CHILDREN AND COMMUNITY DEVELOPMENT BILL 2003

Consideration in Detail

Resumed from 3 March.

Clause 3: Terms used in this Act -

Debate was interrupted after the clause had been partly considered.

Ms S.E. WALKER: The members for Kingsley, Alfred Cove and Churchlands and I yesterday discussed harm as it relates to clause 3. We were concerned that the clause, when related to clause 28(2)(c), outlined that a sexually abused child would not need care and protection unless the significant harm as defined in clause 3 was physical, emotional or psychological. I have spoken to the minister this morning. She has had discussions with her advisers. I am pleased that they have looked at that issue. I would appreciate speaking to my colleagues on that aspect. The House has not yet reached clause 28(2)(c), and I will say more about the definition of "harm". I am not sure whether the amendment will reach as far as the Opposition hoped or will have the desired effect. I thank the minister for her reconsideration.

Child abuse was categorised by Hon Roger McClay, the Commissioner for Children in New Zealand, in his presentation to the Children's Summit at the University of Notre Dame organised by Hon Barbara Scott, MLC. The commissioner asked: what is child abuse? I mentioned his presentation during my contribution to the second reading debate. His comments are significant when considering clause 3 and the types of abuse outlined. Apart from neglect, parents abandoning their children and children losing their parents when they die, other forms of abuse are categorised; namely, physical, sexual, psychologically and emotional. I have not thought the matter through entirely yet. It is true that sexual abuse probably stands alone from physical and psychological abuse. Although sexual abuse has degrees and categories, it is unlike physical abuse. The member for Churchlands stated yesterday that a child could be smacked, and a different force could be used to break a child's arm. The minister stated that a child can be caused physical harm by a person stubbing out cigarette butts on his or her arm. There are degrees of emotional and psychological harm. Sexual abuse is a criminal offence. When someone is sexually abused, there is no range, or, rather, its ranges are less clear than those with other types of harm.

The New Zealand Commission for Children said -

> There are different forms of abuse. These include sexual, physical and emotional abuse and neglect. My sadness most often comes when I hear of children who are or have suffered all three forms at once.

In my experience - the department would know this - a sexually abused child suffers all the harms outlined in clause 3.

Dr J.M. WOOLLARD: I would like to hear further from the member for Nedlands.

Ms S.E. WALKER: The commissioner continued in his presentation -

> Physical abuse is a non-accidental injury or pattern of injuries to a child, caused by parent, caregiver or any other person. It includes injuries which are the result of excessive discipline, severe beatings or shakings, bruising, lacerations or welts, burns, fractures or dislocations, attempted strangulation and female genital mutilation. In New Zealand every five or six weeks a child dies from such abuse and neglect.
>
> It is a very serious problem.

I refer now to the Liberal Party's view about raising the threshold of "significant harm" and the definition of "harm" in clause 3. I ask the minister: how is harm categorised in relation to physical abuse? Is there a scale of injuries or is a judgment made? Do departmental officers exercise their judgment in relation to harm? Is it commonsense? Is a discretion applied? The New Zealand commissioner said the following about emotional abuse -

> Emotional abuse is behaviour by a parent or caregiver which destroys a child's confidence, resulting in significant emotional disturbance or trauma.
>
> This can include a range of behaviours such as excessive criticism, withholding affection, exposure to domestic violence, intimidation or threatening behaviour.

I have received a few submissions, including one from a psychiatrist who works in this area. She asked why domestic violence is not specifically mentioned in the Bill. Is that included under emotional or psychological abuse? The New Zealand commissioner said the following about emotional abuse -

> In the early years, it shapes the very future life of the person exposed to it. It impacts on a two year old's growing brain even more than such displays as love, affection, respect, nurturing and dignity recognition.

