CHILDREN AND COMMUNITY SERVICES AMENDMENT BILL 2010

Second Reading

Resumed from an earlier stage of the sitting.

MR A.P. O'GORMAN (Joondalup) [7.08 pm]: As we heard earlier from the opposition's lead speaker, the opposition is going to support this bill, but a number of us on this side of the house have a number of concerns. Judging by some of the amendments that have been placed on the notice paper, there are also some concerns on the government side about the way in which the bill was written. My concern is about the secure-care facility. As we know, we are basically locking up children. That is not something that this side of the house takes on easily; it is of great concern when we actually lock up children. I accept that there are times when it is appropriate, for their own good and for the good of the community, for us to make sure these children are withdrawn from the community to give them an opportunity to receive some therapeutic intervention, rather than a punitive intervention. I think it is important that we have a proper facility in this state. It is a shame that the parliamentary secretary is not here, because I am about to make a suggestion that I hope the parliamentary secretary will take back to the minister before we go into consideration in detail of these amendments. A proposed amendment to clause 17 of the bill on page 9 of the notice paper reads —

> (2) The CEO may, in writing, appoint a person to be an assessor if the CEO is satisfied that the person has the experience, skills, attributes or qualifications the CEO considers appropriate to enable the person to effectively exercise the powers in subsection (3).

Proposed subsection 125A(3) actually refers to an assessor who attends the residential facility and makes an assessment of whether the care is appropriate and whether therapies are being delivered; or whether the child is being held in the secure-care facility for purely punitive reasons. It is important that the CEO appoint that assessor to go into the facility. I thank the parliamentary secretary for returning to the chamber.

Mr A.J. Simpson: That is all right!

Mr A.P. O'GORMAN: I want the parliamentary secretary to take up the suggestion I am making. It is about his proposed amendment on page 9 of the notice paper for the CEO to appoint in writing an assessor. It is imperative that the assessor be completely and utterly independent—and is seen to be completely and utterly independent. I am afraid that—this is my own personal belief—the proposed amendment that the CEO appoint an assessor to look at a facility for which the CEO is responsible would not provide complete independence. It would be far better if, before we get to the consideration in detail stage, the parliamentary secretary took the amendment back to the minister and came back into this place with a change to the proposed amendment from "CEO" to the "Commissioner for Children and Young People". We all accept that the Commissioner for Children and Young People is a completely independent person. Her commission is to look at the rights of children and to look at the way in which children are dealt with. Removing a child from society and putting that child in a secure-care facility does not mean that the child would fall out of the jurisdiction of the Commissioner for Children and Young People. It would be a much better process for the Commissioner for Children and Young People to appoint these assessors. The assessors would then report back to both the CEO and the commissioner. But the commissioner also reports directly to this place and this would give us some oversight of what was happening in the secure-care facility. I therefore ask the parliamentary secretary in his response to the second reading debate to remark on whether he would accept that suggestion, or whether he will take the suggestion to the minister and ask her to consider putting it in the bill.

I think we are all very concerned about young people. When we remove them from society and place them in a locked facility, there are all sorts of connotations for what can happen in that locked facility. I refer back to the hostels that we used to have around the place. I have had personal experience with one of my foster children who went to one and learnt a whole lot more about the streets and about how to work her way around the streets than she had known previously. It is therefore my concern, when we group a bunch of children in a locked facility, that there is street education there where they can figure out how to sleep rough, how to find drugs, how to avoid being caught by the police and things like that. Having said that, I support the notion of a secure-care facility. I am glad that we are using the terminology "secure care"; it is about protecting children and about providing therapy to those young people who, for one reason or another, are not fitting into society as we have designed it.

In fact, again, in my own experience it probably would have been beneficial to some of the children I had in my care to have been taken into a secure-care facility. I will outline one, hopefully without identifying her too much. One of the children in my care was in care for a particular reason, which I will not mention, but for that reason she kept running away. It was not unusual for me to get a phone call at two or three o'clock in the morning from

the police saying, "Can you please come down and pick up"—I will use a false name, Jacinta; do not ask me where "Jacinta" came from—"Jacinta from the police station." By the time I got to the police station—at the time it was the 79 division that picked up this child in care and took her to the police station—she was placed in a cell. I do not think that is appropriate for a young person, particularly a young female of 16 years. I therefore think it is vitally important that we get this secure-care facility correct and that we get the assessors who go into that secure-care facility to make sure it is doing the right thing. We have to make sure that is correct, and I think the Commissioner for Children and Young People is the best office we have within our government departments to appoint that assessor and to take the reports from that assessor back to Parliament and back to the CEO.

Also in this legislation there is provision for a couple or a person who has had guardianship for a period of two years to access the courts to get that guardianship passed on to them and away from the natural parents. Although I agree with this provision to a certain degree, there are also a number of pitfalls in which we could find ourselves. We need to make sure that in this place we detail exactly what we mean by giving people an enduring guardianship, because it will take a right away from the natural parent. It will make access to the child very difficult for the natural parent who has lost the child. The natural parent would have to go back through the court system and, as the member for Maylands pointed out, probably a court system that the natural parent would have no knowledge of and would have no funds to access, yet that parent would have lost a child. Anyone of us in this place who has had experience of what it is like to lose a child—whether it was our own child, one we had in foster care or one who was close to us—would know that it is a very traumatic experience. For the court to decree that a person or a couple can get guardianship without giving the natural parent access to the child is fraught with danger. I acknowledge that it is inappropriate to return a number of children around this state to their natural parents but—no matter what—we still cannot cut them out of their lives.

I again apologise to my son in advance if I embarrass him. Charles came to live with us when he was 13 years old. He is now almost 30 and he still calls us mum and dad. However, right up to the age of 18 he was in our care. We are probably a couple who would have said, "We'd like him in our guardianship without having to go back to the CEO and the natural parents—in this case the birth mother—to ask for permission to do other things." We had a very good working relationship with all the people involved in that situation—the birth mother, the CEO, and the department staff. We had reviews on a regular basis and it all worked well. When it came to the time that Charles turned 18 years of age, there was actually an exit plan. There was a meeting to establish an exit plan and the exit plan for him was that he would stay with us after he turned 18. The department raised the point that once he turned 18, we would no longer get the foster care allowance and things like that and that costs would therefore have to be shared between him and us. At that point he had been with us for about five or six years and it was not an issue that we considered. Of course, we welcomed him back after he turned 18. He has now gone on to do fantastic things, completely directed by himself. He is an apprentice electrician and he will qualify in February. We are therefore very proud of him; he is very proud of himself; and his natural birth mother is very proud of him. But she has always had that connection and he has also been a great support to her. Being the oldest son, he has managed to go back to see her and to assist her throughout that time with family issues that she has had with a number of her other children. It is therefore important that we do not completely disconnect the natural parents from their child, even if there are issues, and that some rights are still attainable by the birth mother or the birth father to make sure they are involved in how that young person grows up.

As we know, down through history, once children are removed from their natural family—I do not think that it matters from which culture—there is a hurt; there is a grievance, and the grievance lasts for a long, long time. I do not think that we should be setting ourselves up so that in 10, 15 or 20 years a group of young people come back and say that they have a grievance because they were ripped away from their birth family. Therefore, I think it is very important that we get it right. I think that for the best interests of some children, it is appropriate that the carers have that guardianship where they can discuss with the child, hopefully, if they are good parents—because I think that good parents do discuss these things with the child—their future, where they go to school, the type of education they get, the type of training they go on to and all those sorts of things that most of us would normally do with our biological children. However, I still think that ultimately we cannot sever that connection with the birth parents because, even if the birth parents are having a really difficult time and they have drug or alcohol issues or sheer domestic violence issues—I think I speak for 99 per cent of parents and children in this state—they always feel a connection. I know that my son has always felt a connection. I call him my son not because I chose to do that, but many years ago he asked me if it was all right if we did that, which we did. Even when I spoke to him today he said, "Hi Dad" and "Goodbye Dad". That is how he treats us. It is a great feeling for me as a foster parent and for all those other foster carers who are out there, when a 30-year-old still calls you dad. I urge that the minister—sorry, parliamentary secretary, I am elevating you!

Mr A.J. Simpson: You are, cheers!

Mr A.P. O'GORMAN: The parliamentary secretary wants me to be the Premier now!

I urge the Parliament to consider this bill very seriously and to consider all its implications. I know that some members chuck in all sorts of red herrings at times, but two issues are most important for me. First, the assessment done at the secure-care facility must be of the highest level of independence that we can obtain, and I think the Commissioner for Children and Young People is the person to do that. The commissioner is not out there on her own; she is oversighted by a committee of this Parliament. The members for Bassendean and Kingsley are on that committee so they will be able to keep a very close eye on the proceedings that happen in those secure-care facilities. Secondly, the issue about guardianship—yes, it is a good idea, but it is something that we have to be very careful of because there are families in which the grandparents have been taking care of the kids and for some reason may have a dispute with their daughter or their son. They have taken care of the kids for a period of two years and the day after the two years clicks over, they can apply to the court for special guardianship of the children. I am not so sure that it is a good thing on its own that they are the ones who apply; I think it should probably come back through the department so that the department can make an assessment of the application before it gets supported in the court. I hope that the parliamentary secretary takes on board those couple of points that I have made. I look forward to hearing the parliamentary secretary's response to the second reading debate and to debating this bill in consideration in detail.

MR W.J. JOHNSTON (Cannington) [7.24 pm]: I also would like to participate in this debate on the Children and Community Services Amendment Bill 2010. There are many issues that come up in this bill, but the one that I seek to address is the question of special guardianship, which I think is a path that we should go down very cautiously. I do not support the provision in the bill for special guardianship; I think it is ill-advised. I will not vote against the legislation, but I make it clear that I do believe that it is the wrong path.

I do that for a number of reasons and I will start by making the comment that my very, very strong view is that families should be kept together whenever possible. If a child needs to be cared for by the state and fostered by another family, the role of the state should be to re-establish the family link; that should be the principal responsibility of the state. I do not see any of that identified in the provisions of part 3 of the bill, which deals with special guardianship. The family unit should not be lightly set aside, and this bill does not deal with that matter appropriately. The current act has enduring parental responsibility orders that allow for a foster parent to be granted, effectively, the same rights as a parent but only when the chief executive officer of the department—the person who represents the community through the public service—believes that that is in the best interests of the child. Part 3 of this bill would create a new situation in which the foster parent would decide to make an application for special guardianship. That, in my view, is not the right approach. I do understand that this was a Liberal Party election commitment and I recognise the government's right to legislate, but I do not think that, just because the government has a right to legislate, that makes it good law.

A number of issues need to be considered. I am fortunate that my life has not led me to need foster care or for my family to be assisted in that way. However, there is no question that I recognise the assistance that my family received when my father died when I was aged two, the youngest of eight kids. I have raised what my family discussed in this chamber previously. I remember clearly talking these things over with my family, with my brothers and sisters, about what would happen were our mother to also die. One of those things was keeping the family together. If children from the same family are being fostered by different families, there is no provision in this bill to ensure that siblings are kept together. I must say that that was the position I arrived at from my own examination of this bill after the parliamentary secretary read it in in June. I raised that with the parliamentary secretary on the day just very, very briefly and I was very pleased to attend the briefing given to the opposition during the winter recess. As it happens, one of my constituents came to see me during the winter recess on this issue, even though she was not aware of my position on this matter. This woman has provided me with a letter and I will read some of it into *Hansard* tonight. To give members a bit of background, this woman is an Indigenous person who was raised in a family and received care from the state, but her family were able to maintain their links and reunify later on. She has gone on to work as a social worker and is a leader of the local community, and because she is a leader of the local community, the Department for Child Protection used her as a foster mother. She makes some very interesting observations and I will read out some parts of the letter that she sent to me. About reunification she states —

> In my view the re-unification process is not seen as a priority, I could comfortably make the assumption that it is not adequately managed for the interest of the family e.g. ultimate interest of the children and to the parents. The removal of children should not be viewed as a permanent arrangement DCP staff should make it a matter of priority to work towards gaining good rapport with parents. I have insight as to how some parents have/are treated, it is as if they are totally irrelevant. It seems to be easier for the Case-managers/Team Leaders to allow a child or children to live and remain in care of a DCP carer,

> where it is viewed to be a better life option for the children because of what is considered to be the best material interests.
>
> My question is what about the emotional wellbeing of the children? How are the emotional needs of the children addressed? What happens to any future relationship with other siblings? From experience it is not adequately addressed by way of professional or clinical counselling, it seems it's a rarity within the Department that a child or children are adequately attended to. Children are more likely to be just left to linger, usually when the child ages to around thirteen and beyond they tend to spiral out of control. Often the children or young adults act out and start rebelling as they become in a state of confusion. The outcome usually is being caught up in the criminal justice system simply because of the lack of support mechanisms and programs in place.
>
> I have witnessed in my professional work experience where children have been classed as being too difficult to handle despite being under protection orders until they are eighteen. The Department/staff simply turn their backs on them and leave them to their own with little or no support. The children are then left to question who are they? Where do they fit in life? Which family do, or should they belong to? They are likely to question their commitment and obligation, is it to DCP, the Carer (s) or biological parents?

If a person attempted to adopt a child in this state, very extensive procedures must be followed before adoption can take place. The process that is being proposed by the amendments to part 3 will not have the same level of detailed protection built into it. In my view, it does not adequately recognise all the issues. I am sure that I am not alone in knowing children who were adopted at a young age who later search for their parents because they do not see their life as being complete without access to their biological parents. Indeed, we are now seeing children around the world who were born from donor sperm following the same process, finding out the identity of their natural father. This biological urge appears to me to be very, very strong. I do not see that being adequately represented by the amendments to this bill. I do not think that we should walk down this path lightly.

