executive officer of the department, under the authority delegated to an authorised person, to take a child into protection. In fact, the thrust of his argument was that when we set up an adversarial procedure in the courts and include a legalistic procedure in which we say the rights of the parent and the rights of the child will be respected, it eventually comes down to a very legal decision. He asked whether we were really translating the principle into practice. He argued that we were not, and that we were translating the principle into the procedure that has operated since 1947 and that has not changed. That is my understanding. Whether people like it or not, the simple fact is that all jurisdictions in Australia have a court decision-making process for the protection of children. The essential nature of legislation is that it must be enforceable. There is no point in legislation that is not enforceable.

Hon Derrick Tomlinson: By saying that, are you following what other States in Australia have done?

Hon LJILJANNA RAVLICH: Yes, but we are not taking it out of the court system. If we took it out of the court system, by what mechanism could we operate?

Hon Derrick Tomlinson interjected.

Hon LJILJANNA RAVLICH: That may be. It is a bit sad that the member will not be with us beyond this term because he could have had a real input to this policy area.

Hon Derrick Tomlinson: I think that I must contest Armadale! I have just got to.

Hon LJILJANNA RAVLICH: No comment! The simple fact is that the Bill must set out clearly those affected by its provisions. It does that. It also sets out what it will and will not allow. It sets out the penalties for contravening the provisions of the Bill.

The other issue raised by Hon Derrick Tomlinson was the lack of representation for the interests of children. I am advised that clause 148 provides for the separate representation of children. In fact, it will be arranged by the Legal Aid Commission of Western Australia.

Hon Giz Watson raised a number of issues about the complaints and appeal mechanisms, and asked what would happen if the State Administrative Tribunal Bill was not passed. I have spoken to the Clerk on this matter. It is the position of the Government that if the SAT Bill is not passed by the Council - although it is expected to be - an amendment Bill will be introduced to provide external review of case decisions affecting the Children's Court. I was advised by the Clerk that there should not be a problem with passing the SAT Bill. I am advised that this legislation can proceed without any problems.

Hon Giz Watson also raised the issue of financial assistance and the general issue of the diminishing role of the State Government in providing financial assistance to those in financial crisis. This legislation does not refer to guidance being provided by regulation. However, there is capacity under this Bill to make regulations. Ongoing consultations have already taken place with the Western Australian Council of Social Service and the non-government sector in developing the guidelines for procedures and practice concerning financial assistance. Clause 22(2) specifically directs the chief executive officer to promote the establishment, implementation and regular review of procedures that facilitate such cooperation, particularly in relation to the protection and care of children and the provision of financial and other assistance. Hon Giz Watson also raised matters about supervision provisions and how they will work in practice. Clause 21 states that the functions of the CEO include considering, initiating and assisting in the provision of social services to children, other individuals, families and communities. She also raised a very interesting issue about the legal representation of a child ordered by the Children's Court, pursuant to clause 148. The importance of costing legal representation is acknowledged and the Department for Community Development has been working, and continues to work, with the Department of Justice and the Legal Aid Commission to ensure that an appropriate level of resources will be made available for the implementation of the Bill. It takes some time to draft regulations, so the time frame will be 12 to 18 months. As I understand it, children over the age of eight years receive legal aid as a matter of convention because they are able to instruct a lawyer. Under the proposed changes, any child, even one under the age of eight years, will be able to access legal aid if it is at the direction of the court. However, they must be of an age to instruct a lawyer. There is expected to be a cost impost as a result of this. However, the quantum is not known. My advisers tell me they have spoken to magistrates who say that, in practice, things should not change all that much. However, there are others who say that we can expect a change because more children will have access to the services. I know that modelling is being looked at in respect of worst case and best case scenarios for cost impacts. Those matters are currently under consideration.

I could speak for a long time, but I will not, tempting as it might be. However, I must state that the Bill also expands the concept of protection orders. For the first time we are expanding the number of available options for protection orders. Historically, there have been two types of protection orders: time-limited orders and protection orders that apply to a child until he reaches 18 years of age. As part of this new legislative package, there are two new protection orders. One is the protection order of supervision and the other is the protection order of enduring parental responsibility.