I am a parent with a son aged 30 years and a daughter who is 25. When we are young and first have children, it is something new. We are not trained to be parents. I am disappointed that the parenting information centres set up by the coalition were shut down. I would not mind knowing why that was so. If people want to know about parenting, I suppose they can buy a parenting book - I do not know. However, it seems to me that it is a great idea for people to be able to just walk into a shop in a shopping centre, browse around, get a leaflet and know that any criticism of a child can

have such profound effects on that child. We are all brought up in our own way, and we may all carry on traits that perhaps are not conducive to a child's wellbeing, as the Bill states. That is my third question of the minister.

Interestingly, the commissioner does not include psychological abuse. I would like the minister to tell me what the department understands psychological abuse to be. The commissioner defines neglect. This also refers back to clause 3 and the definition of "harm". I wonder whether the minister would also tell me whether there is a significant harm threshold when a child has been neglected. Clause 28(1) states -

> **"neglect"** includes failure by a child's parents to provide, arrange, or allow the provision of -
>
> (a) adequate care for the child; or
>
> (b) effective medical, therapeutic or remedial treatment for the child.

However, it does not have the application of the significant harm test. I am wondering why that is the case.

Ms S.M. McHALE: I will make a couple of comments in response to the member for Nedlands. I will go back to basic principles about the Bill and remind members that the Department for Community Development will intervene in a family or in a child's life if it has a concern about a child's wellbeing. That is the first principle I want people to understand. That is found in clauses 31 and 32. We have a very low threshold for engaging with a child or family, and that is because we want to ensure that the department focuses at the level that the member for Kingsley mentioned in her second reading contribution; that is, around early intervention, support for families and so on. The department at an early stage, and with a very low threshold, can have a formal relationship with a child or a family. A decision will then be made about what action will be taken as a result of that, on assessment. Largely, we are talking about "in need of protection". This is a threshold for the court to make a finding that the child is in need of protection, and it will or will not make an order to place that child into alternative care. Of course, it is recognised by everybody, I hope, that that is a very serious action and should not be taken lightly, as it is essentially about removing a child from his or her family, neighbourhood and school - from everything that is familiar to that child - and it ultimately removes the parents' rights over that child. I just wanted to remind members of the context in which the department works in reality. The threshold for intervention is quite low. However, we also need a threshold for making a decision about whether we refer a child to the courts for statutory intervention. That is where the debate about levels of harm, the consequences of ill treatment and the effect of abuse on the child comes in.

To answer the member for Nedlands' question, I indicate that judgment calls must be made. This area of work is not amenable to a set of criteria that state that if these things apply, this will happen. If it were, it would probably make everybody's lives a lot easier. However, it is dealing with human frailty, vulnerability and situations that exist in our community that most people find absolutely abhorrent. The workers in the department must make a professional judgment about whether they will take the child into care or whether they will provide alternative services.

I will deal with harm and significant harm. Perhaps for the benefit of other members, I indicate that I had a very brief conversation with the member for Nedlands this morning about the concerns she expressed yesterday. Having had conversations with the practitioners in the field - people who actually work at the coalface every day - I put it on the record that, in their view, harm from sexual abuse is considered to be significant harm. There are no degrees of harm when it comes to sexual abuse. They have been operating under practice guidelines that were introduced by the Liberal Government back in 1996, and significant harm has been enshrined in those practices. However, in practice, a harm from sexual abuse is deemed -

Ms S.E. Walker interjected.

Ms S.M. McHALE: The member for Kingsley introduced the new practice guidelines in 1996. The Liberal Government introduced the definition and the threshold of "significant harm". That has been enshrined in practice for eight years, and to a large extent it has not got in the way of good practice. Let us be clear about the historical use of "significant harm". In practice, it has existed since the Liberal Government introduced it. That is what we are debating. This Government took that concept from the Liberal Government's practice and included it in this legislation. Yes, there are degrees of harm, and we need to have a debate about that in relation to physical and emotional abuse and neglect.