I also note the proposed apology to women who had their children taken from them. I was in the chamber on 24 February this year when the member for Mandurah read a very emotional statement from a woman in his electorate. He went through the details of the tragic circumstances of the woman who had a child taken from her when she was 15 and how her life had been damaged by the circumstances that she found herself in. On 7 September this year the Minister for Health issued a media release headed "Adoption Apology Planned for October". He said that Parliament will give an apology to the parents, particularly the women, who were caught up in those practices of the past. What will happen in 20 years' time? For example, a woman who might have difficulty raising her children might have been in an abusive relationship and sought refuge in drugs and alcohol. As a result, she lost a child. I understand why the state needs to ensure protection of the child; I am not arguing against that. After two years of the child being looked after by a carer, the carer applies for permanent guardianship of the child. A year or two later, the birth mother finally has her life back together but she no longer has the right to raise her child. I do not understand why we are proposing to do that. Where will that woman go? People might say that this is only a moot point that is raised in debate. As people know, I am married to member for South Metropolitan Region Hon Kate Doust, MLC. Hon Kate Doust had this very issue raised in her office by a woman who went through that experience, having fallen into drug use. After rehabilitation, under the current law, she tried to deal with the complexities of DCP. We will make it even harder for a woman in that situation. That is an example of a woman in the metropolitan area. Imagine if a woman is in a country area where no services are available. Effectively, a drug-addicted woman in remote Western Australia will never get her child back because she has no access to the services required to get her life back. We are not doing anything about that; we are just saying that this is easier for the foster parents. Quite frankly, I think that is completely wrong.

I want to quote more of the letter sent to me by my constituent. I am not giving her name because she is dealing with DCP and I do not want to bring her into any conflict with the department. Under the heading "Application for Legal Guardianship", she states —

> In a couple of my care planning meetings it was highly suggested to me as an option for Legal Guardianship of my four nieces and a nephew. I felt sick in the stomach as I heard this account and as I was absorbing the information. It was made clear very quickly to me that I would still receive the subsidy from the government, almost felt like my whole motivation for the caring the children was about the money. This option is not viable; it blatantly removes all or any possibility of the reunification process from ever taking place. Sure there may be case where a child or children need to be removed for their immediate health and safety reasons, then so be it.

> In adoption processes, birth parents are involved in the selection of the adoptive parents for their child from a list of approved applicants. This should be a common practice within the Department of Child Protection. It should be considered that the same privilege and right should be given for the parents whose children who are to be placed under guardianship order. In adoption no adoption can take place with out an adoption plan being worked out by way of negotiation between the birth parents and the adoptive parents. The plan has to be approved by the Family Court before an adoption can precede plans can include agreements with regards to contact between the parties including visits and exchange of information. A plan can also include that there will be no contact. The plan can be changed if parties agree and the Family Court approves. There are very heavy penalties for breaches of the plan. There has to be something in the Guardianship that ensures that siblings are kept together and if that is not possible that children in guardianship arrangements have the right and opportunity to know and have contact with siblings including those born after the guardianship placement.

She raises a very important issue. Just because a guardianship arrangement takes place at a particular time does not mean that that is the end of that woman having a family. If she has further children, what will be the relationship between the children who are part of that guardianship order and any future siblings? Why do they not have a right to have a direct connection? Why do they not have a right to sit down and chat, play Scrabble and go and play football in the front yard—all the things that I and every other member remembers from our childhood? Why should they be denied those same rights? Again, in my view, the focus of this part of the bill is very wrong. I do not think that it will create sensible laws. To me it is about taking the easy option, taking the easy choice that will make it easier for the Department for Child Protection and probably easier for certain foster parents. All credit to the foster parents. I personally have never been able to make that type of commitment. The people who make this commitment are the cornerstone of our child protection system. Quite frankly, we would not be able to protect children if we were not able to rely on foster parents. All credit to them. If there is something that I can do to help them, I want people to let me know because I would like to do that. That does not mean that they should be the focus of the care of the child. The care of the child is not just about their physical environment and whether they go to a fancy school and have access to computer games, it is also about how they inter-relate with their family and their siblings. I would hate to think that in 20 or 40 years, the Parliament of Western Australia will be offering an apology to the children who were caught up in the arrangements that we are discussing tonight. I will read a little more from the letter. It goes on to say —

> The Department of Child Protection should be putting more into helping parents meet their parental responsibilities rather than to permanently remove children. The Department is making it too easy for parents to abandon their children, any responsibility to their children and ultimately the morale or ethic responsibility. The children did not ask to come into the world and for the parents to give up on them. If there is equally as much efforts put into helping parents as they do with assisting foster carers many more children would be living with one or more of their parents.

It is not an ideal world and there will always be circumstances in which parents cannot cope and parents need the assistance of the community to raise their children. As a member of the Labor Party, I am very happy to accept the community's responsibility to pick up that burden and say that that is something we should be part of. Again, I have nothing but admiration for people who are prepared to foster children. But we should allow the system to be based on a considered judgement by the director general of the department that action needs to be taken. We should not remove that step and allow foster parents to make the applications. We have no idea of the opportunities that will be made available in a practical way to the biological parents through this process. As the member for Maylands has rightly asked, what resources will be made available to Legal Aid WA or any other organisation to ensure that parents are represented? There is a much more fundamental issue; that is, how will parents be capable of articulating their interest if the only reason they are losing their children is that they are not coping with their life? They may not be capable of expressing their needs and obligations at the point at which a guardianship order might be made. It is a much more complex issue than is dealt with by the bill before us tonight.

I will not call a division on this bill, but I do not support this legislation. I am just homing in on the special guardianship protection orders; I am not discussing the rest of the bill. I understand why the department wants to make the technical changes, and I understand the need for secure care. But I am not dealing with those issues; I am just homing in on this particular issue. In my last couple of minutes I make the point that when I got the briefing from the department, the department explained to me that there has been no demand for these changes. Nobody in what I call the child protection industry has asked for these changes. These changes are being introduced because they were a Liberal Party election commitment. As I say, I respect the government's right to legislate, but I think we need to stop and think about what we are doing because we are making a big mistake.

The parliamentary secretary is part of that mistake, and he needs to think about the responsibilities that he is taking on in pursuing this legislation.

MR M.P. WHITELY (Bassendean) [7.43 pm]: I congratulate members on this side of the house for the thoughtful contributions that have been made, particularly that made by the member for Maylands. That is no criticism of members on the other side of the house; I have not heard any contributions from that side. When I hear contributions like that of the member for Maylands, I am assured that we have enormous talent on this side of the house, willing, raring and waiting to get into government. I am very heartened by the depth of talent on this side of the house.

The parliamentary secretary will earn his payment and his stripes for the Children and Community Services Amendment Bill 2010. This bill needs some very careful and thoughtful review before we decide to embark on this route. The idea for a secure-care facility for children at extreme risk for purposes other than criminal intervention or psychiatric care in non-punitive but compulsory care is potentially a dangerous concept. I understand the need for locking up children who have engaged in significant and criminal activity, but we need to be concerned about the use of compulsory placement in a secure facility for psychiatric care. We need to be concerned about the reasons for this proposal. Having said that, I can understand and intuit the logic behind it, although I will be interested to hear what the parliamentary secretary has to say. If we are to go down this pathway, it is absolutely essential that we have external and independent oversight. The great danger of this sort of facility is the out of sight, out of mind opportunities that could be presented. The member for Cannington quite rightly said that there is a danger that if this is not done well, in 40 years someone will be issuing an apology to children who were put into this type of institution. All sorts of things can happen behind closed doors, be they government facilities or facilities that have been run by church organisations in the past. Most of them have happy histories, but there are far too many cases of physical, sexual, psychological and, I suggest, pharmaceutical abuse in these sorts of facilities. Although there may be reasons for this facility, alarm bells ring in my head at the potential for abuse.

Most often the children placed in these facilities will not have powerful family advocates. They will come from dysfunctional family circumstances and they will be at the mercy of the system. The system must have appropriate external oversight. I note that the member for Maylands has foreshadowed some amendments. I also heard the member for Joondalup suggest an increased role for the Commissioner for Children and Young People in ensuring that the assessors are in fact independent. The last thing that we would want is a system in which the assessors report back to the CEO of the service provider, because that is a system that would be fraught with problems. There needs to be the capacity for the assessors to report back without fear or favour. They cannot be accountable to the person they are reporting on. They cannot be appointed by that person. They must be appointed by third parties. They also need to be accountable to this Parliament. Children in these facilities need adequate protection from coercion by assessors. The job continuity of assessors cannot be dependent on the good graces of those who would be embarrassed by pointing out their failures. We must have independence. Some questions need to be answered, and this is where the parliamentary secretary will earn his money. We need to know who will appoint them, who will review them, who will reappoint them, what the terms of reference will be, what the resources will be for assessors, and who the assessors will report to. As was highlighted by the member for Joondalup, perhaps providing a role for the children's commissioner or possibly the Parliament may be a better route than having some sort of internal reporting to the department. I note that the parliamentary secretary has left the chamber.

Mr J.E. McGrath interjected.

Mr M.P. WHITELY: It could be a call of nature. We need an adequate explanation of the need for secure facilities. I need it to be made clear to me who we are trying to keep in or who we are trying to keep out and what the reason is for that level of security. That level of security makes the need for external scrutiny even more important, because when things happen in the community, there is potential for neighbours to intervene and to be watchdogs on behalf of children in their neighbourhood. I am currently working with a group of people in a neighbourhood in my electorate—I will not mention the suburb—who are highly concerned about the failure of the system to deal with a number of kids whom they consider to be at risk. These kids are in loving environments, but nonetheless unsatisfactory environments for meeting their basic needs, involving them in educational institutions and having a decent life and a decent childhood. These neighbours are not motivated by anything other than concern for the welfare of these children. I will not go into the details of this particular case, but I think there are failings in the system, which this case highlights. I do not think the Department for Child Protection is doing as good a job as it could in the circumstances, and also these children are slipping through the education net. In fact, the people who are gathering this information are not the truancy officers or the Department for Child Protection, it is these local residents. That is not going to happen in a secure facility where

kids are locked away from the eyes of the public. We need to be doubly vigilant with these secure facilities, because that oversight will be lost.

I notice that the parliamentary secretary has re-entered the chamber. One of the issues I would like the parliamentary secretary to address in his response to this debate is the need for a secure facility. Who are we trying to separate from whom? Are people being locked up or are they being locked out, and for what reason? In the parliamentary secretary's absence, I spoke about the need to be doubly cautious in placing kids in these facilities, because in these circumstances we do not have the eyes of the community on the behaviour of the carers. Obviously these secure facilities will be utilised only in extreme circumstances and will be brought into play only when there are examples of extreme dysfunction. This actually highlights a missing option, which I spoke about previously when we were in government. It was an idea that I tried to get up very close to the end of Labor's term in government, and it is an argument that this government needs to consider now. The only options available in a dysfunctional circumstance are to leave kids with their families and hope that it all works out well, or to separate them from their families and either put them in state care, a foster home or some sort of hostel arrangement away from their family members. This proposed third option is for secure-care environments, which obviously must be for cases of extreme dysfunction. I think we need an intermediate step.

I have encountered this scenario on a number of occasions in my electorate: there is a single parent family—usually mum, as often dad is not on the scene; dad may be in prison and intermittently on the scene, and often dad may be more trouble than he is worth to put it bluntly—and mum is doing her best under trying circumstances. Mum may be coming from a second-generation dysfunctional environment and she has not learnt the necessary parenting skills. Mum may also have intermittent problems with family and friends imposing themselves upon the home environment, and mum may also have an alcohol or drug problem. I say "mum" because, to be honest, in the cases that I have encountered, it is almost always a single mum doing it tough by herself, with or without the intermittent presence of dad, who is often, as I said, more trouble than he is worth. Mum is basically loving; she is doing her best under difficult circumstances, but because of her personal history and personal needs and for all sorts of interventions over which she has no control or is unable to control, she lacks the skills and support to provide her kids with a safe, happy routine. The kids suffer. Their attendance at school is very patchy. They lack routine. Often their basic food and health needs are not being met. There have been examples of kids in my electorate, coming from the sort of environment I am talking about, where neighbours have reported to me that they have caught kids breaking into their houses to steal food out of their fridges. These are kids who live next door. The kids are not bad kids, and the mum is not someone who does not care about the welfare of her kids, but she lacks the basic skills, and her own home environment is so dysfunctional and so disruptive that she cannot get routine in that environment. A case was reported to me where a neighbour came home and found kids in the kitchen. They almost said, "Hello, Mrs Smith, how are you?" They do not perceive what they are doing is wrong; they are breaking into the house next door because they are hungry.

The only option we have at the moment is to leave those kids with mum and hope for the best, and there are all those outside influences that I talked about that prevent any appropriate action, or we take the kids out and split the family, and break mum's heart and then we entrench mum's mental health issues and drug dependency issues and probably mum's dependency on the dropkick she has for a partner. We need to provide another option. In my view, we should have a circumstance where mum and the kids have a chance to go into a supported environment, where they live in a house and are supported by, if you like, community "uncles"—or whatever we want to call them—in a hostel-type environment where the kids are given routine, mum is given support to help the kids meet their basic daily needs, the kids are engaged in school, and the kids are engaged in community activities like sport and other activities that most kids take for granted. If dad is functional and involved and prepared to live by the rules of the hostel, he should be there as well. That third option is a circuit-breaker. This should not be a system of permanent placement. Whether we do it through a hostel environment or through supported in-house accommodation where someone comes into the house and provides that support on a mentoring basis, I am not sure; however, we need greater hands-on intervention. It would be expensive, but the reality is that sort of accommodation and facility would break a pattern of continuing disadvantage. Whilst some expenditure may be needed at that time, and it may be expensive in the short term, it would save the government lots of money in the long term, because we would have functional families and kids and we would not have the sorts of problems that come about because kids are separated from their loving, but dysfunctional, families. Either that or some derivation of that concept is worthy of pursuit, because, as I say, it is a problem at the moment that the only two options are: take them away and split the family up or leave them in dysfunctional circumstances.

Kids need routine. Kids need the opportunity to go to school and to do their homework. Kids need to know that they do not need to break into the house next door to feed themselves! Kids need to be clothed. Kids need plenty

of sleep; they do not need to live in a party house where they cannot get to sleep because everyone else sleeps all day and parties all night. We need to offer the opportunity for that sort of controlled environment and involvement of mum and, hopefully, dad—if dad is on the scene, if there is a dad. I am talking from experience, because the reality is that in the circumstances I have encountered, in my electorate it has been single mums doing their best under very difficult circumstances and we need to do everything we can to support them. There is a desperate need for some sort of third option. Obviously, the kids who are going to these sorts of secure facilities must be coming from extremely dysfunctional circumstances. Kids are a product of their circumstances; kids are not born good or bad. If kids are troubled for whatever reason, we need to spend some money earlier on in their childhood to make sure they have the opportunities that we expect for every other child.