Hon Derrick Tomlinson: It essentially brings the legislation into line with other States.

Hon LJILJANNA RAVLICH: Yes.

Hon Derrick Tomlinson: So we are doing what the other States are doing?

Hon LJILJANNA RAVLICH: Yes. The member will then argue that we are not doing what the other States are doing about mandatory reporting. I know the member will argue that. I will return to the issue because I know the member will be absolutely rabid about it. The member can argue all he likes; that is fine, they have made their policy decisions. We have made our policy decision. My job is basically to -

Hon Derrick Tomlinson: Not think.

Hon LJILJANNA RAVLICH: It is not a case of not thinking. The member may say that it is a hopeless report and that he likes mandatory reporting, but the simple fact is that this has been the Government's position. I am the parliamentary secretary to the minister. It is my job to make sure that this legislation goes through this place. I am not a practitioner; I do not profess to be an expert on all these things. In international jurisdictions, the United Kingdom does not have mandatory reporting, but the United States does across all 50 States. However, they are also criticised for having one of the poorest systems per capita for responding to incidents of child abuse. The policy does not deliver in practice what it promises in theory. Ireland and New Zealand do not have

it. All provinces of Canada, except Yukon have it. The Netherlands and Belgium do not have it, but Denmark and Sweden do have it. It is similar to the issue of a children's commissioner. It is best to look at a small sample of countries. Worldwide, between 16 and 19 countries have a children's commissioner. However, obviously, not every country in the world has embraced that. The Government has made a policy decision on the issue of mandatory reporting that it will not go down that path. However, we are in good company with a range of countries that have also chosen to not take that policy line.

I will share with the House an extract from a very good paper that I believe summarises the whole issue of mandatory reporting. It is titled "Mandated Reporting: A Policy Without Reason" and was prepared by Gary B. Melton from Clemson University.

Hon Derrick Tomlinson: A very good man.

Hon LJILJANNA RAVLICH: Yes. This report is a commentary prepared for a virtual discussion sponsored by the International Society for Prevention of Child Abuse and Neglect. It was presented in October 2003. I refer directly to page 4, which states -

... Child maltreatment reporting rates vary according to neighborhood quality even when income levels and cultural composition are similar. In neighborhoods in which children are protected, there is friendship among neighbors, watchfulness for each other's families, physical safety of the environment, common knowledge of community resources, visible leadership, and, perhaps most critically, a sense of "belonging," ownership, and collective responsibility.

He argues that those things effectively reduce the rate of child abuse. However, he refers to the issue of mandated reporting as a policy without reason. He gives a very good case about the involvement of child protective services. I will go through this to demonstrate how mandatory reporting can in fact not deliver that which it sets out to do. The commentary states -

Ms. Jones calls CPS and makes the following report:

I'm calling because I'm very concerned about the Williams children, who are aged 8 and 5 and who live next door. Their mother is single, and she is an unskilled assembly-line worker at a nearby factory. When Ms. Williams goes to work at about 6:00 every morning, she leaves the children alone until it is time for them to go to school. There are times when they show up at my doorstep. From the way that they eat the snacks that I give them, I suspect that they're not getting enough to eat. It's been cold, but the only outer garments that they've worn have been tattered thin sweaters.

I doubt if Ms. Williams makes more than seven or eight dollars an hour. She recently went for weeks without any work at all, because the plant furloughed many of the workers in response to low sales of the goods made there. I don't know Ms. Williams very well, but she seems to have some chronic health problems, and she often appears depressed. I don't think that she has any relatives nearby.

Ms. Jones's reason for calling CPS -

That is, child protective services -

is straightforward: she wants help for the Williams family. She undoubtedly imagines that the social worker who takes the call will be able quickly to arrange some basic services: child care a few hours a day, some food, perhaps an emergency income subsidy, and a sympathetic ear for Ms. Williams.

But what actually happens? The call is treated an allegation of wrongdoing, not a concerned neighbor's plea for help. The social worker's principal legal obligation is to collect evidence to determine whether neglect has occurred. If the decision is made that there was no neglect, the case will be closed. Even if neglect is substantiated, there is a good chance that no further "service" will be offered. If there is, it will often be a required parent education class, which will also be viewed as an opportunity to gather evidence - simply checking off whether Ms. Williams attends the classes - and which will also bear little if any relation to the particular threats to safety that her children may be experiencing.