Ms S.E. WALKER: I thank the minister for that. I believe that the minister's advisers and this Bill have got it wrong, and I will tell members why. The minister's rationale for introducing significant harm is that the department intervenes. In reality, there is a low threshold for intervening in relation to a child, but the threshold to get the case to the court when the child is in need of care and protection is significant harm. In my view, it is a bit like the discretion. Each officer in the department has a discretion. The minister is trying to put that discretion into this Bill. This Parliament has sent a message to the community about what it thinks should happen if an adult commits sexual abuse against a child or another person - but let us stick with a child. The judge, in carrying out his role in the courtroom, exercises his discretion against that law. Here in Parliament I am saying that the message we should be sending to the community and to parents - we will stick with parents for the moment - is the same as the message currently in the Child Welfare Act. None of those forms of abuse will be tolerated. However, when the officers intervene, they must use their discretion in relation to the law. Otherwise, this Bill will send a clear message to parents that they can physically,

emotionally and psychologically abuse their child - the minister said she will correct sexual abuse, so let us leave that for the moment - as long as it is not significant. What sort of message is that? The fact is that people are not allowed to emotionally, physically and psychologically abuse children, and it is up to the officers, when they are carrying out their duties, to use their discretion as against the law that Parliament has set down. That is why in this instance the minister and her advisers or practitioners have not got it right. The thing that struck me when I first read this Bill was that it looked like a practice manual. What do members of the Parliament say about the abuse of children? It seems that the wording in the Child Welfare Act is old-fashioned, but let us be honest. If we look at it, anyone can work out what it means. The way in which this provision is set out is a bit like saying to a judge that people cannot sexually abuse children. However, they should not be imprisoned unless the children are significantly sexually abused. It is the same thing. That is why this is wrong and why the term "significant harm" should not be in this Bill at all, just like it is not within the Child Welfare Act. The department or the minister's advisers are trying to bring in a practice manual approach to this legislation. It is the same as trying to bring in a judge's discretion to the Criminal Code. That has been done in some instances; for example, the wilful murder provisions in which the judge's discretion has been taken away.

Ms M.M. Quirk: Do you think it's a bad thing that judges have discretion?

Ms S.E. WALKER: No. I have always said that judges should have discretion in individual cases, as should officers have discretion in individual cases. However, we cannot put the discretion in the Bill because it sends a message to the community that anyone can physically, emotionally or psychologically abuse their kids as long as it is not significant.

Ms S.M. McHALE: Let us do a reality check. The Child Welfare Act is outmoded. It does not reflect the current environment in which the department or families are operating, nor does it make clear what the grounds for "in need of protection" are in the twenty-first century. Nowhere in the definition of "child in need of care and protection" does it talk about sexual, physical or emotional abuse. Yes, it talks about the moral and physical welfare of the child, but what does that mean? We are being absolutely clear in this Bill about the grounds for abuse. This Bill gets it right. The department has consulted and put an enormous effort into getting this Bill right. The member for Nedlands told me that I had dusted off the old Act, and she has taken credit for the Bill. I did not object to that.

Ms S.E. Walker: I said I don't agree with it.

Ms S.M. McHALE: The member for Nedlands should be very careful with what she says or I will read the transcript to her. The member took credit for this Bill. She said that I had dusted off the old Act. Therefore, she should be very happy that I have adopted her Bill. If she wants to take credit for it, fine. Let us do a reality check. The member's party, in government, did not bring this Bill into Parliament.

Ms S.E. Walker: No, because the party did not approve it.

Ms S.M. McHALE: Absolutely, because it was too difficult for the member's party to deal with it.

Ms S.E. Walker interjected.

The ACTING SPEAKER (Mr A.J. Dean): Order, member for Nedlands! The object of consideration in detail is to have quick exchanges between members speaking. Five or six minutes is not too long for a member to wait until his or her next turn. I suggest that the member for Nedlands wait for her next turn.