[Member's time extended.]

Mr M.P. WHITELY: I want to build very briefly on some comments that I made last week when we delivered the annual report for the Joint Standing Committee on the Commissioner for Children and Young People. Given that Western Australia is the wealthiest state in one of the wealthiest nations on earth, I do not think that we do children's services particularly well; in fact, I think we do them particularly poorly. One of the problems has been that there has historically been a lack of advocacy on behalf of children. We have the Commissioner for Children and Young People, which was a good innovation brought in by the previous Labor government, with Barbara Scott, the previous member for the South Metropolitan Region, driving it from the other side of the house. It was a good bipartisan innovation, but, nonetheless, it was brought in by a Labor government.

I talked last week about having a committee of this Parliament that looks specifically at children's issues. I believe that we need that urgently. I also spoke about the lack of organised not-for-profit advocacy in Western Australia. Victoria has a history of public benevolent not-for-profit organisations, funded by private sector donations, advocating for kids. The example that I am most familiar with is the Australian Childhood Foundation, which has ended up being not only a service deliverer but also the voice of advocacy for kids, because kids lack the same sort of political clout that adults have. We need to have a robust and strong private sector advocate for kids in Western Australia. In fact, I was talking to the former member for Armadale, Hon Alannah MacTiernan, just last week, trying to convince her that we need someone with her sort of energy advocating for kids. She would have an amazing capacity to generate heat and light around an issue. She would have an amazing capacity to generate money around an issue, too, with all her contacts throughout the town, where people are immensely grateful for the service she gave to the state. If we could get somebody like that involved in running an advocacy organisation for kids, with a focus on service delivery and also on keeping the government accountable, I am sure that both sides of the house would tremble in fear that we had somebody like the former member for Armadale keeping them to account to make sure that they delivered children's services well. There is a desperate need for that. I am certainly trying to push her towards it. If that does not come to fruition, it certainly needs to happen, and I am determined to make some efforts in that direction.

I want also to make some brief comments about another change that is in the bill, which is to do with the principles relating to the placement of Aboriginal and Torres Strait Islander children. The act is being amended to delete the words "must be considered as far as is practicable". To paraphrase the act, it states that Aboriginal and Torres Strait Islander children should be placed with Aboriginal and Torres Strait Islander families. That has been watered down slightly to read "must, so far as is consistent with the child's best interests and is otherwise practicable". I do not have a problem with that form of words. I think it is okay. I understand that, as in all dealings with children, it must be in the child's best interest. I do want to stress that it is incredibly important that, where possible, Indigenous kids are placed in Indigenous settings. I speak from personal experience. I had a foster brother. I will be brief talking about this, because I do not think I would be able to make it through talking for a terribly long time about my brother's circumstances. In 1972 when I was 12, Chris Dingo was placed with my family. Chris was five years of age. He lived with us intermittently until he was 18 years of age. It was a loving environment, and he was my brother in every sense of the word. It was a happy placement for our family circumstances, but for Chris it was not a happy placement for his place in the world. Chris was a troubled individual. A lot of that trouble came from his non-engagement with his own people. My father, who worked for the former department of child welfare at the time, recognised this and took every step that he could to engage with Chris's mother Jenny, who is a wonderful woman. We have an ongoing relationship with her, and she is a great friend of my mother. Jenny was only 14 years of age when she gave birth to Chris. In Jenny's words it was not a case of a Stolen Generation child. Chris had been adopted once by a white family before he came to live with us. He had also been fostered out in numerous placements. None of those had worked out. It worked out well with us. We just jelled; in every sense he was my kindred spirit, my brother, and he got on well with all my family. But there was something missing for Chris. Being safe and secure in the walls of a house is not enough; people have to have a sense of who they are in the world. If Chris could have been placed in circumstances where he had exactly the same family dynamic in an Aboriginal family, Chris would have had an easier path in

life. Chris died about 15 years ago. He was an amazing person. I said that I should not have spoken at length about this. He would have had an easier path in the world if he had been placed in an appropriate loving environment where he had Aboriginal connections. I can understand, and I do not have a problem with this form of words, but, nonetheless, where it is practicable it is in the best interests of an Aboriginal and Torres Strait Islander child to be placed with an Aboriginal and Torres Strait Islander family. Hopefully, the world has got a bit better since then. I do not think that Western Australia is the racist place that it was in the 1970s. I think that some of the difficulties would not be as great as they were for my brother in that time, but I still think it is ideal to have that sort of placement. Although I accept the amendment that it must be consistent with the child's best interests, I do highlight the fact that I believe in most circumstances it is in an Indigenous child's best interests to be placed with an Indigenous family.

This is one of those bills that need time. I am sure that we will be getting adequate time to go through this legislation in fine detail. It is not a political bill and one in which we will be seeking to make points on behalf of the Labor team—the red team, as it were. It is one in which we will be seeking to make sure that the best interests of children are protected. If that means that we have to take quite a bit of time to do it, it will be time well invested for the benefit of children.

MS J.M. FREEMAN (Nollamara) [8.10 pm]: I rise to speak on the Children and Community Services Amendment Bill with great cognisance of the previous speakers, all of whom have made an extremely valuable contribution to this debate, both from a professional point of view and, more importantly, from a personal point of view. There is clearly a lot of passion around this issue. I would like to give a perspective on this issue from the community of Nollamara, which I represent. Members would be aware that Nollamara is in the City of Stirling. Large, newly arrived migrant communities live in the areas I represent, from the Macedonian community and the Vietnamese community right through to the current African community and the Burmese community. Many of those communities comprise newly arrived humanitarian refugees, people who have come here on visas and also students and people who have come here as part of a skilled migration scheme. One of the issues that they regularly raise with me is the difficulties that they have with child protection, and the cultural difficulties they have in raising their children in the way in which they wish alongside the expectations of Australian culture and community. In any discussions I have with them, I make it very clear that there are certain responsibilities that they have as parents regarding their care of and compassion to their children, and that if they breach those responsibilities, it is clearly a concern. However, they often feel quite powerless to enforce the discipline that they feel is necessary in their communities. That is a difficulty when we look at this issue.

I refer to the changes that are being discussed with the Aboriginal child placement principles and having regard for those principles when deciding where those children are placed into care. I have some concerns about those changes. There is also a large Indigenous community in the seat of Nollamara, and I concur with many of the previous speakers about the absolute importance of ensuring that children's best interests include acknowledgement of their cultural heritage. That should be one of the highest priorities to consider when placing children with other families. I think this should also apply to culturally and linguistically diverse communities, especially some of the African communities, where potential problems arising from religious differences may necessitate a much better understanding of the communities that we are dealing with, along with associated culturally appropriate behaviours, when considering the placement of children. In saying that, I also note that there is an existing provision in the act regarding the principle of community participation. I believe that something needs to be done to recognise those sorts of communities in the way that we prosecute and implement this act.

There is a Greek private school in my area called St Andrew's Grammar that places a very strong emphasis on Greek culture and heritage. I went to its open day recently and there was talk about how children are raised by a village, which is an African proverb. I think that that statement is true and means that we should be protecting families before the serious implications of the sorts of amendments that we are looking at today generally, and in particular the secure care, are played out. We should never, ever have to implement those sorts of provisions. We should be doing early intervention work at ages zero to four. We need to ensure that these children are in a caring and nurturing environment. The member for Bassendean outlined a very important issue, and that we need an intervention base that can allow for that environment.

Member for Bassendean, it is funny how history replays itself. Twenty-odd years ago—I am showing my age—I worked for the Minister for Housing. In those days the department of community development, as it was then, did not have a lot to do with big intervention programs—it was very much hands off. I used to get regular eviction files of families and they were pretty hard cases to deal with. Yet there did not seem to be any intervention happening with these families; the department was just going to make them homeless. One of the primary things that I believe is necessary to ensure child protection is the right to secure ongoing housing, and

that was going to be taken away. I suppose it was as a result of my belligerence as a policy officer in not passing the files on to the minister—I kept on asking the department what it was doing, and how it was helping out with these situations—that the special housing assistance program was set up.

It was somewhat concerning that 20 years later, when I re-entered the housing field after years of not working in the area, that that program was still operating. Clearly there was still a need for that service, but it was not provided on a greater scale. We have not addressed how we would do that effectively and efficiently to ensure that people maintain their housing security, their neighbourhood relationships and the schooling of their children. I note that somewhere in the legislation there is discussion about a multi-agency response, and I really have to ask the Minister for Child Protection, through the parliamentary secretary, what the government thinks that this means and how it is ensuring that this happens other than by putting a nice catchphrase in a very weighty piece of documentation. How are the guidelines for a multi-agency response going to happen? What procedures are they putting into place? What budget incentives is the government putting into this to ensure that it will occur? What is it doing to put into action the nice words that are framed in a conciliatory manner? This legislation will put people in severe and difficult situations, such as secure facilities. That is not where the government's focus should be; it should be on early interventions and multi-agency response.

The new guiding principle states "so far as is consistent with the child's best interests and is otherwise practicable". I am very concerned about that wording and I reckon it comes pretty close to contravening the United Nations Convention on the Rights of the Child. We probably do not think that that is so important, but Australia is a signatory to it. We have been part of those discussions. We understand that the primary consideration for any decision regarding children is the best interests of the child. If that is the case, we do not need to have wording such as "so far as is consistent". Coming from a background of occupational health and safety, workers' compensation and industrial relations, the words "so far as is consistent" make me shudder. I think it is far simpler to say "in the best interests of the child".

I understand that we have difficulties in gaining appropriate foster carers. I have to say that I was very moved by member for Joondalup's speech. He is probably much more qualified to speak on this bill than I ever will be, given his history as a foster carer. It seems to me that we rely far too much on the good nature and benevolence of the people in our communities without giving them the proper support. There needs to consideration of financial support for foster carers because many people see it as a vocation, as well as simply a part of their family make-up. A woman I deal with in the Nollamara area has been, along with her partner, a foster carer for many years. The two of them make fantastic foster parents. They are regularly called upon by Department for Child Protection because of the desperate need in those areas. They are always respectful of the parents and they are always respectful of the need of the child to maintain a parental connection.

Similar to the member for Cannington, I am concerned about the special guardianship orders. I have seen how a parent can lose influence over the way his or her child is raised. I refer to another constituent in the electorate of Nollamara who lost guardianship of her son to the child's father even though they were estranged before the child was born. When my constituent's son was seven years of age, guardianship was given to the father. I am not sure of the circumstances involved in that decision, but I think they were serious. The child is almost 18 years of age. The mother has spent the past 11 years trying to connect with and have influence over her son's life to his benefit and best interests. We must be cautious about special guardianship orders because of the history of the stolen generation, the history of people who have been the subject of forced adoptions and from what we know from our day-to-day dealings with people who want an ongoing relationship with their children no matter what has occurred. It is extremely difficult to sever that with the ink of a pen in a piece of legislation.

I am interested in the provision that allows the chief executive officer to give information as soon as practicable. When the member for Maylands referred to that provision, my ears pricked up. I wondered where I had heard the term "as soon as practicable". It is not an industrial relations term. Then I remembered that it is an Australian Securities and Investments Commission term. It is used in the superannuation industry when a company has to advise of a significant or material change. At least the ASIC provisions refer to "as soon as practicable, but not greater than three months". There is no similar provision in the Children and Community Services Amendment Bill. It simply states that the CEO should give information when he or she gets around to it. It is about the materiality and significance of it. Let us get down to tintacks. The Attorney General knows as well as I do that we could spend three days in court arguing what the terms "materiality" and "significance" pertain to when looking at legislation such as this. Although I understand that the CEO must have flexibility when making provisional plans for the parent of the child or the carer of the child or when advising people of a particular decision, there should be a cut-off point. The legislation should read "as soon as practicable, but no later than 28 days" or "as soon as practicable, but no later than 32 days". As the provision is worded, the CEO could say, "Sorry, I didn't get around to it. I did it as soon as I could practically get to it."

Clause 51 of the bill seeks to amend section 24. It deals with the delegation authority of the CEO, which is being extended quite markedly. Proposed section 24(3) reads —

> The delegation may expressly authorise the delegate to further delegate the power or duty.

Proposed section 24(4) reads —

> A person exercising or performing a power or duty that has been delegated to the person under, or as authorised under, this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.

The issues of the delegation of power go towards some of the issues that were raised in the debate on the Public Sector Reform Bill. This provision will allow the CEO to delegate his or her powers, duties and responsibilities to non-government organisations. It concerns me greatly that this has been done in legislation that is primarily about much more weighty issues, such as secure-care facilities and guardianship orders.

I refer to the changes to the employment of children and the amendments that seek to insert proposed section 194A. I put on the record that the department has missed a great opportunity to make the provisions of part 7 simpler. This provision states that people cannot employ people under the age of 15, and then it wipes all that away and states that is the case unless a person does this, this and this and this, this and this. It would have been better to say that people can employ children aged between 10 and 13 if they work in these areas and that they can employ children aged between 13 and 15 if they work in these areas et cetera. If we look at this provision from an employment law perspective, it is the exception rather than the rule. A great opportunity has been missed.

[Member's time extended.]

Ms J.M. FREEMAN: In saying that, I note that the proposed section 194A has been included because of the Bikini Girls case. Members are aware of the case involving a 17-year-old who turned up to a massage parlour and was suddenly told that she had to massage nude men whilst wearing barely any clothes. The case involved vulnerability issues because of the place of business. It makes me question whether this provision will apply elsewhere. If the Attorney General thinks that that is inappropriate, can he tell me whether the department will ensure that modelling agencies that exploit children's bodies in the sale of sexualised fashion will be addressed, because that is a big issue? Suddenly the Attorney General is inviting the department to enter into areas into which it may not want to go.

Mr C.C. Porter: What clause are you talking about?