It goes on. However, it basically states -

The most serious shortcoming of the nation's system -

That is in the United States -

of intervention on behalf of children is that it depends upon a reporting and response process that has punitive connotations and requires massive resources dedicated to the investigation of allegations. State and County child welfare programs have *not* been designed to get immediate help to families based on voluntary requests for assistance. As a result, it has become far easier to pick up the telephone to report

one's neighbor for child abuse than it is for that neighbor to pick up the telephone and receive help before the abuse happens.

The result of the current design of the child protection system is that investigation often seems to occur for its own sake, without any realistic hope of meaningful treatment to prevent the recurrence of maltreatment or to ameliorate its effects, even if the report of suspected maltreatment is validated.

Hon Derrick Tomlinson: Anybody who interprets Ms Jones' call as a mandatory report of child abuse is an absolute drongo.

Hon LJILJANNA RAVLICH: I thank members for their contributions to the debate, which have been very worthwhile. We may not necessarily agree on matters of policy; however, I hope that I have responded to their concerns. The next stage will provide them with an even greater opportunity to go into some of the detail of the Bill. I ask that members support the second reading.

Question put and passed.

Bill read a second time.

*Committee*

The Deputy Chairman of Committees (Hon Simon O'Brien) in the Chair; Hon Ljiljanna Ravlich (Parliamentary Secretary) in charge of the Bill.

**Clauses 1 to 6 put and passed.**

**Clause 7: Principle that best interests of child paramount -**

Hon DERRICK TOMLINSON: I move -

Page 8, after line 23 - To insert -

- (2) If, in the application of subsection (1), any conflict may arise between the interests of a child and the interests of that child's family, the interests of the child prevail.

The principle that the interests of the child must be regarded as paramount is an amendment that was agreed to in this place two years ago or thereabouts. At the time I think I was handling the Bill as the opposition spokesperson on community development. I had, and still have, no objection to that principle. I accepted at that time that the word "paramount" was the operative word. Paramount, according to the *Oxford English Dictionary* - the only dictionary - means more important than anything else; having supreme power. Therefore, the interests of the child are more important than anything else. The Bill before us adds another set of guiding principles. I refer to clause 9, which states -

In the administration of this Act the following principles must be observed -

- (a) the principle that the parents, family and community of a child have the primary role in safeguarding and promoting the child's wellbeing;

Therefore, the first role belongs to the parents, family and community of a child. The clause further states -

- (b) the principle that the preferred way of safeguarding and promoting a child's wellbeing is to support the child's parents, family and community in the care of the child;

The clause further states -

- (g) the principle that if a child is removed from the child's family then, so far as is consistent with the child's best interests, the child should be given encouragement and support in maintaining contact with the child's parents, siblings and other relatives . . .

Again, looked at in isolation, one could not take exception to any of those principles. They are values that I certainly hope are universally held in our society. The problem appears to arise when there is a conflict between the paramount consideration of the interests of the child and the primary role of the parents and others. I read with interest the January 2004 report of the Queensland Crime and Misconduct Commission titled "Protecting Children: An Inquiry into Abuse of Children in Foster Care". Page 220 of the report refers to an example of baby Kate, who had been referred to earlier in the report at chapter 2. In discussing the baby Kate case, the report quotes the decision of the Department of Families to release baby Kate into the care of her biological parents, Lisa and John. The report states -

In making these decisions, DoF officers gave undue weight to the principle that their approach should be the least intrusive or a minimal intervention approach in respect of the family unit. My investigation suggested that their approach may be indicative of the widespread application of this principle by DoF officers with potentially dangerous consequences for the safety of children.