Ms S.M. McHALE: This area is fraught with difficulties. It is like the adoption legislation. The member's party could not get its head around the adoption legislation in the same way that her party's Cabinet could not get its head around this Bill. The member can take credit for it if she wishes, as she has in her opening statement, but she should not then contradict herself and say that she has problems with it. She cannot have it both ways. The reality is that as a minister I have worked assiduously, almost clause by clause, with this Bill, trying to work out whether this was the right approach. The member should not tell me that the department has got it wrong because we have, for the first time, modern legislation that this Parliament can debate. I said in my response to the second reading speech that I will accept sensible amendments and will work with members on some of the tweaking around the elements of concern. I want this Bill to be seen as the plank and the way forward for the next 50 years, as the last Bill was. The member should not tell me that the Child Welfare Act is appropriate legislation when it talks about kids running off to the circus. I do not even think moral welfare is sufficient language when talking about sexual abuse. Let us call it sexual abuse. Horrific as it is - it is anathema to all of us here - it happens, and we need to deal with it. We need legislation that reflects what is happening in the lives of our families. Most members could probably not even contemplate what happens in some families, which is what we have to deal with. The member should not tell me that running off to a circus is grounds for ripping a child out of the family in the twenty-first century. Sexual abuse, and the harm associated with it, is significant, and that is the understanding of this department.

When dealing with sexual abuse a range of options are available. We do not put every child who has been sexually abused into care. I do not think the member can get her head around that. If she wants to put every child who has been sexually abused into care, then she had better look at having hundreds more foster carers. The reality is that there are alternative intervention strategies for dealing with the sexual abuse of children. I need the member to understand that the statutory intervention or the court order for removing the child from the home is the ultimate option in dealing with sexual abuse cases.

Ms S.E. WALKER: The minister may be used to speaking to people in her department like that. However, she cannot get her head around the fact that she is trying to bring a departmental discretion into this Bill. All the minister can do is throw abuse. When the minister made her second reading speech she said that this Bill was a milestone and she took complete credit for it. All I said in my contribution to the debate was that I had a briefing and was given some drafting instructions from 1987 and this legislation was based upon those instructions; that is all. If the minister had not said anything about it, I would not have brought it up. The fact is that this draft legislation did not go to the Cabinet or the party room.

As I said in my contribution to the second reading debate, I have great difficulty with the concept of significant harm, which is dealt with under this clause. The minister cannot get her head around the fact that her Bill is being attacked because of something that is very profound and goes to the heart of child sexual abuse. After my second reading contribution, the minister's department sent me the reciprocal child protection procedures for the Western Australia Police Service. Although we have not yet analysed the amendments that the minister will make to the significant harm aspect, the procedures make interesting reading. If the minister's department is going to intervene, as it currently stands, the Western Australia Police Service is very concerned that the minister's department will not interview children who have been the subject of sexual abuse because of the ability of the people from the child sexual abuse unit. The procedures state -

> The Western Australia Police Service recognises the first priority of the Department for Community Development staff is to protect children.

That is of concern to me here. That should be the first concern of the minister, and significant harm should not apply only when a child is being sexually abused. The document continues -

> However, staff must recognise the need to use correct interview techniques as inappropriate questioning such as leading questions may jeopardise the successful prosecution of perpetrators and hence place the child at further risk.

This concerns me about the SafeCare program. The document continues -

> When it becomes apparent that a criminal offence has taken place the Department for Community Development staff will discontinue the investigative part of the interview, unless such discontinuance adversely impacts upon the provision of services or measures designed to protect the child.
>
> The objective of the joint response protocols is to minimise the number of times that a child is interviewed and as such the need to interview the child at all in respect to the allegations is a matter for careful consideration.
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> . . .
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> The Western Australia Police Service is responsible for interviewing the person of interest/person believed responsible in relation to any criminal offence that may have occurred.
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> . . .
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> Wherever possible the Department for Community Development will refrain from any interview with the person of interest/person believed responsible in relation to the allegations prior to consultation with the Western Australia Police Service.