Ms J.M. FREEMAN: I am referring to proposed section 194A, "Power of CEO to prohibit or limit employment of children in particular business or place". The CEO can prohibit the employment of children or impose limitations on the employment of children in the business or place. Proposed section 194A(2)(a) reads that if the CEO —

> believes on reasonable grounds that one or more children are, or may in the future be, employed in a particular business or place …

It does not state why a particular business is not good for a child to work in. Frankly, it could be argued that it is an occupational health and safety issue if a 15-year-old apprentice hairdresser uses the sort of chemicals that are used to dye a person's hair. The provision is interesting. There is no capacity for the department to give itself guidance notes or regulations. It is provided with a broad and subjective capacity to ban places of employment. Clearly, we will ban the sort of Bikini Girls employment—that is a no-brainer! I get that. I would like to ban them in any event!

Mr C.C. Porter: If a minor works in the offering of sexual services business, it is a criminal offence.

Ms J.M. FREEMAN: Yes; that is exactly right.

Mr C.C. Porter: Without more—you can forget the Department for Child Protection.

Ms J.M. FREEMAN: Yes, but the loophole was that they were not offering sexual services; they were simply providing massages. The fact that they were wearing bathers and massaging naked men was just a loophole! When I googled it I was fascinated to see that the bloke who pleaded guilty to 11 charges has just opened up in South Australia; no-one actually learns from their first folly.

Mrs L.M. Harvey interjected.

Ms J.M. FREEMAN: Yes, I saw that the member for Scarborough was pretty appalled when he opened up in her part of the world as well.

Mrs L.M. Harvey: He's a conman.

Ms J.M. FREEMAN: Yes, he is a complete conman. He is such a conman that he pleads guilty. My perspective on these sorts of things is that he needs to be found guilty by a court; I suppose pleading guilty is a conviction, but it does not seem to stop that sort of behaviour.

Mr C.C. Porter: It got him out of our jurisdiction, which is something!

Ms J.M. FREEMAN: Yes, but in a situation such as this there really needs to be some harmonisation. This is the sort of stuff that needs to be in the Industrial Relations Act and other relevant legislation. I do not doubt that it should be in the child protection act in some form or another, but it raises questions. I am pleased that the bill enables industrial inspectors to be authorised officers, which is really important. But the industrial inspector is not an occupational safety and health WorkSafe inspector, and one of the major areas in which children need to be protected is that of occupational safety and health because, for instance, chemicals are much more harmful to children's development than they are to adults. If members read the statistics on workplace fatalities or injuries, they will see that a high percentage of young people are injured in workplaces in their first two weeks of work. If part of child protection includes industrial inspectors, the legislation should have also included occupational safety and health inspectors, and I ask why they were not included.

Returning to the theme of "we are all a village and a child is raised by a village", proposed section 33B sets out the powers of a chief executive officer even before a child is born. That is very important, especially the part about developing a plan to address the needs of the child. But, in saying that, I reiterate what my colleagues have said tonight, which is that that will need resources. It does no good to give people the capacity to do something if they have not got the resources to be able to pursue that capacity.

There is also a change in the wording around assessors in that they are now "appointed" rather than "designated". I am not completely sure what the difference is between the two, but the member for Joondalup's suggestion that the Commissioner for Children and Young People be involved in that appointment is very good, and it is worthy of the minister and the parliamentary secretary looking into it.

It is good that the Attorney General is in this place because I want to ask about proposed section 88J, which states that a child who is absent from a secure facility can be apprehended without a warrant Proposed section 88J(5) states —

> When exercising a power under this section an officer may use reasonable force and assistance.

It quite clearly states that the officer does not need a warrant to exercise a power in that section. The officer has only to suspect, on reasonable grounds, that a child is absent, so he does not have to have any proof that the child is absent, or has been taken, without lawful authority. That is a big power to give to people who are not police, I have to say.

Mr C.C. Porter: Who is the power granted to?

Ms J.M. FREEMAN: To authorised officers, or a police officer. But, basically, a worker can be authorised under this act with the power to remove a child on suspicion of reasonable grounds.

Mr C.C. Porter: Would you take a brief interjection? I think you've raised a fair point but, I guess, balanced against your concern is the fact that whilst we talk about arrest warrants, the fact is that most police arrests occur without a warrant on the basis that they have a reasonable suspicion that an offence has occurred in immediate time, and they use reasonable force. In fact, that ability to arrest resides in every citizen who sees an offence.

Ms J.M. FREEMAN: Except that if they try to do that, they could end up in court over how they had done it, when they did it, and whatever else happened. It is asking for trouble if someone who is not a trained police officer, or trained in arrest, has the capacity to do that with reasonable force.

Mr C.C. Porter: I will listen to the debate, because an authorised person, I am assuming, is someone who has some training and involvement in these matters. Of course, in a secure facility there might be very good reasons why we would want the swift apprehension of someone who has left a secure facility.

Ms J.M. FREEMAN: But it is very clear that secure facilities are not supposed to be another form of prison, for want of a better word, or mental institution, or any of those sorts of things.

Mr C.C. Porter: No; indeed.

Ms J.M. FREEMAN: They are for the protection of children. If a child is in that sort of place, one really has to question the ramifications of such a serious provision. The definition of an authorised officer states —

> *authorised officer* means —

(a) an officer designated to be an authorised officer under section 25 for the purposes of this Part

…

Mr C.C. Porter: I also imagine that it is the child's safety that is hoped to be enhanced by allowing apprehension of the child.

Ms J.M. FREEMAN: Proposed new section 25 states —

The CEO may, in writing, designate officers to be authorised officers —

(a) generally for the purposes of this Act; or

(b) for the purposes of a provision of this Act specified in the designation.

The CEO could authorise an officer—tell a clerk—"Here you go, you're designated; go and get that person." I am sure that will not happen, because a CEO would not do that, but it is a pretty big concern. The only persons who should be allowed to apprehend people are police officers, because people are in secure facilities for a reason, and it is serious. I do not think people should be allowed to apprehend without a warrant if they are not police officers.

Mr C.C. Porter: Again, I think the point is well raised, and I will be interested to listen to the debate, but I would imagine that if someone absconds from a secure facility, it may be that one of the employees of the facility is actually there in time and place and able to apprehend the person, perhaps for their own safety.

Ms J.M. FREEMAN: No, but they are able to go into other premises and things like that.

Mr C.C. Porter: I understand that, but you might need to have someone other than a police officer authorised to do that because police officers do not patrol the perimeter of secure facilities.

Ms J.M. FREEMAN: But the CEO would ring the police. Have a look at it; the power it gives seriously concerns me.

MR A.J. SIMPSON (Darling Range — Parliamentary Secretary) [8.38 pm] — in reply: I thank members for their contributions to the debate; I will try to address a number of the issues as we go through, and we can thrash it out more in consideration in detail.

There has been a lot of talk about secure-care facilities, and I need to put on the record that they have been debated for a long time and through previous governments. These facilities need to be available if an unusual situation happens and a child needs to be in a safe place for his or her own safety to give the facility the time to address the child's needs, take a breather and settle the person down, and look at why the person ended up in that situation. Everything needs to be looked at on its own merits, such as where the child has come from and why the child has ended up in this process, whether drug, alcohol or mental problems are involved, or maybe the child needs medication—all those issues will come into it. While the child is in a secure-care facility is an opportune time to address and assess the needs of the child. The best way to facilitate that and to take the child out of harm's way and stop him harming himself is to put him in secure care. There has been a lot of debate about that tonight from both sides of the house, and there are concerns about the 21-day term plus another 21-day term, but I think it is most important that the child is out of the community for the protection of the community and the child. We are talking about children, and we hope that, one day, they will grow up to be great citizens, but we may have to take them out of society for a while to actually calm them down and bring them back down. The most important thing in those situations is that it is a process of trying to work within the system we have. We do not want to have to put them into a facility such as Rangeview Juvenile Remand Centre or a detention centre; we are trying to step away from that. That is where they go once they have been through the court system. The idea behind secure care is to deal with problems before they get to that stage. The member for Maylands raised a couple of good points and I acknowledge her hard work in looking at a facility in Victoria that is based on that model. That is where we got the idea from; it was the previous government's idea to do that. I hear those concerns, but it is a case of going through the process of working out how it is going to unfold and work. I take those concerns on board and we will probably address it a bit later.

The chief executive officer is the person who will sign off on a process —

Ms L.L. Baker: Will you take an interjection just briefly? I am a bit concerned about your reference to Rangeview, which is a correctional facility.

Mr A.J. SIMPSON: Yes, it is.

Ms L.L. Baker: The intent of this bill is therapeutic intervention. Even the language used by the parliamentary secretary to describe this facility is that of a secure lock-up correctional facility.

Mr A.J. SIMPSON: The point I was trying to make is that that is what everyone has in their mind when they think of a wayward child in that process. I was trying to say that they do not actually end up there until such time as they have been through the court process. If a child has, for some reason, ended up in that process, and we have to take hold of them and protect them from themselves and others, we need a place where we can take them, and Rangeview is not the place; that is the problem. We do not want to mix them with the ones who have been convicted. This is a separate problem and we need to address those needs. A lot of issues come into it, such as medication, psychology and family background. That is the idea behind secure care, so we can protect them from themselves and protect society, and so they can take a step back and look at where they are. I take the member's point about taking on board the whole process.

The chief executive officer of the Department for Child Protection is the person who has final responsibility for that process. The Commissioner for Children and Young People can also enter the site if she so wishes, by making the call to the Department for Child Protection. The commissioner has overarching responsibility, but the chief executive officer has responsibility for the administrative process. The idea of secure care is that once the child is under the CEO's care, they can then go to those other government agencies, whatever they may be, to help them through the various departments. The CEO has the power to bring those people together to resolve the child's issues and move forward. The member for Joondalup raised the process of the Commissioner for Children and Young People, but the CEO is the person with the power to instruct other agencies to come in. Therefore, I think it is important for members to realise that it is within the power of the CEO of the Department for Child Protection to bring those agencies together; the commissioner is at a step back from that process.

Ms L.L. Baker: On a further point of clarification—I may be a bit out of date because it has been a while since I have looked at that legislation—I thought that the children's commissioner investigates groups of claims, not individual claims.

Mr A.J. SIMPSON: Correct.

Ms L.L. Baker: So the children's commissioner doesn't have the right to just come into a facility?

Mr A.J. SIMPSON: No, but she could quite simply make a call to the Department for Child Protection and say that, as the Commissioner for Children and Young People, she would like to have a look at the facility, and that would not be a problem.

Ms L.L. Baker: How far can they drill down in that and look at the facility?

Mr A.J. SIMPSON: I would have to check with the department, but at the end of the day, the commissioner has a fair bit of power. I would have to check with the department to see how far she could drill down, but my understanding is that it would include a review of the facility to make sure the child's protection and welfare is uppermost.

Ms L.L. Baker: It would address some of the concerns we have heard tonight if we could clarify the extent of the commissioner's powers in relation to this facility. It might be a very helpful midpoint.

Mr A.J. SIMPSON: I understand, and I thank the member for Maylands. I look forward to consideration in detail, where we can probably drill down on that.

A number of other issues were raised. During the election campaign, the special guardianship process was flagged. The process is very similar to the one that is available in the United Kingdom. I raised last Thursday with the member for Kingsley the issue of grandparents having responsibility for their grandchildren and going through the process of looking after them. It is a lot to do with that process. A suite of parameters and options within the Children and Community Services Amendment Bill will strengthen the introduction of special guardianship orders. The orders are intended to provide stable, long-term placement with an emphasis on the child knowing his or her parentage, and will remain in force until the child is 18. They will still have a connection with their parents, but the special guardianship orders will apply until the age of 18. It will also afford carers the same duties, powers, responsibilities and authorities that the birth parents have under the law. The person with the guardianship of the child will have access to all services available to the child, including help with government agencies. The member for Kingsley raised the issue of guardians being too scared to put their hands up and say that they are looking after a child, in case the child is taken away, at the same time as the grandparent could help out in that process. The carer will be responsible for implementing contact arrangements with the birth parents and siblings. Again, we are saying that under a special guardianship order, the arrangement with the birth parents is continued and they continue to have those rights, even though those rights are also given to the guardians. We will probably discuss that more during consideration in detail.

The member for Bassendean raised the issue of Aboriginal children in this process. During the second reading speech I referred to ensuring that Aboriginal children are placed in the best possible environment. We do our best to place them with Aboriginal families. We have recognised that, and we have gone a long way in moving forward from the days of the 1970s. I was part of that process; in Wyndham in 1973, I was in grade 4 or 5, and we cared for a two-year-old Aboriginal child, Nola, and we are still in contact with her today. She became part of our family and we helped raise her, on and off, when her mum was in hospital; she had some medical problems. She is now doing well. In that day and age, there was nowhere else for her to go, and I think we have come a long way from that. We now try to help Aboriginal children to stay within their communities, and find foster parents with whom they can stay close to where they are from, so that they are not totally separated and lose their identity, which is the problem raised by the member for Bassendean—the situation of being separated and losing identity.

I thank the members for Maylands, Kwinana, Joondalup, Cannington, Bassendean, Nollamara and Alfred Cove for their contributions. The Children and Community Services Amendment Bill 2010 will go a long way towards addressing concerns about secure care and special guardianship, and the issue raised by the member for Nollamara about child employment and stopping unscrupulous employers from tricking young people into working —

Ms J.M. Freeman: My definition of "unscrupulous employers" and yours are probably not the same.

Mr A.J. SIMPSON: On this bill, I think we are on the same page. If we stay with the bill, we should be right. I look forward to consideration in detail.

Question put and passed.

Bill read a second time.

Consideration in Detail — Bill's Scope Extension — Motion

Dr J.M. WOOLLARD: I move —

> That the scope of the Children and Community Services Amendment Bill 2010 be extended to allow the member for Alfred Cove to move her proposed new clause 67 as listed on the notice paper.

Mr M. McGOWAN: I would like to know the government's view on the motion moved by the member for Alfred Cove.

Mr A.J. SIMPSON: The government is happy to accept the motion on the notice paper as moved by the member for Alfred Cove.

Mr M. McGowan: So you are accepting all the amendments on piercing?

Mr A.J. SIMPSON: Yes.

Question put and passed.

Consideration in Detail — Bill's Clauses

Clauses 1 to 3 put and passed.

Clause 4: Section 3 amended —

Mr A.J. SIMPSON: I move —

> Page 3, line 10 — To delete "designated" and substitute —
>
> appointed

Amendment put and passed.