The principle was that the child should be returned to the care of his or her parents - in this case her parents - at the earliest opportunity or at the most opportune time. In this instance, it was tragically shown to be in conflict with the best interests of the child. The report recommended, in recommendation 7.45, that the legislation in Queensland be changed and that an additional principle be inserted in section 5 of the Child Protection Act 1999 clearly providing that any conflict that may arise between the interests of a child and the interests of the child's family must be resolved in favour of the interests of the child. That makes it quite clear that in a conflict between competing values, the paramount interest, which takes precedence over all else, is the interests of the child. The word "paramount" is already in the Queensland legislation. The recommendation of the CMC made it quite clear that when there was a conflict between those competing values, the paramount interest is clearly the interests of the child over those of the parent. For that reason, and having some experience of similar cases in Western Australia, I thought it would be appropriate to propose this amendment to allow the Government to tell us whether it supports it. Does the Government really mean in the principle as it exists in clause 7 that the interests of the child take precedence over all other interests? If that is the case, the Government will support my amendment. If the Government does not take that position, I would like to hear its explanation.

Hon LJILJANNA RAVLICH: The Government will be opposing the amendment. The member is quite right when he says that the principle of the best interests of the child being paramount was inserted into the Child Welfare Amendment Bill 2002. It is consistent with family law legislation and legislation in other States, such as the Australian Capital Territory's Children and Young People Act 1999.

Hon Derrick Tomlinson: And consistent with the United Nations Convention on the Rights of the Child.

Hon LJILJANNA RAVLICH: Yes. The principle on the best interests of the child is clearly articulated in clause 7. The honourable member proposes to insert new subclause (2), which is unnecessary in the Government's view. Clause 7 achieves the same thing; that has been confirmed by parliamentary counsel. So as not to complicate the clause, the Government will again take the expert advice of parliamentary counsel in this matter and, therefore, oppose the amendment.

Hon DERRICK TOMLINSON: Let us consider a hypothetical case. Three children were placed in care because the mother was an alcoholic and the father had a double affliction of alcoholism and drug addiction and was in prison. The children were taken, in their best interests, from the mother and placed in care with a very loving, Christian family, who had already three children of their own and who treated the three children as part of their own family. These children had nothing but love and proper family care given to them. The foster mother has a Bachelor of Social Work and the foster father has a Master of Education and was the principal of a high school. In the meantime, the children's biological parents were reunited and made an application to the department for the return of their children. After some considerable consideration of the principle that the best place for children is in the care of the child's parents, the case managers decided to return the children to their parents. However, the carers were concerned. It is not that they wanted to keep the children. They had been carers in two States for more than 16 years and many children had passed through their family. Nonetheless, they were concerned about the welfare of the children because they understood the parent's circumstances. Therefore, they made representations to the department that it was not in the best interests of the children to be reunited with their biological parents at that time.

Having listened to the foster parent's submission, the department made a decision based on the principle that the best place for the children was with the children's parents and the department set up a procedure whereby a case worker constantly worked with the parents. Reluctantly, the carers said goodbye to the children and sent them home with all their toys and clothes. However, within 24 hours the children were back with the foster parents because the mother had become drunk and there had been a violent argument at the house. A caseworker who was called to the house immediately judged that those three children should not remain in that house with the children's parents. The children were sent back to the foster carers' house without the children's clothes or toys as the parents had discarded them because they wanted to eliminate all memory of the carer family. Can members guess what happened next? The parents made another application and once more the children were returned to them. I do not know what happened after that; I can only speculate. However, I know that the parents made a submission that was not in the best interests of the child. I have demonstrated that. The department made a decision on the principle that the best place for the children was with the children's parents. In other words, the rights of the parents were in conflict with the best interests of the child. I do not know what happened to the children - I can only speculate - but I know that because those carer parents dared to challenge the department, they were struck off the roll as potential carers and received from the manager of the south metropolitan region a most insulting letter.

In that case, those competing interests were not resolved in the best interests of the child at all; the decision that was made was based upon the department's policy, which was demonstrably inappropriate in that instance. Even though the department might argue that its clear policy is that the interests of the child are paramount, its policy was not in the interests of those children. Unfortunately, the department's decision was final. Nobody

represented the interests of the child except the carers, who were not allowed a voice. They were listened to and they were ignored.

Hon Paddy Embry: They would have been the best informed people.