The priority one category for the Child Abuse Investigation Unit is when the alleged perpetrator is a person in authority, which includes teachers, police officers, foster carers, social workers, priests, youth workers, voluntary youth leaders, doctors etc. I do not have any difficulty getting my head around the concept that a child can be sexually abused and therefore needs to be withdrawn from the family. A child can be sexually abused by someone living down the street, and still stay with the family. The minister has an ego problem with my raising this issue with her and going straight to the heart of this issue, which is that she has raised the threshold bar, sending a clear message to the community that a child must be significantly harmed now instead of just suffering abuse, which is pretty clear under the current Child Welfare Act.

Ms S.M. McHALE: That contribution was all over the place. The department interviews children who have suffered sexual abuse. When the department believes that there is a criminal offence, the case is handed over to the police and becomes a criminal matter. The police then start to investigate the allegations. There is good reason that there would not be separate lines of investigation, because the police are involved, and there are issues of not corrupting the evidence. I am informed that, when the police take over the lines of investigation, as they rightly should, there are joint interviews between Department for Community Development staff or child protection workers and the investigating police. The interviews are not done separately because there are problems of corrupting the evidence. Let me assure and disabuse the member that the department does not ignore allegations of abuse. I shake my head sometimes at the things the member says, but that one tops the lot at the moment.

Dr J.M. WOOLLARD: Why does the Bill include a definition of "harm", but not of "significant harm"? Will the minister answer by way of interjection?

Ms S.M. McHale: That issue was canvassed, but when it came to attempting to set a threshold, it became almost impossible to have a definition, because each case is different. Each case needs to be examined in accordance with its particular characteristics. It is not appropriate and it is not helpful to be too prescriptive in defining the terms, because things can fall out of the definition. "Harm" was defined to reaffirm the importance of looking at the socio-psychological developmental issues arising out of abuse, but if the definition is too prescriptive, it can be counterproductive to what we are attempting to achieve. That is why there is no definition of "significant harm".

Dr J.M. WOOLLARD: If there is no definition of "significant harm", will that not lead to problems in interpreting what significant harm is? I refer to the request by the member for Churchlands yesterday for more details about the qualifications of an authorised officer. The powers of an authorised officer under this legislation, as set out on page 135, are very wide. The minister said yesterday that the person exercising these powers may not even have a diploma, let alone a degree. I remember bringing to the attention of the minister last year an incident in which someone who would be classed as an authorised officer under this Bill visited the home of the late Clarrie Isaacs and said a child had to be taken to Princess Margaret Hospital for Children. The child was taken to the hospital and then returned to the family. It was admitted by the hospital and other people that the admission was a mistake, but no apology was given to the family. These authorised officers will have wide powers. Will we leave it to these officers to determine the difference between harm and significant harm? If that issue is not clarified, it will be left to the officers to determine the difference between the two, and the officers are not necessarily people with five or 10 years experience in community welfare. If the minister does not intend to include a definition of "significant harm" in this Bill, the clarification of the term should come later, in the regulations. If the definition does not work, it can then be reviewed very easily.

Ms S.M. McHALE: The answer to the question I think the member is posing is yes. We are, to a large extent, giving that discretion to our staff, and with good reason. They must make those decisions all the time. It is a judgment call based on the facts of the case. It is based on their training and on advice from senior practice development officers and their supervisors and line managers in collaboration with the individual officer. Yes, there is a judgment to be made and judgment calls have to be made every day. That is the reality of the work that they are doing in this department and many other departments. I do not think we can legislate for an environment that is based on case management. Literature, research and court cases are available that help to define "significant harm". We have no intention of trying to define "significant" in this legislation. No two cases are the same. We can build up a body of knowledge. We can take trends from cases, and that is what we are doing, for instance, with the establishment of the child death reviews. For the first time we are building up evidence and trends about what is happening on a systemic basis, but for the individual case a whole set of conditions and judgment calls come into play to make a determination about degrees of harm.