Ms L.L. BAKER: "Secure care facility", at the bottom of the definitions on page 3 of the bill, is defined as "a place declared to be a secure care facility under section 88B(1)". That definition leaves it open for other secure-care facilities to be established, but none is planned at the moment and none is mentioned in this bill. Will the parliamentary secretary comment on that aspect? Are there plans to open more secure-care facilities?

Mr A.J. SIMPSON: At the moment we are only refitting the nine-bed secured facility in Parkerville. There is room for movement. We could probably extend that to about 20 if need be in the future but there are no plans to build any more.

Clause, as amended, put and passed.

Clauses 5 to 10 put and passed.

Clause 11: Part 4 Division 5 Subdivision 4 heading amended —

Ms L.L. BAKER: I want to discuss the Aboriginal and Torres Strait Islander placement principles. In the parliamentary secretary's reply to the second reading debate, he said that he agreed that we are obviously looking for the right home environment and carers for Aboriginal children. Could he please let me know how realistic it is to expect that we will be able to fulfil that?

Mr A.J. Simpson: What part of clause 11 are you referring to?

Ms L.L. BAKER: I refer to the Aboriginal and Torres Strait Islander placement principles set out in division 2.

Mr A.J. SIMPSON: The member for Maylands raised a very good point. The department and the government ensure that they place children from different backgrounds into the right environment so they can grow as best they can. As the member for Bassendean said in his speech on the second reading, when we take a child out of his community, we need to place him with his kinship so he is not always searching to try to find out who he is. That is exactly what we are trying to do. We learnt our lessons from the stolen generation and we need to move on. The whole idea of this bill, as I mentioned in my reply to the second reading, is about trying to place Aboriginal children with Aboriginal families. We also want to keep them in their environment. We have also done a lot of work to ensure this happens. We used to call it foster care but now we have what is called residential care. We keep siblings together. In years gone by, we would separate the boys from the girls, putting them in separate houses. We have come a long way and we understand that if a family breaks down for whatever reason, it is important to keep brothers and sisters together. That goes a long way towards building their relationship. If they can stay together throughout their childhood and into adulthood, it gives them a bit of a bond to move forward in their lives.

We have come a long way with the processes in the past 20 years to get to where we are today in trying to keep those communities together. This issue relates more to clause 40, but I am happy to answer the member's question now. I thank her for the question.

Ms J.M. Freeman: I raised the issue of placing people in similar communities. How does that pertain to communities such as newly arrived African communities or particular religious communities?

Mr A.J. SIMPSON: It would be a similar situation if a child ended up under the care of the Department for Child Protection. In this case, we are dealing with guardianship and secure care, but if we were to take that one step back, the same principle would apply. We are trying to keep kids together and also to find them a guardian.

Ms J.M. Freeman: Where is that in the act?

Mr A.J. SIMPSON: Section 80 of the act outlines the guidelines for placement of certain children. It covers what the member for Maylands spoke about.

Clause put and passed.

Clauses 12 to 16 put and passed.

Clause 17: Sections 125A and 125B inserted —

Mr A.J. SIMPSON: I move —

Page 15, lines 13 and 14 — To delete the lines and substitute —

(2) The CEO may, in writing, appoint a person to be an assessor if the CEO is satisfied that the person has the experience, skills, attributes or qualifications the CEO considers appropriate to enable the person to effectively exercise the powers in subsection (3).

(3A) An officer is not eligible for appointment under subsection (2).

(3B) An assessor is to be paid such remuneration and allowances (if any) as the CEO, on the recommendation of the Minister for Public Sector Management, determines.

Amendment put and passed.

Ms L.L. BAKER: Proposed section 125A(3) states —

An assessor may, at any time, visit a facility and do one or more of the following —

A number of paragraphs are then listed under the proposed subsection. My amendment seeks to add paragraphs (f), (g), (h) and (i). We discussed the powers of advocacy for the assessor during the second reading debate. Therefore, I move —

Page 15, after line 24 — To insert —

(f) be accessible to hear complaints concerning any child in the facility made by the child, their guardians or their relatives;

(g) enquire into and seek to resolve complaints concerning any child in the facility made by those persons, their guardians or their relatives;

(h) determine if it would be appropriate for any other person or body to further enquire into or deal with any matter, to refer the matter to that person or body; and

(i) assist with the making and presentation of an application of Review under s.88G and/or 88H under this Act in respect of a child in the facility or, where authorized by this Act to do so, to make any application.

Mr A.J. SIMPSON: The Department for Child Protection has a well-developed, three-tiered complaint management process that is accessible to all clients of the department, including children in care. The process operates under an accountable, transparent procedure that ultimately, in unresolved cases, leads to a hearing of complaints under the Australian standard for complaints handling. A number of department staff have received training in complaints handling. We have already set up a three-tiered process.

Ms J.M. Freeman: You said that it is a transparent procedure. Is that publicly available? Is it that transparent?

Mr A.J. SIMPSON: Yes. Complaints are heard by the Ombudsman. Basically, the Ombudsman is in place and there is a third party process. This is a document on resolving complaints.

Ms J.M. Freeman: Can you table it?

Mr A.J. SIMPSON: I cannot table it during consideration in detail, but I will do it later, member.

In relation to the amendment moved by the member for Maylands, under proposed section 125A(3)(d), the assessor will be able to seek and talk to any child in the facility about any matter of concern or refer the matter to the appropriate avenues for assistance. The department notes that the assessor will be required to provide the CEO with a written report following each of the visits made to the facility. I am sure that the assessor will report any matters of concern to the CEO in a written report. If the assessor wishes to report any serious matter to the appropriate bodies other than the CEO—for example, the Ombudsman or the Commissioner for Children and Young People—he or she would not be prevented from doing so. We have gone through that process whereby it can be taken to the commissioner, as I said in my response to the second reading debate. The Ombudsman is in place. We have set up a transparent, three-tiered process. There is no provision in the act or the bill that would allow an assessor to make an application for reconsidering or reviewing a secure-care decision. This is because the assessor is not a party to any proceedings involved in the child's secure-care arrangements. The assessor is separate from the arrangement. The assessor would just look at the child's circumstances. The functions provided to the assessor are for the purpose of operating oversight to ensure that the facility is run properly, rather than providing advocacy services for individual children in care. The advocacy in respect of applicants for reconsideration or review of secure-care decisions is more appropriately provided by the child's legal representation, the department or the Advocate for Children in Care, and by arrangements made through Legal Aid WA regarding legal services. We have all those systems in place. We have the three-tiered process in place to review that. We have a process that goes from the Commissioner for Children and Young People to the Ombudsman. I hope that addresses some of the concerns of the member for Maylands.

Ms L.L. BAKER: I am not sure that it does, but I thank the parliamentary secretary for that explanation. The point that we were making goes to the parliamentary secretary's explanation pretty clearly. There is nothing in the role of an assessor that will mean that the assessor will have any capacity to intervene on behalf of the child. It is a case of taking a complaint to the CEO or escalating it to the State Administrative Tribunal. I am not at all clear that the process that the parliamentary secretary has described will give the child the level of intervention that is required. There needs to be an independent assessor. It is an important point that we are making. It is important to the scope of assessors to be able to pick up on issues that a child might have without it escalating to the SAT.

Mr A.J. SIMPSON: I think the process starts from a complaint. A system has been set up. We have a complaint form that starts the whole process. If there is a concern, that process can be started. If people are not happy with

that process, they can go to the next process of the Ombudsman. Further down the line, they can make a complaint to the commissioner.

Ms L.L. Baker: But this is a child.

Mr A.J. SIMPSON: I understand that, but the child still has rights. We abide by the "Charter of Rights for Children and Young People in Care", which clearly states —

> You have the right to receive proper health care including medical and dental …
>
> You have the right to receive guidance and encouragement in your education and activities such as hobbies, sport, music, dance and art.
>
> You have the right to be kept informed about your care plan and your views about the plan considered.
>
> You have the right to be respected (and to treat others with respect too).
>
> You have the right to raise an issue with your case worker, foster carer and/or Advocate for Children in Care.

Ms J.M. Freeman: They do not have that right, do they?

Mr A.J. SIMPSON: They do, because this is the child's charter of rights.

Ms J.M. Freeman: You are not actually putting it in the act.

Mr A.J. SIMPSON: This relates to the rights of children in care, which we support very much. I refer the member to section 10 of the act, "Principle of child participation", which reads —

> 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 —

That right is clearly in the act.

Ms J.M. Freeman: Are the rights prescribed in the act?

Mr A.J. SIMPSON: The rights are prescribed in section 10 of the act.

Ms L.L. BAKER: To clarify this for the parliamentary secretary, the suggested insertions contained in my amendment are based on provisions in part 9, "Council of Official Visitors", of the Mental Health Act 1996 on the independence of assessors in secure-care facilities. We have not just made this up. We are following through on what we think is a working model that has some good examples. We had hoped the government might consider making this role a little more than just one of "come and see and write about", and the government might consider the ability of an independent assessor to look at the situation of perhaps one child and maybe even determine whether it is appropriate for the children's commissioner to be involved or for another authority to be involved.

Mr A.J. SIMPSON: There is nothing stopping this. Any child can access an advocate who can help sort out any problems of the child and can also help the child have a say in decisions that affect the child and help the child make a formal complaint, if necessary, or apply for a review of a decision. Basically, as clearly stated, the Advocate for Children in Care does have that opportunity.

Amendment put and negatived.

Ms L.L. BAKER: My second amendment relates to page 15, line 24 of the bill and, again, is about the child's ability to request the person who is in charge of the facility to arrange for a child to be visited by an assessor. It is linked into the previous amendment, which we have just lost, but for the purpose of the debate, I move —

> Page 15, after line 24 — To insert —
>
> (4A) A child in the facility, or any person on behalf of a child in the facility, that person may —
>
> (a) request the person who is in charge of the facility to arrange for the child to be visited by an assessor.

Mr A.J. SIMPSON: I can see where the member is coming from, but the bill addresses those issues. We have pretty much covered visits by the assessor already, and it is covered in the bill. The member is seeking to add another piece, which we do not need.

Mr M.P. WHITELY: Perhaps the parliamentary secretary might enlighten us on where it is covered. I suggest that it is more likely to be raised by a person on behalf of a child, because I do not think children in these sorts of

facilities would have the skill set and knowledge to undertake the process. Surely a family member or someone who is actually involved in the child's life and who has the welfare of the child at heart should be able to request that the assessor come in and review the circumstances of the child; otherwise, we must rely on the good graces of the periodic visits of the assessor. If that does not happen and the assessor visits intermittently and a problem arises between visits, or the assessor comes and everything looks sweet on the day, it will not be picked up. I would have thought that the most powerful protection for the child is having family members and others who are concerned—a parent, grandparent, aunty or uncle—able to insist that there is a visit by an assessor; otherwise, we are relying on the good graces of the institution. The parliamentary secretary said this is covered elsewhere in the bill, but I want to know where in the legislation it says that some other person who is concerned about the child can instigate a visit by the assessor.

Mr A.J. SIMPSON: The assessor or legal aid lawyer or the Advocate for Children in Care can do this for children in care anyway. I refer the member to section 10 of the act, "Principles of child participation", which states —

> (1) 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;
>
> (b) the opportunity to express the child's wishes and views freely, according to the child's abilities;
>
> (c) any assistance that is necessary for the child to express those wishes and views;
>
> (d) adequate information as to how the child's wishes and views will be recorded and taken into account;
>
> (e) adequate information about the decision made and a full explanation of the reasons for the decision; and
>
> (f) an opportunity to respond to the decision made.

We have covered that.

Mr M.P. WHITELY: No, I do not think that we have. It is not practical that this says "a child in the facility", so this amendment seeks to insert "or any person on behalf of a child in the facility", which means any person who has a relationship with that child. That would usually be a family member—parent, grandparent, aunty or uncle—or even a family friend who has an interest in that child. They are the ones who will know that there is something going on in the facility. I can envisage a situation in which a relative has an inclination of the sort of abuse that has occurred in other institutions that we have heard about. That person would have no mechanism to insist that an assessor goes in there. We are otherwise relying on the child itself, which has evidently just been outlined, or the good graces of the other authorities to pick up that it is happening. In reality that is not how it is going to happen. If something is happening in that institution and a child's rights are being violated—for example, if a child is being subjected to physical, emotional or sexual abuse—the person who is most likely to twig to that will be a relative, such as a grandmother who visits the child occasionally and notices that there is something wrong. Nothing that the parliamentary secretary has outlined indicates that there is a capacity for that other person to instigate those processes on the child's behalf. If we do not see this amendment accepted, it will be a recipe for disaster.

Mr A.J. SIMPSON: The member for Bassendean raised a good point. If the parents, grandparents or brothers and sisters turn up, all they have to do is ask. They can go through a process of complaints. A three-tier system is set up. We are not saying that because they are the brother or father of the child that we will not listen to them. A complaints system is set up.

Mr M.P. Whitely: Where in the act is that?

Mr A.J. SIMPSON: It is quite clearly stated. The complaint process is set up in such a way that there is a complaint form, which makes it quite straightforward for resolving complaints within the system of the Department for Child Protection through that process.

Mr M.P. Whitely: How are the complaints dealt with, though; are they dealt with by the assessor or internally by the department?

Mr A.J. SIMPSON: They are dealt with internally to start with, but if people are not happy they can go to the Ombudsman.

Mr M.P. Whitely: The sorts of families you would be dealing with here would not know what an ombudsman is.

Mr A.J. SIMPSON: They are advised that it is an avenue of complaint.

Mr M.P. Whitely: By whom—the department?

Mr A.J. SIMPSON: Yes.

Mr M.P. Whitely: That is not good enough.