Hon DERRICK TOMLINSON: They were extremely well informed. They are a couple for whom I have a high regard but who no longer live in Western Australia. Although I understand the parliamentary secretary when she says that in the opinion of the parliamentary draftsman the term "paramount" is clear in its meaning and intention, the practice of the department in that case - I am sure many other cases could be found if the case files were explored; I certainly have many more such cases in my files - led me to believe that there needs to be a restatement of the department's policy. It may be redundant, but there needs to be a restatement that in the event of a conflict the interests of the child will prevail.

Hon LJILJANNA RAVLICH: That is a sad case indeed. However, I am sure that it is not unique and that the department deals with similar cases all the time. I do not know about the specific case, but these types of situations always rely on a matter of judgment.

Hon Derrick Tomlinson: It did not happen during the time of your Government.

Hon LJILJANNA RAVLICH: The case manager would have made the decision to reunite the parents with their children based on a professional judgment and on some positive changes in the parent's behaviour. Sometimes the department gets it wrong. There are no two ways about it; sometimes parents with problems such as alcoholism will stop drinking for a short time to get their kids back, especially if they know or consider it likely that the authorities will visit their house. Therefore, it is fair to say that the responsible officers deal with what they are faced with. Obviously they would like to believe some positive change in the parents' behaviour has occurred. In this case it seems that the wrong decision was made, possibly based on the behaviour of the parents. The officers would have acted in what they thought were the best interests of the child, which was not so in this case. I can understand where the honourable member is coming from. However, having said that, the Government will not support the amendment for the reasons that I have already outlined.

Hon DERRICK TOMLINSON: I will give the parliamentary secretary an example of one more case in which a child's mother and father are addicted to heroin and the father is serving time in prison. The children concerned are under the care of an organisation and are emotionally and psychologically fragile; they are very damaged. As part of the process of rehabilitating the family, a program is established whereby the mother lives at the place in which the children are kept in care and the mother is taught to become competent at cooking, cleaning and caring for the children. Together, the mother and the children start to develop under the guidance of the organisation and the carers. The children and the mother build a rapport and form a new found compassion and love for one another - it is not that I think those children do not love their parents; they are just damaged little kids. Let us say that the father gets out of jail and, in the meantime, the mother makes submissions to the department for the children to be released to her care so that she can continue the program. She requests that she be found a house for her in a suburb that is in close proximity to the institution in which she and the children have been living and working together. The children can continue to go to that school and have the support of the carers. That is not possible. The department makes a decision that it is not in the best interests of the child to release it to the mother at this time. The mother, at this stage, professes that she has reformed; she has quit her drug habit and conquered her addiction. The husband, who has been in prison, has also conquered his addiction, and when he comes out he intends to be a model father. So they make the submission together. The department, in this case, saw the interests of the children as being paramount. The father was released from prison and the mother joined him. That night she died of a drug overdose. It is a case in which the conflicting interests of the child and the parents were resolved in the best way. I do not know what has been the fate of those children. My guess is that their fragile condition probably suffered more considerable harm as a result of that experience. However, the department acted correctly here. It acted in the best interests of the children, and contrary to the competing request of the parents to be reunited with the children. The conflict between the interests of the parents and those of the children was resolved in favour of the children. All that I am asking is that the parliamentary secretary make quite clear that that is her intention in the law. To make that intention clear, I would like subclause (2) inserted, even though it may appear to be a redundant statement.

Hon GIZ WATSON: As I am in a position of having to make a decision one way or another on this amendment, I would like some clarification of why the amendment is not simply a belt-and-braces approach to this issue. What would be the consequences of inserting this subclause? The parliamentary secretary has argued that it is not necessary, but my thinking is that I would rather we were very emphatic about the principle in case there was any doubt about it. I am sure it comes down to a matter of the wording, and the argument about whether this is a necessary addition. I would like the parliamentary secretary to give me more advice on this, because it is my sense that Hon Derrick Tomlinson's amendment has some merit.

Hon LJILJANNA RAVLICH: Clause 7 is very explicit in requiring that, in the performance of a function or the exercise of a power under the Bill in relation to a child, a person or the court must hold the best interests of the child as a paramount consideration. I really cannot see what is added by the amendment proposed by Hon Derrick Tomlinson, which states -

If, in the application of subsection (1), any conflict may arise between the interests of a child and the interests of that child's family, the interests of the child prevail.