Dr J.M. WOOLLARD: I am pleased to hear the minister say that a whole realm of judgment calls come into play. I am also pleased that the Leader of the House is in the Chamber at the moment. I hope he is listening carefully to the minister's comments and that he will consider them when he looks at the workers compensation legislation, because he wants to exclude the word "harm" and narrow the situation down. He wants to change the wording of the legislation and replace the word "disability" with the word "impairment". He also wants to take out references to "emotional harm" and various other things, which will be detrimental to many workers in many workplaces.

Clause 28(2) states -

> (c) the child has suffered, or is likely to suffer, significant harm as a result of any one or more of the following -
>
> (i) physical abuse;

When it comes to physical abuse, is "significant harm" going to be a broken leg or a black eye?

Ms S.M. McHale: I think we should deal with clause 28 when we come to it.

Dr J.M. WOOLLARD: If the minister intends to leave the word "significant" in that clause, she should insert a definition in clause 3 and not leave the situation wide open. Maybe information could be provided to me before we deal with that clause so that we do not waste time. When the officers look at physical abuse, how will they differentiate "harm" as a result of physical abuse from "significant harm", and when they look at sexual abuse, how will they differentiate between "harm" and "significant harm"? I would like to know the parameters for each of those categories and the basis for the officers' judgments.

Ms S.M. McHALE: Let us deal with clause 3. The member might have been out of the Chamber when I said this. Bearing in mind what we were discussing yesterday, I have suggested an amendment to clause 28, which will basically separate sexual abuse from other forms of abuse. When I spoke to the field workers and the practitioners last night and early this morning, they said that harm deriving from sexual abuse is significant harm.

Dr J.M. Woollard: Any form of harm?

Ms S.M. McHALE: Yes. They see harm as significant. All harm from sexual abuse is significant. However, there are degrees of harm in relation to other forms of abuse. When we get to clause 28, I propose to separate those issues. I believe that will then deal with the collective concerns that were expressed yesterday.

Dr J.M. Woollard: I appreciate the fact that you will do that, but in preparation for when we get to that clause, is there any paperwork that I can look at that gives a breakdown of physical, emotional and psychological abuse and the levels of severity?

Ms S.M. McHALE: When we come to clause 28 I will try to elucidate the different sorts of cases to help members understand the degrees of harm. It will not be a list of examples from one to 10; it will be subjective, but I will endeavour to provide case examples of degrees of harm in those other categories. I have a form of words for clause 28 and I will make sure the member for Alfred Cove gets it before we get to that clause.

Ms S.E. WALKER: I accept the minister's comment about the judgment calls that need to be made concerning the harm aspect, but I still say this Bill is wrong. I will supply an example of a sexual relationship with a child under the age of 16. Parliament says that when a person has a sexual relationship with a child under the age of 16 years, if that person on three or more occasions, each of which is on a different day, does an act in relation to the child that would constitute a prescribed offence, that is a sexual relationship. That is defined in the legislation. When the matter gets to the courtroom the judge has the discretion as to what he will do with the offender. Will he give him one to 20 years? The judge may use his discretion in deciding how he will deal with the offender - whether he will take away his liberty. We do not say to the judge that a sexual relationship with a child under 16 years of age is an offence only if there is significant harm. Parliament must clearly set out to the community that children cannot be abused by neglect or subjected to physical, sexual, emotional or psychological abuse. That is the law. The practitioners make their own judgment calls. Here the minister is including in the Bill the discretion that is reposed in the officer of the department, and she is raising the threshold. This can be applied to any offence. Basically the minister is saying to a burglar that he can commit a burglary as long as he does not cause significant harm to the people being burgled. That is where this Bill is wrong conceptually, because the practitioners carry out the law and they make judgment calls. Everybody accepts that. It is no good the minister saying that they make all these judgment calls. I know they make judgment calls, and the judge and the police have a discretion. We are providing the police with the law and asking them to please not apprehend an offender unless he has caused significant harm to the person he is burgling, and to please not apprehend an offender unless, when he sexually penetrates someone, he has caused significant harm. That is my point. When I picked up this Bill I thought it was like a practice manual, and now I hear that in the practice manual there is "significant harm". When I first read the Bill it was like a departmental practice manual. This Bill must send a clear message to adults and parents in the community. The Bill does not have to include the discretion that is reposed in the officers. I have no problem with that. Of course, discretion must be reposed in the officers. I will keep saying that. That is why I think this is wrong.