Mr P. PAPALIA: I am interested in the nature of this debate, having listened carefully to what has gone on. I share the concerns of the member for Bassendean and the member for Maylands with this specific amendment that has been proposed and the parliamentary secretary's dismissal of it. The issue appears to me to be a matter of power. What we are talking about are people who are in effect powerless and who are institutionalised in an environment where they are cut off and excluded from contact with the outside world in many respects. The parliamentary secretary knows already that for them to be institutionalised in this fashion means that they are vulnerable, they are in all likelihood not very articulate, and they are in all likelihood not fully capable of understanding a lot about their own situation. I therefore think that the amendment of the member for Maylands is done in the spirit of wanting to provide an additional safeguard so that we do not have a situation in which the department responsible is the sole authority, in a closed loop, for maintaining a safe environment for these individuals and ensuring that that environment is assessed by an independent assessor. By refusing to accept this amendment the parliamentary secretary indicates that the minister and the department are comfortable that having created a set of rules, which are articulated in a document, that will provide adequate safeguards for the individuals concerned here, who are completely powerless. I urge the government and the department to be a little less stubborn about accepting this amendment and a little more open-minded. This amendment is not moved in the spirit of confrontation or wanting to make it difficult for the minister or the government to pass this legislation. It is done in the spirit of hoping to provide an additional safeguard. Noting, as I understand it, the readiness to accept amendments from the other side of the chamber in the course of this debate, I ask that some further consideration be given to it, rather then just refusing to accept it and continuing to respond by saying that it is written down that the assessor has the ability to go into those places. All that is being asked here is that an additional person, on behalf of a child in these facilities, be given the ability to request that the person in charge of the facility arrange for a child to be visited by an assessor. It is an additional safeguard; it is not an onerous impost on the department. The department is merely being asked to consider that an additional safeguard be put in place. I cannot see the concern with it; I cannot see the reason for outright rejection of it. If it is just stubbornness, I would like to hear whether that is the case.

Mr M.P. WHITELY: If I might make a very short contribution. I have sat where the parliamentary secretary is when I was dealing with the Biosecurity and Agriculture Management Bill as a parliamentary secretary, in full knowledge that I did not have the capacity to make amendments to the bill. I suspect that we are faced with an impasse. We have come up with a good amendment. I think the parliamentary secretary knows in his heart that it is a good amendment. We have made the point and I can make the point again. I think that this is an essential safeguard, giving people, who are probably family members who have a relationship with the child, the capacity to instigate an independent investigation—not an internal investigation, because the Department for Child Protection has a vested interest in finding out that the Department for Child Protection has done a good job, like any department and like anybody. We cannot have Caesar judging Caesar. We have got a really good amendment here, and I think the parliamentary secretary probably knows that in his heart of hearts. I sat there dealing with the BAM bill. I knew that I did not have authority to accept an amendment. A parliamentary secretary has to take it back to the minister. The parliamentary secretary might wish to discuss with the Leader of the House how perhaps we could find a mechanism for delaying the consideration of this clause. I see the Leader of the House shaking his head. It will not be good enough to reject this amendment simply because there is an administrative problem here and rely on it being fixed by the upper house. We should not do business like that. It needs to be fixed.

Mr R.F. Johnson: It is not an administrative problem. There are already safeguards in place. The parliamentary secretary has already said that.

Mr M.P. WHITELY: To be honest, it is so frustrating, because this is beyond the capabilities of the Leader of the House to comprehend. This is actually detailed policy. The parliamentary secretary gets it. I know that he gets it because he is an intelligent man. He understands that there is a problem here, but he does not have the authority to make the decision on the floor of the house. I know it; I have been a parliamentary secretary. He does not have that authority and he cannot take direction from his advisers. He needs to go back to the minister and get direction. The sensible thing for us to do as a Parliament is to find some mechanism for just putting this clause aside and coming back to it so that we can argue the merits of the case. It would be reckless in the extreme just to vote this down now and not adopt that process.

Mr R.F. Johnson: This is going to the upper house where the minister will be in place.

Mr P. Papalia: We take our responsibilities seriously.

Mr M.P. WHITELY: We have a responsibility to pass good legislation from this house to the upper house. If the Leader of the House has not got the capacity to understand that, at least the Deputy Premier has.

Several members interjected.

The ACTING SPEAKER (Mrs L.M. Harvey): Members!

Mr M.P. WHITELY: The Deputy Premier, as an intelligent man, is concerned about the welfare of children, I am sure. We have an impasse here where the parliamentary secretary does not have the authority to accept a good amendment.

Mr R.F. Johnson: In your view.

Mr M.P. WHITELY: He knows it is a good amendment. Anybody with half a brain can see that it is a good amendment. If some kid is getting sexually abused in a departmental run facility and a relative—the kid's grandmother or whoever—is aware of this, that relative has no mechanism for getting an independent assessor to go and look at it. The grandmother has to rely on the good graces of the Department for Child Protection to assess that—it is not on! This is the situation that was pointed out by the member for Cannington in that 40 years from now people will be coming into this place and apologising to kids who were put into these facilities because the facilities did not have adequate safeguards. That will be because the parliamentary secretary, on this night, was not prepared to go back and get advice from the minister. This is an administrative thing. I could sit now and the parliamentary secretary could stand and say he accepts that it is a good amendment and that the leaders of the various parties will find a mechanism for dealing with this proposed amendment, and we can come back and deal with it on another day. If, after consideration by the minister, the answer is no, well the answer is no, but it would have been given proper consideration. We are being locked into a situation because of the apparent stubbornness of the Leader of the House, who is unwilling to find a way of getting past the impasse, which is a blight upon this Parliament.

Mr A.J. SIMPSON: I thank the opposition for its contributions. When children are admitted to a secure-care facility, they are very clearly made aware of their rights from the beginning and as they go through the process.

Ms J.M. Freeman interjected.

Mr A.J. SIMPSON: Yes.

Ms J.M. Freeman interjected.

The ACTING SPEAKER (Mrs L.M. Harvey): Member for Nollamara, the parliamentary secretary has the call.

Mr A.J. SIMPSON: The Department for Child Protection has a three-tiered complaint system, as I explained before, and the Ombudsman and the Commissioner for Children and Young People can also help in that process. I think it is addressed enough in this process.

Mr M.P. Whitely: No, it is not!

Ms J.M. Freeman: Does that mean that the new commissioner can go into those secure facilities?

Mr A.J. SIMPSON: Yes.

Mr M.P. Whitely: Yes, but how are the authorities going to know if the grandma can't go in?

Mr A.J. SIMPSON: The commissioner can go anywhere; anytime she wants to go in, she can just call the chief executive officer.

Mr P. PAPALIA: The opposition has suggested this amendment because the list of rights alone is inadequate, because the government is relying upon the department, as the member for Bassendean has suggested, being Caesar judging Caesar. The government will be relying upon the department that is the authority with all the power in this situation, in an environment involving an individual who is completely powerless, who may well be not well educated, who may well even be impaired, and, in all likelihood, I would suggest, who may well be receiving pharmaceutical treatment for a behavioural condition. I see the Minister for Health frowning, perhaps, in response to that observation. The Auditor General handed down a report on juvenile offenders in late 2008, and the Attorney General frequently refers to that report because it states that a very small number of individuals are responsible for a large amount of crime. As I recall it, there was a one-line reference in that report to the fact that almost every one of those children—I think it was every one of them—suffered from some degree of mental impairment or mental illness to the extent that they were being treated. I asked at the time whether the treatment referred to included attention deficit hyperactivity disorder medication, but the Auditor General was not able to tell me because his report did not go into that sort of detail.

Dr K.D. Hames interjected.

Mr P. PAPALIA: Yes; I recently asked the Attorney General; Minister for Corrective Services if he could tell me how many of the individuals in juvenile detention receive pharmaceutical treatment for attention deficit–type behavioural problems. The response was that the government cannot tell me because it would take too much time to go through the individual files to ascertain how many have been treated. I asked, basically, who was on dexamphetamines because we know that is the standard treatment for a lot of people. The government—the department—was incapable of providing that information, which I would have thought would be pretty simple to acquire and would be pretty basic information that the minister would like to have in his hands. The individuals who will be incarcerated in this particular facility are a very similar cohort.

Mr A.J. Simpson: "Incarcerated" is not the right word—secured care; protected.

Mr P. PAPALIA: The type of individuals we are talking about are a very similar cohort, and as the Minister for Health has suggested, in all likelihood many of them will have received some sort of pharmaceutical treatment for a behavioural problem. The concern is that if people such as that are medicated, beyond the fact that they are already probably not necessarily that capable of understanding what is happening to them anyway, their capacities will be diminished through that medication. By refusing to allow this additional safeguard we are preventing them from having that opportunity to be assisted by an external agent such as a grandparent or some other carer or loved one. I say to the parliamentary secretary that I think the member for Bassendean made a very good and worthwhile suggestion. The opposition understands that the parliamentary secretary is not able to make the decision to approve the amendment himself, but would it be possible for the parliamentary secretary to seek some sort of mechanism via the Leader of the House for coming back to this and considering it? We should not just absolve all responsibility for discussing and considering legislation in the lower house in the expectation that the upper house will fix it later. That is just not good enough.

Mr A.J. Simpson: But it is fixed in the legislation.

Mr P. PAPALIA: No; the parliamentary secretary is not responding to the amendment. The parliamentary secretary is just saying that he thinks those rules will adequately cover it; we are saying that this is an additional safeguard, but that is the end of the discussion!

Mr T.K. Waldron interjected.

Mr P. PAPALIA: Actually, not always; I saw him accept amendments, and other ministers have accepted amendments. But in this particular case the minister is not in this place, and I understand that the minister will not get to consider the amendment.

Mr M.P. WHITELY: I notice that the Leader of the House has left, so I presume that the Deputy Premier is in charge. We have a problem, and the parliamentary secretary is doing his best to sell the party line, but he knows and understands the truth of the problem. The problem is that the protection afforded to these children is the fact that an independent assessor comes in. The reality is that the independent assessor will visit the facility for a periodic review every three months or every six months. The facility will probably know when that is going to happen and it will probably be able to get its gear in order to make sure that the independent assessor is comfortable with it. But the reality is that the people who are most likely to switch on to the fact that there is something not right with the child are extended family members—grandparents, aunties, uncles, cousins or whoever.

Mr A.J. Simpson: So they would be able to go back and put in the complaint.

Mr M.P. WHITELY: The parliamentary secretary has highlighted the fact that they can make complaints to the department.

Mr A.J. Simpson: Yes.

Mr M.P. WHITELY: So they can ask Caesar to judge Caesar.

Mr A.J. Simpson: Yes.

Mr M.P. WHITELY: And then the department will come back and say —

Mr A.J. Simpson: I have great faith in the department.

Mr M.P. WHITELY: Well, I do not; that is an abrogation of responsibility.

Mr A.J. Simpson: Why don't you have faith in the department?

Mr M.P. WHITELY: Because I am a realist and because I know human nature. Human nature is that when Johnny is asked to evaluate Johnny's performance, Johnny says Johnny has done very well. The whole point of having these independent assessors is to have somebody who will come in with fresh eyes and who is completely independent of the department and can say, "This child's welfare is being protected." The best protection that a child in that facility has, because these children are away from the eyes of the community, is a relation who has a sense of how the kid is progressing. I have examples that I could reel off about similar incidences to this in my electorate on a weekly basis of grandmothers—great-grandmothers on occasions—who actually have a sense of whether the child in care is being looked after properly. We are saying that grandmother, or great-grandmother or aunty or uncle or whoever it is, should have the capacity to say, "I want an independent assessor to come in; I don't want Caesar judging Caesar."

Mr A.J. Simpson: They could write to the Commissioner for Children and Young People.

Mr M.P. WHITELY: The Leader of the House has returned to the chamber, but I was appealing to the Deputy Premier because I think the Deputy Premier can see the substance of what I am saying.

As a parliamentary secretary, I sat where the parliamentary secretary is sitting now, and I knew that I did not have the authority to make government policy on the run. I could not just accept an amendment—not that there were any, because we are better in opposition than the government was, but had there been, I could not have just accepted them. However, had the then opposition come up with a useful idea, I would have taken it to the minister. That example was only about biological security; this is about kids. We would have found a mechanism for delaying the debate and taking it back to the minister. The mechanism proposed by the parliamentary secretary is that it can be done in the upper house, but that is not good enough. This house has a responsibility to get it right. If the Leader of the House was concerned about the efficient functioning of the house, he would have agreed to it and we would have found a mechanism for this 20 minutes ago, but he is not. He is just obstinate, and he does not get it. This is the problem with having people without authority handling legislation.

Mr A.J. Simpson: It's already addressed in the bill.

Mr M.P. WHITELY: It is not addressed in the bill, and the parliamentary secretary knows it. The Deputy Premier is clever enough to understand that it is not addressed in the bill. Why does the parliamentary secretary not find a mechanism by which we can pass over this debate and come back to it? Otherwise we will have a division, we will lose, and bad legislation will go to the upper house.

The ACTING SPEAKER (Mrs L.M. Harvey): Members, there is a lot of background noise in the house and I am having difficulty hearing what members are saying. Members, take your conversations outside, please.

Mr P. PAPALIA: I would like to pursue this a little further. I say to the parliamentary secretary and to the Leader of the House that the member for Bassendean has made the point that —

Mr R.F. Johnson: You won't accept a decision by the parliamentary secretary.

Mr P. PAPALIA: As the member for Bassendean has indicated, having operated in a similar capacity in the previous government, the parliamentary secretary is not necessarily in a position to consider the proposal in a reasoned fashion and to make a judgement. Rather than allow the parliamentary secretary to seek guidance and consult with the minister responsible, the suggestion by the Leader of the House is that we absolve our responsibility to consider this legislation and disregard our responsibility to protect vulnerable children in Western Australia. The Leader of the House is suggesting that it is unimportant to consider the welfare of vulnerable children.

Mr R.F. Johnson: That is totally untrue, and you know it!

Mr P. PAPALIA: Is not untrue. If it were untrue, the Leader of the House would take the time —

Mr R.F. Johnson: You're just grandstanding now.