I would have thought that is already inherent in what is contained in clause 7. First of all, the Government believes that clause 7 already covers the circumstances in which there may be a conflict between the interests of the child and those of the child's family, because the principle of the best interests of the child being paramount applies. Parliamentary counsel has said that the Bill leaves no doubt that the best interests of the child will always be paramount. Based on that advice, the Government will not support the amendment. Providing better guidance for people working in the area to deal with some of the very difficult issues that arise is the aim of clause 8. Certain matters need to be taken into account; for example, the need to protect the child from harm, the capacity of the child's parents to protect the child from harm and the capacity of the child's parents or any other person to provide for the needs of the child. A range of criteria is to be considered by practitioners in performing their functions. The most simple reason I can give for not accepting the amendment proposed by Hon Derrick Tomlinson is that it is already adequately and totally covered by the provisions of clause 7.

Hon DERRICK TOMLINSON: I am grateful for the parliamentary secretary's explanation, but I wish her to reaffirm, for the public record, that the phrase "the interests of the child as the paramount consideration" in clause 7 quite emphatically means that, in any conflict that might arise between the interests of the child and those of the child's family, the interests of a child will prevail.

Hon LJILJANNA RAVLICH: Yes.

**Amendment put and negatived.**

**Clause put and passed.**

**Clause 8: Determining the best interests of a child -**

Hon DERRICK TOMLINSON: I move -

Page 9, line 14 - To delete "permanency" and insert instead "stability".

I am sure we would all like permanency in our living circumstances. At this stage of life, when intimations of mortality are looming ahead of me, I certainly would like my life to be permanent. I would like the circumstances of my life to be permanent. Permanency is not the consideration. Clause 9(e) contains the principle that a child should have stable, secure and safe relationships. That is a much more sensible and pragmatic statement. If this is a pragmatic Government, then permanency should be an unreal proposition. Stability is really what the Government is intending, I am sure.

Hon LJILJANNA RAVLICH: The Government will oppose this amendment. The Foster Care Association of Western Australia is very keen on the word "permanency". "Permanency" may not mean a lot to the member, and "stability" may be more meaningful, but the Foster Care Association is very keen on this point, and it wants "permanency" as opposed to "stability". However, perhaps during question time we may come up with a compromise. Perhaps after the word "permanency" we could insert the words "and stability".

Hon DERRICK TOMLINSON: I do not think we could. I am pleased to hear that the wording is at the behest of the Foster Care Association. I have respect for that organisation and for foster carers. They are unsung heroes in child care in Western Australia and they do not get proper recompense or recognition for the outstanding work that they do. However, one thing that foster carers are aware of is that there is no permanency in foster care.

Hon Ljiljanna Ravlich: They can aim for permanency.

Hon DERRICK TOMLINSON: They can aim for permanency but if the parliamentary secretary were to talk to them sensibly, they would say that what they want is a stable environment for these kids, and that they offer them a stable home life. They offer love and care well beyond that which might be specified in some regulation or agreement that they sign. They will certainly want stability in a placement of the child so that the child is with a single carer for an optimum time. I am surprised to hear that the foster carers are arguing for permanency, because one that I have spoken to has had care of 100 children in 20 years. There is no permanency in that.

Hon LJILJANNA RAVLICH: That is just one case.

Hon DERRICK TOMLINSON: We could go for dozens of them. However, the principle of permanency, regardless of the preference of the Foster Care Association of Western Australia, is unattainable and unrealistic.

Hon Ljiljanna Ravlich; President; Hon Derrick Tomlinson; Hon Giz Watson; Hon Barbara Scott

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If we could achieve stability in the lives of children we would have no need for this Bill whatsoever. Although I respect the opinion of the Foster Care Association, I still say that stability is the appropriate word.

Hon BARBARA SCOTT: I support the sentiments expressed by Hon Derrick Tomlinson in this amendment, which is very relevant.

Debate interrupted, pursuant to sessional orders.

[Continued on page 5418.]