I asked the minister two questions about harm that she has not answered. I asked her whether domestic violence came under the definition of emotional harm. Does the minister include domestic violence harm in that category? Why does the definition of "harm" under clause 3 not form part of the neglect provisions under clause 28?

Ms S.M. McHALE: The member asked me a question about domestic violence, but I ran out of time. Domestic violence is not a ground of abuse per se. There are different degrees of domestic violence. I do not know whether the member's psychiatrist acquaintance thinks domestic violence ought to be an automatic ground for abuse. This issue was discussed. It is a guiding principle in the Bill. Domestic violence is recognised as a contributing factor that ought to be taken into account.

Ms S.E. Walker: Whereabouts is it stated in the Bill?

Ms S.M. McHALE: It is stated on page 10 in the principle that every child should live in an environment that is free from violence. It is also defined as a social service that the department ought to provide. It was not made an automatic ground for abuse and therefore a ground for automatically taking children into care. The question that must be asked is whether it would lead to a reduction in the number of reports of incidents of domestic violence if women who are subject to domestic violence are also under threat of their children being taken from them. We know that fewer incidents of domestic violence are reported than ought to be. Therefore, domestic violence was considered to not be an automatic ground for abuse and for taking a child into care. That condition could have the effect of fewer women reporting domestic violence because there would be an added risk of them losing their children. Children are taken into care when one of the contributing factors is domestic violence, in the same way as there are many examples of children being taken into care when a contributing factor is drug abuse. Drug abuse is not included in the Bill as an automatic ground for abuse, and nor will domestic violence be included in the Bill as an automatic ground for abuse.

Ms S.E. WALKER: The minister did not answer my question about why significant harm with regard to neglect was not included in the Bill.

Ms S.M. McHALE: The member's Bill may have an omission. Neglect is listed on page 25 of the Bill.

Ms S.E. WALKER: I am sure that my copy of the Bill is exactly the same as the minister's. I am talking about the definition of significant harm and the use of that term in clause 28(2)(c).

Ms S.M. McHALE: I refer the member to my previous answer. Page 25 of the member's Bill is obviously wrong. Putting it bluntly, "neglect" is included in the Bill at the top of page 25.

Ms S.E. WALKER: I beg your pardon.

The DEPUTY SPEAKER (Mrs D.J. Guise): I remind members that they are getting to the detail of a clause in the Bill with which we have not yet dealt. Members should deal with the clause before us and then refer to other clauses in more detail when we get to them.

Ms S.E. WALKER: Clause 3 includes a new definition of "placement arrangement", which is an arrangement under clause 79(2) for the placement of a child. Will the minister explain to me what the new placement arrangement means?

Ms S.M. McHALE: The definition of placement arrangement refers to a new term of arrangement whereby the department will agree to take a child into care for reasons other than protection concerns . For a range of reasons some parents are unable to look after a child. Currently, those children are not subject to care plans. Essentially, the Bill distinguishes between children who are placed into the care of the department because their parents cannot look after them and they have no other family support, and children who come into care because there are significant concerns about their protection and wellbeing.

Dr E. Constable: Could it be because their parents are in jail?