Mr P. PAPALIA: I am not grandstanding, I am pinning the blame where it belongs. The Leader of the House intends to pass inadequate legislation to be fixed in the upper house by members of the National Party, who will no doubt convene a committee with some reasonable individuals from the Greens (WA) and Labor Party as members. They will discuss this legislation in a reasoned fashion in much the same way as they have with previous inadequate legislation that members of the Legislative Assembly have passed through this place, to which no consideration of an appropriate nature was given. We will have a bumbling, disorganised, dysfunctional operation by this government in the upper house to try to desperately grasp back some sort of control over out-of-control legislation that has been passed by the Legislative Assembly without appropriate consideration. Instead of pursuing that path and absolving ourselves of responsibility, we have an opportunity to do this properly. I am not referring to the parliamentary secretary; I actually have great regard for him, and I am sure that, given the opportunity, he would actually do something about this. I feel that he is being railroaded. The government does not have regard for what should be the primary concern of all of us in this place, which is the welfare of some of the most vulnerable children in this state, who may one day end up being the type of people who are affected by fiascos like Redress WA and being ignored for what occurred decades in the past. If we do not undertake a little more consideration and appropriate deliberation over this legislation, these children may one day very possibly end up in the same situation. It is not adequate or sufficient for the parliamentary secretary to say that it is all right and that the department will observe, police and judge itself. That is not good enough. We have seen what happens when that is the case. The children of 30 and 40 years ago were held in environments in which they were vulnerable, and in which Caesar judged Caesar in respect of their treatment. In that situation, if there were rumours of wrongdoing, inadequate treatment or inadequate protection, the authority responsible for providing that inadequate protection would be asked about it, and of course it would say that it is okay and that it will assess itself. The Leader of the House is saying that he does not care about the most vulnerable children in Western Australia; he would rather steamroll this legislation through, get his own way, be tough, demonstrate how hard he is, and ignore the most vulnerable children in the state of Western Australia, because he would rather go home 20 minutes earlier tonight. He would not want to reconsider this legislation in a day or two, after the parliamentary secretary has had the opportunity to discuss this matter with the minister. That is what he is saying: he does not care, and he is cementing it in stone.

Mr A.J. SIMPSON: I thank members for their input to this debate. I restate that the government has looked at the amendment, and I am confident that we have the three tiers of complaints systems set up for protection. The state government will create a special secure unit, restricting the movement of children at risk of harming themselves and others. Under the previous government, the then Minister for Child Protection, Sue Ellery, announced that the Department for Child Protection would allocate $3.8 million for the modification of the operation of the Kath French Centre in Stoneville to become a secure-care facility for young people in need of high-level care and supervision. These were children who, before coming into care, were at risk of harming themselves and others. At no point did the former minister talk about levels of care, protection and scrutineering. I think it is covered in the bill. We have three tiers, the Ombudsman, and the Commissioner for Children and Young People. I have discussed it with the minister and I have full faith in the department that we have covered this process.

Ms L.L. BAKER: The parliamentary secretary said that the children's commissioner could come in at the request of a child or a person in the facility. Earlier this evening we talked about the children's commissioner not investigating individual complaints, but being called in for group issues. Can the parliamentary secretary confirm for me that it could be a child's carer or one child? The children's commissioner is not mentioned in the bill as a point of referral for that purpose, as far as I can tell. I do not remember seeing that anywhere in the bill. There is nothing in the bill to say that people can go to the children's commissioner if they have a problem. I understand that the parliamentary secretary is talking about other places, but I am talking about this bill. The reference is to a child in the facility requesting the person who is in charge of the facility to arrange for the child to be visited by the office of the children's commissioner, if not an assessor. It is necessary to spell this out somewhere, otherwise we are leaving it all to some other document. It needs to be in this bill.

Mr A.J. SIMPSON: I cannot speak for the Commissioner for Children and Young People and I do not know what the commissioner will do but she does have access to that process —

Ms L.L. Baker: She does not have to investigate. There is nothing in the legislation that says she has to investigate.

Mr A.J. SIMPSON: I presume that once the commissioner gets a complaint, she would investigate it.

Ms L.L. Baker: But she does not have to.

Mr A.J. SIMPSON: Yes, the member is right. People would go to the Ombudsman first.

Ms L.L. Baker: They do not have to either.

Mr A.J. SIMPSON: If a complaint is made to the Ombudsman, he has to react.

Ms J.M. Freeman: They have to assess whether they want to react.

Mr A.J. SIMPSON: An assessment has to come out of that process. The Ombudsman has to do an assessment notice on a complaint. There is a process set in place.

Mr M.P. WHITELY: I am on the children's commissioner committee. The children's commissioner's task is to investigate issues affecting children in a general sense. The children's commissioner does not have the capacity to investigate the circumstances of an individual child. It is not her function. Her function is to be an advocate for children in general and to consult with children. The only way she can bury down into individual circumstances is when they relate to a generalised problem. What the parliamentary secretary said before about the children's commissioner having a capacity to do this is nonsense. He is telling us that the protection on children is this independent assessor, yet family members cannot insist that there be a visit from this independent assessor.

I am not going to labour this point for much longer but it needs to be put on the record that obstinacy from the government—I understand that the parliamentary secretary has to toe the party line—notably the Leader of the House, can lead to a situation concerning a grandparent of a child in one of these facilities who has concerns about this child being abused, be it sexually, psychologically, through the indiscriminate use of pharmaceuticals for control or a range of circumstances. Let us take the most extreme case of a grandmother visiting her grandchild who thinks the child is withdrawn or engaging in sexualised behaviour and is concerned that something is going on in that hostel and who cannot get the assessor to come in and have a look. She will not have that capacity. The blame and the suffering that could arise from that situation rests fairly with the government and, in this case, with the Leader of the House because he is not prepared to find the mechanism to stall this debate. We could have moved on from this about 35 minutes ago if the Leader of the House had the intellect and the work ethic to do his job. This Parliament is a disaster because he is not smart enough to run this place. I do not want to sound elitist, but it really upsets me that stupid people such as the Leader of the House get to be in positions of power. I can see others rise up the ladder. I do not mind that.

Mr R.F. Johnson: I'm over here and you're over there.

Mr M.P. WHITELY: Yes, the Leader of the House is on the other side of the chamber, and it upsets me. I do not mind that the Deputy Premier has a role —

The ACTING SPEAKER (Mrs L.M. Harvey): Order! Member for Bassendean, you need to confine your discussion to the amendment that is before the house.

Mr M.P. WHITELY: I put it on the record that we are engaged in a situation in which 40 years from now, as the member for Cannington said —

Mr T.R. Buswell interjected.

Mr M.P. WHITELY: Does the member think it funny that kids in an institution could be suffering sexual abuse and grandparents have no effective mechanism for raising that issue? Does the man who put "Vasse" into Vaseline think that is funny? He is a disgrace and a joke.

Withdrawal of Remark

Dr J.M. WOOLLARD: I think the member for Bassendean has to withdraw his comment about "stupid people such as the Leader of the House" because that is a personal attack.

Mr M.P. Whitely: If I withdraw, I will be misleading the house. I will finish up now.

The ACTING SPEAKER (Mrs L.M. Harvey): Member for Bassendean, I have not made a ruling on the point of order. I thank you not to tell me when to be quiet.

Mr M.P. Whitely: I didn't tell you to be quiet.

The ACTING SPEAKER: There is no point of order. It is not an unparliamentary term, sadly, to call people in this house stupid.

Debate Resumed

Mr M.P. WHITELY: I am passionate about this because we are missing an opportunity. In fact, we are not missing an opportunity; we are missing an obligation to protect the most vulnerable children. Grandparents—relatives—will not have that opportunity to get that independent assessor to look at the circumstances of their children. The fundamental flaw in this approach is when the parliamentary secretary asked earlier, "Don't you trust the department?" It is not our job to trust the department; it is our job to put in systems that are foolproof. If we do not do that, we are failing in our obligations and we are failing the children.

With those comments, I will sit down. I want to register my extreme disappointment. Frankly, I think it is time, Deputy Premier, that people at the top of the government thought about getting somebody to run the affairs of this house so that they can make it work more efficiently and so that we do not pass up second-rate, potentially dangerous legislation to the other house.

Mr T.G. STEPHENS: Colleagues will know that I have spent most of my parliamentary career so far in the other place. I have the experience of watching this type of debate in the Legislative Council, where legislation would arrive from the Legislative Assembly precisely in the form in which it is about to pass this house. Good points were made, governments of both persuasions used their numbers to ignore those good points and the only circumstance in which good legislation could emerge from the Parliament was when the numbers in the other place were finally balanced and the arguments could be evaluated and then deliberated upon on the basis of the merits of those arguments.

What is happening right now is one of those disgraces in the experience of the lower house of this Parliament. I am a student of what goes on around the Parliament and the way this process operates. I have watched how officers of departments firm up their advice to ministers. That advice comes by way of verbal advice that then gets communicated in the form of a written note from the minister that lands on the table of the parliamentary secretary. Here comes another note, another set of instructions, no doubt pressing the point for some officer of government.

Mr T.R. Buswell: That's our job.

Mr T.G. STEPHENS: Yes, and it is our job to evaluate that argument. This house has heard compelling argument, in my view.

Mr R.F. Johnson: Not in our view.

Mr T.G. STEPHENS: The Leader of the House does not have an informed view. I would like to see the minister's note.

Mr R.F. Johnson: When you were a minister, you were one of the most disgraceful ministers I have ever known. You abused the government for your own personal political purposes and all sorts of things. That's why you got the sack.

Mr T.G. STEPHENS: That is absolute nonsense. The Leader of the House talks absolute rubbish.

Withdrawal of Remark

Mr M. McGOWAN: I heard the Leader of the House make an accusation against a member —

Mr T.G. Stephens: A false accusation.

Mr M. McGOWAN: He made a false accusation against a member of this house, which is unparliamentary, and I suspect it has been recorded in *Hansard*. I ask that he withdraw that because he, in effect, accused someone of unlawful behaviour.

The ACTING SPEAKER (Mrs L.M. Harvey): It is borderline. However, I rule that there is no point of order in this instance. Member for Pilbara, I ask you to confine your arguments to the words to be inserted into the bill.

Debate Resumed

Mr T.G. STEPHENS: The arguments that have been put by the parliamentary team on this side of the house have had a coherence and a weight that would be the basis upon which a rational government would accept the argument. Instead, officers of government are pushing their cause, successfully it appears on this occasion, to thwart that. I flag for those members of the other house who will read this debate —

Several members interjected.

Mr T.G. STEPHENS: Which of these guys opposite have been in the other house, because I can tell them exactly what does happen?

Mr R.F. Johnson: We wish you were still there.

Mr T.G. STEPHENS: You are a stupid man!

Mr R.F. Johnson: Which one?

Mr T.G. STEPHENS: You! Johnson, you are a pathetic creep!

Withdrawal of Remark

The SPEAKER: Take a seat, member. The first thing I will ask you to do is withdraw that last comment. I will formally call you to order for the second time. Members, I am interested in hearing about this particular bill in front of us.

Mr T.G. STEPHENS: I —

The SPEAKER: I have not given you an opportunity.

Mr T.G. STEPHENS: I am going to withdraw.

The SPEAKER: I will give you an opportunity in a moment. I am not interested in hearing extraneous matters. I want to hear matters related to this bill. Now I ask you to withdraw, member.

Mr T.G. STEPHENS: I am going to withdraw, Mr Speaker, and I want to ask you at the same time to do what should be done to the Leader of the House—that is, to shut him up when he is making such stupid interjections in this debate.

The SPEAKER: Take a seat, member. My instruction to all members in this place is to deal with this bill. I do not want to hear any extraneous comment. I am interested in this bill and nothing else. I give you the opportunity to talk to the bill, member.

Debate Resumed

Mr T.G. STEPHENS: In talking to this bill, I flag for those members of the upper house who will read this debate that they should observe what has happened on this occasion, take this as their invitation to look at the amendment that has been moved, see the stupidity that has gone on in this place in handling this amendment and consider this amendment with more sense than has been displayed in this debate. The parliamentary secretary has more sense than the ministers who sit behind him. The parliamentary secretary has understood the argument, but the parliamentary secretary has been hamstrung by the stupidity of the ministers giving the riding instructions on the amendment.

Mr D.A. TEMPLEMAN: I will be very brief. I appeal to some members in this place, particularly those on the other side of the house, who during their inaugural speeches talked about the importance of integrity and the importance of listening to arguments and making up their minds in a way that is not fettered by simple party politics. The member for Southern River was very passionate in this place in his inaugural speech and in other speeches about children and young people and protecting the rights of children and young people. The member for Wanneroo is very vocal, when he thinks it counts, about the importance of protecting children and young people. When are we going to hear from those two members? I believe that those members probably have no idea what this amendment is about. They probably have not even been listening to the debate, yet in a moment they will follow the lead of the Leader of the House to vote down an amendment.

Mr R.F. Johnson: Why don't you talk to the bill?

Mr D.A. TEMPLEMAN: I am talking about the amendment, because there is going to be a vote shortly. The ridicule from members opposite about the importance of this amendment is abhorrent. The member for Bassendean put a very strong and passionate argument. Yes, he got emotional and angry, but I can see why. I guarantee that members opposite, particularly members who are serving for the first time in this place, have no idea what this amendment is about. In fact, I invite the member for Southern River or the member for Wanneroo to stand and support this amendment, but I bet that they will not. Why will they not support the amendment? They will not support it because of the Leader of the House. I have a great deal of respect for the parliamentary secretary. I have much more respect for the parliamentary secretary than I do for the member for Vasse. New members opposite will very shortly vote down an amendment and they will have no idea what it means. Does the member for Southern River know what it means? Members have not even been in the chamber to ask questions. He has said in this place how important it is that we have integrity in politics and in Parliament and how important it is that we do the right thing for children and young people.

The SPEAKER: Take a seat.

Mr D.A. TEMPLEMAN: He has no idea what is going to happen —

The SPEAKER: Member for Mandurah, take a seat.

Mr D.A. TEMPLEMAN: — and he is going to stand in a moment —

The SPEAKER: Member for Mandurah, take a seat! Thank you very much. I do not like raising my voice. Member for Mandurah, I call you back to the bill to address what is in front of us at the moment.

Mr D.A. TEMPLEMAN: I will finish on this point. Very shortly we will divide on a particular amendment that the opposition believes is an important component of this legislation. The argument that has been put by the other side is, "If we make a mistake, we can always fix it in the other place." That is what members opposite are basically saying: "If we make a mistake, we can always fix it in the other place because we've got huge numbers up there and they won't debate it very much. They'll be told what to do by the minister in that place and they will support this motion." This is a bad process that we have been asked to simply lay down and accept. We will not accept it. I appeal to those new members—the member for Southern River, the member for Wanneroo and member for Carine—who told us in their maiden speeches how important it is that we have integrity in this place and that we support and protect children and young people. They will follow the Leader of the House like sheep because he is overriding the sensible understanding of the parliamentary secretary.

Mr R.F. Johnson: It has nothing to do with me.

Mr D.A. TEMPLEMAN: It is a wonder that the parliamentary secretary listens to the Leader of the House at all.

Mr R.F. Johnson: The parliamentary secretary has already told you that the minister will not accept your amendment.

Mr D.A. TEMPLEMAN: It is a wonder that the parliamentary secretary listens to the Leader of the House at all; very few people would. I will sit down, members will vote down this amendment and use the line that if there are a few mistakes in this legislation, they will be fixed in the other place. That is a pathetic excuse when we are dealing with very important legislation.

Mr M.P. WHITELY: It is important that those members who have just come into the chamber and the member for Southern River, who I think is an honourable person, understand what we are about to vote on. The member for Kalgoorlie has also just entered the chamber. This legislation will give the state the capacity to put children in secure facilities. The protection that shows that the department is doing a good job of looking after those children is the independent assessor who is not responsible to the director general of the department or to anybody within the department who oversees the child's welfare. That is the effective protection in this legislation. This amendment effectively provides that any person may request on behalf of a child in the facility that the person who is in charge of the facility arrange for the child to be visited by an assessor. What does that mean in reality? In reality, normally grandparents, great-grandparents, uncles, aunties or other concerned people who know the child will visit the child in the facility. They may have concerns that the child is unusually withdrawn. They may have concerns about sexual abuse, the level of treatment or bullying within the facility. They may have concerns based on their experience and knowledge of the child. This amendment gives that person who has that relationship with the child the capacity to say, "I want an independent assessor who is not beholden or responsible to the department to come in and look at the welfare of the child." The parliamentary secretary has said that all sorts of mechanisms can be in place, all of which are controlled by the department. The parliamentary secretary says that it is all right for Caesar to judge Caesar. We are not asking for assessors to be put on; we are asking for concerned individuals to have the capacity to say that they want an independent assessor. Usually those people will be family members. I come across these sorts of circumstances in my electorate on a weekly basis when kids are in care. A great-grandmother came into my office the other day. She was very concerned about a child in care whose needs were not being met. I have heard those concerns expressed frequently in my electorate. This amendment will give those people a mechanism by which they can go to an independent assessor. I hope the member for Southern River is listening. He obviously is not. Member for Southern River! Each and every member opposite has a responsibility to consider this amendment.

This debate started about 40 minutes ago. We are not asking now for the government to accept the amendment. We want to find a mechanism whereby the government can go away and have the Minister for Community Services reconsider the merits of this amendment. All we have managed to hear the government say is, "We'll wait till it passes to the other place." Therefore, we are going to be forced to vote on this amendment now. Every member who votes against this amendment should understand that if in 40 years the Parliament of Western Australia gives an apology to children in these facilities who were sexually or physically abused or abused

because of inappropriate care, it is his or her responsibility. Those members failed to do their job; they failed to look after the children of Western Australia.

We are not asking members opposite to accept the amendment. Sometimes, if there is an innovative way of thinking in this place, we can say, "Hold on. Let's just pass over this for a period. Let's go on and deal with the rest of the legislation." We can find a mechanism to delay the debate. But, no, the Leader of the House will not allow that to happen, so members opposite will be forced to vote on this amendment. They will be forced to vote on a position that denies grandparents, aunties and uncles the capacity to request that an independent assessor go in and review the circumstances of a child. Effectively, the government is going to gut these children of the protection that should be in this legislation. It will be a charade. Frankly, it is the responsibility of members opposite.

Dr K.D. HAMES: I have listened very carefully to the contributions to the debate by members on the other side and what has been going on. They have put forward some very strong, impassioned arguments about what they obviously believe is correct. However, there is a mechanism in this house. The process is that members can make changes in this place, and they should not need to wait for what is decided in the other house. However, from many years of experience, I can tell members that that is in fact the normal process. When the member, as a parliamentary secretary, was on this side, he would not have made amendments off his own bat, or even delayed the passage of legislation. However, on occasions, even as a minister, I would have said that I would re-examine a proposal that was put forward to review the merits of what was said. Having listened to the argument, I have to say that there is some strength in the argument that has been put forward. I have just had a brief discussion with the parliamentary secretary, who is very happy to go away, discuss this further and put to the minister the argument that has been presented by the opposition, because I think there is the potential for it to have some merit. However, at the end of the day, that will be the decision of the minister. It will also depend on the numbers in the other house. The opposition does not have the numbers in this place, so it would lose a division. The opposition does not have the numbers in the other place, so it would lose a division. Therefore, where the actual amendment comes from is irrelevant. If the amendment is passed, the opposition will have had a win; if it is not passed, that is life and that is what happens in Parliament. However, the opposition has had an excellent opportunity to put forward a strong argument, and I believe the parliamentary secretary is more than willing to discuss with the minister what the opposition has put forward. The opposition says that we should not have to wait until the bill gets to the other place, but that has always been the way we have operated. In the other place, the minister who is responsible can look at the opposition's arguments, listen to the arguments from the parliamentary secretary, and make a decision about whether that amendment should be accepted in the other place. At the end of the day, in this house we will make a decision on the merits of the arguments put forward. However, it must be remembered that it is up to the minister to accept amendments; it never has been and never will be up to the parliamentary secretary to make decisions of that sort.

Mr T.G. STEPHENS: Firstly, I thank the Deputy Premier for engaging in the debate in the manner in which he has and for relaying the goodwill that is not only at the table, but also with the Deputy Premier on behalf of the government in this debate. A mechanism is available in these debates for doing exactly what the minister has suggested, and that is for the house to accept a motion that consideration of this clause be postponed. If I were to move that motion right now, it would provide an opportunity not only for the rest of the debate to take place, but also for a vote on this clause to be delayed until such time as the government has had the opportunity to give this matter consideration. I am disappointed to see a shaking of the head by some members opposite. However, that motion would give other members of the government an opportunity to be involved in this process in a way that could throw some reason into the discussion of this clause. I can tell members that when I was a member of the other place, we regularly experienced the postponement of a clause while there was discussion and consideration amongst our ranks, with ministers and across parties during which good, coherent arguments came up. I say to the house at this point that it is an appropriate time to get on with the rest of the debate but to postpone consideration of this clause. Therefore, I move —

> That further consideration of clause 17 be postponed.

Mr D.A. TEMPLEMAN: I also acknowledge the olive branch that was extended by the Deputy Premier. The motion that has been moved by the member for Pilbara reflects the intent. Quite simply, by postponing this clause, we would be allowing the parliamentary secretary to liaise with the minister overnight. We do not sit until 12 noon tomorrow. This matter could be listed as the first item of government business on the agenda for tomorrow. I am sure that between now and midday tomorrow would be ample time for the parliamentary secretary to liaise with the Minister for Community Services, who I am sure, as we speak, has people analysing the amendment and the impact of the amendment. Therefore, I again ask members on the other side to support

the motion that has been moved by the member for Pilbara. We would simply be potentially postponing debate on this clause until tomorrow. We will be back at 12 noon when the house resumes. The government has control of the business that is listed. It could simply list this bill on the notice paper, and this bill in particular, because it would be the only clause that we would need to debate. We could have a report back from the parliamentary secretary and then have a debate.

There has just been an indication by the Leader of the House that he is going to gag this debate now.

Mr R.F. Johnson: Can I tell the member, by way of interjection, that the minister has been watching this on the screen in her office and I reiterate that she is not prepared to accept the amendment moved by the member for Maylands. All members opposite are doing is delaying the inevitable. Let us put it to the vote. You have had your say.

Mr D.A. TEMPLEMAN: I am disappointed that the Leader of the House has reported that, because I am not convinced that the minister has necessarily been watching on her screen in great detail. Liberal Party members have a history of watching things on their screens, including, of course, the famous *Temptation Island* expose some years ago, when Liberal Party members were absent from the upper house. I can remember when they were all absent from the other place and important legislation—the industrial relations legislation—was allowed to pass unopposed by the then Liberal opposition because they were all watching *Temptation Island*, that salacious —

The SPEAKER: Thank you, member for Mandurah. I ask the member for Mandurah to speak either to the motion or the content of the bill. That is the opportunity the member has.

Mr D.A. TEMPLEMAN: I was not aware that the word "salacious" would offend you, Mr Speaker, but I will get back to the point.

This motion is an opportunity to give members the right and the ability to consider an amendment, which I believe members on the other side have not read, do not understand and have not digested, but they have been told by the dictator over there, the Leader of the House, "Fall in line, I want to get home by 11." Of course, I will be home much later than that, as members know. That is what will happen.

Mrs L.M. Harvey: It is very arrogant to assume that nobody over here understands.

Mr D.A. TEMPLEMAN: Most members opposite have not been in this place for the debate, quite frankly! I am not sure what is on at 10 o'clock at night on free-to-air; it is probably a rerun of *Survivor* on Channel 72. Most members opposite who are in this place now were not here during the body of this debate —

The SPEAKER: Thank you, member.

Mr J.J.M. BOWLER: I rise to support the amendment moved by the member for Pilbara. It will give the Minister for Child Protection the opportunity to reconsider overnight. Like other members who sat here and listened to the member for Bassendean and other speakers on this, I cannot find fault with what has been put forward. I have been on both sides of the house, and each side says, when they are in opposition, that the government of the time did not listen to any of their amendments. By saying that, they are saying that even though that was wrong, they are going to be wrong too because they are going to do the same thing! Postponing this debate overnight will give the Minister for Child Protection and some of the senior members on the front bench time to reconsider this. I do not see any fault with the amendment. I cannot see why the government would oppose it, particularly after hearing one of the best speeches I have heard from the Deputy Premier, who cut through the abusive nature of the debate on both sides of this house. I thought the way that the Deputy Premier held out the olive branch was excellent. If the other ministers in the cabinet show that same sense of consideration, maybe we will get a better outcome tomorrow.

Dr J.M. WOOLLARD: I have listened to the debate. Whilst I appreciate the concerns raised by the member for Maylands, I think that the wording of this clause is too broad. The member's amendment refers to "A child in the facility, or any person on behalf of a child in the facility, that person may…", which leaves it open for someone to ask the assessor to go in on the basis of hearsay. Although the comments members opposite have made about wanting to give further protection to children are valid, I cannot support the current wording of this clause.

The SPEAKER: Member for Alfred Cove, we are dealing with a motion moved by the member for Pilbara that clause 17, as amended, be postponed. We are not dealing with the substance of clause 17, as amended; we are dealing with the proposal to postpone that amended clause.

Mr M.P. Whitely: By way of interjection, member for Alfred Cove, I hear what you are saying. You are saying that you think the wording is not quite appropriate and does not hit the mark, but you have obviously twigged that we have raised an issue.

The SPEAKER: Member for Bassendean, I will apply the same ruling to you. We are simply dealing with a motion moved by the member for Pilbara that clause 17, as amended, be postponed. That is the question before the house and that is the question I will put to members unless they have further comments to make about the motion moved by the member for Pilbara. Member for Alfred Cove.

Dr J.M. WOOLLARD: I will not support the motion.

Mr M.P. WHITELY: I was trying to say this by interjection, but I was indicating to the member for Alfred Cove that I hear what she is saying. She is saying that the wording of the amendment is a little too broad. I think the member understands the fundamental point, which is that interested family members, grandparents, aunties and uncles —

The SPEAKER: Let me make it patently clear, member for Bassendean, that we are dealing with the motion moved by the member for Pilbara to postpone amended clause 17. I want you to either speak in favour of that motion or against it. That is what I want from all members at this point with respect to the question before the house. I do not want members to introduce any other material.

Mr M.P. WHITELY: That is exactly what I was speaking to, Mr Speaker, because I am arguing that the member for Alfred Cove should support the postponement of this clause while we, as a Parliament, including the member for Alfred Cove, can come up with more suitable words. The member does not like the current wording but she can see some merit in the argument that the grandparents and relatives of children who are in care should have the ability to instigate visits by the assessor. The member cannot support the current proposal because it is too broad. Let us take the time to get the wording right and narrow it down so that it applies only to relevant people such as family members or people who have a caring role or a pre-existing relationship with the child. The member has made a very powerful argument for the postponement of the consideration of this clause. She has said that even if the government were to agree to it in principle, we should still postpone it because we could use better words. The member for Alfred Cove has built the case for supporting the postponement of the consideration of this clause until tomorrow. I believe, by the member's comments, that she could accept the need for family members and carers to have the ability to instigate a visit by the assessor. The member's concern was that she did not want third parties that might have no relationship with the child to instigate those types of undertakings just because of hearsay. The member wants those sorts of undertakings to be instigated by people who have a relationship with, and a role in, the care of the child. If we were to postpone it —

Mr R.F. Johnson: If you sit down, I will say something that you will probably like to hear.

Mr M.P. WHITELY: I will do that.

Mr R.F. JOHNSON: There has been a lot of debate on this bill so far. As the Deputy Premier has said, we understand what members opposite are saying, it is just that the minister does not agree with it. If the member for Pilbara wishes to withdraw his motion, I will adjourn this debate until tomorrow so we can come back and continue the debate in, I hope, a timely manner. However, if the parliamentary secretary states quite clearly that the minister is not prepared to accept the amendment, I hope the opposition will accept that and that we can move on with the debate. I am saying that now. If the member for Pilbara wants to withdraw it—otherwise, we will have votes and go on with this for a long time—I will move that the debate be adjourned to a later stage of this day's sitting, which will actually be tomorrow.

The SPEAKER: Member for Pilbara, I advise you that you need to seek leave from the house.

Mr T.G. STEPHENS: In prelude to seeking leave, I indicate to the house that I hope that the minister and the government will find the opportunity to look favourably on this amendment. I also think that even if the minister herself is not persuaded by the argument, the government will understand that there will still be an amendment before this Parliament in the other place, and, hopefully, that amendment will finally win through. In order to facilitate that process, I am more than happy to seek leave of the house to withdraw the motion that I have before the house.

By leave, motion (that further consideration of clause 17 be postponed) withdrawn.

Debate adjourned until a later stage of the sitting, on motion by **Mr R.F. Johnson (Leader of the House)**.