Ms S.M. McHALE: Yes, it could be. The department would not take those children into care because they had been abused or because they had been neglected. The State would take a child into care because, for example, the child had a severe disability and the family could not look after him. In that case, the department would not be concerned about the child being abused. As another example, a partner in a relationship might die, and the surviving partner may not be able to cope with caring for five kids and he may have to give up one of them. Placement arrangement is a term used to describe a very different type of arrangement. There is some concern in the community about whether this type of arrangement will be used instead of the other types of placement orders. I can categorically state that this Bill will prevent negotiated placement arrangements being used as a form of slippage or as an alternative to cases in which there is concern about the protection of a child. I put that on the record because I know that the Children Youth and Family Agencies Association has concerns about the negotiated placement arrangements. It supports them, but it is concerned about them. It does not want the arrangements to be withdrawn from the Bill. It wants to be assured that the arrangement will not be used as an alternative form of placement or for the department to use it coercively. It is a good alternative arrangement for those cases in which there are reasons to remove a child, other than harm. When a child comes into the care of the department under that arrangement, it then enables the department - this is what we should be focusing on - to afford the same types of support for the child, including care plans. The child would be treated and his case would be monitored. Annual reviews of the care of the child would be required. They are positive outcomes.

I probably do not need to say any more about the definition of "placement arrangement". When we deal with the member's amendments, which seek to withdraw the concept of negotiated placement arrangements, we will have a fuller discussion

Ms S.E. WALKER: Is the definition of "placement arrangement" under clause 3 the same as the definition of "negotiated placement agreement"? I do not see a definition of "placement agreement", unless I have missed something. Is a negotiated placement agreement the same thing as a placement arrangement? Are they connected?

Ms S.M. McHale: No, they are separate. I have just spoken about negotiated placements.

Ms S.E. WALKER: Is the minister saying that what she spoke about is not right?

Ms S.M. McHale: I was talking about negotiated placement agreements, but these are placement arrangements. I am quite happy to talk about a placement arrangement.

Ms S.E. WALKER: Good, then I will not be sarcastic about it.

Why was a definition of "negotiated placement agreements" not put in clause 3? For the first time in this State, children will be shuffled around by the department to wherever it likes without any form of accountability.

Ms S.M. McHALE: I will deal with the second question first. Negotiated placement agreements are referred to in the definitions, followed by a referral to clause 75. That sets out the meaning of a negotiated placement agreement. The details of negotiated placement agreements are set out at page 51 of the Bill. It would not be possible to encompass everything in clause 75 in a two or three-line definition. By definition, a placement arrangement means an arrangement under clause 79(2) for the placement of a child. Broadly speaking, the term is used to describe the different types of arrangements that can be made for children in care. It could be a foster care arrangement or a residential facility such as Kyewong - otherwise known as the Como hostel - the Kath French Centre, a children's home or another accommodation facility. It is basically the different sorts of placement environments and arrangements that the chief executive officer can use on behalf of a child who is coming into the care of the department.

Clause put and passed.

Clauses 4 and 5 put and passed.

Clause 6: Objects -

Dr E. CONSTABLE: I am particularly interested in comments made by the minister about paragraphs (a), (b) and (c). I understand clearly what it means to promote the wellbeing of children, other individuals and families, which is referred to in paragraph (a). I also understand paragraph (b) as far as it goes to acknowledge the primary role of parents and families in safeguarding and promoting the wellbeing of children. In paragraph (c), I understand what it means to encourage and support parents and families in carrying out that role. I do not understand why the word "communities" is included, because this Bill is not about communities. If the minister can define what she means by a community, I would be very happy to learn that. A community can be defined in many different ways. There are also communities within communities; for example, a community may contain a fundamentalist religious group. That group's view of the wellbeing of children might be quite different from that of other people in the community. How do we promote the wellbeing of a community? How do we acknowledge that the primary role of a community is safeguarding and promoting the wellbeing of children? I am not sure whether that is the primary role of a community. It may be only one role of a community; it is not the primary role of a community. How do we encourage and support communities in carrying out that role, as referred to in paragraph (c)? If we are talking about the objects of the Bill, I do not see that within this Bill. In some general way, the role of the Department for Community Development is to develop communities and the wellbeing of communities and groups within it. I do not see that as being what this Bill is about. We need to know what is meant by that. It is an issue I raised earlier when we were discussing the title of the Bill. It is not clear why this is in the Bill. If the minister can enlighten me, I would be most grateful.

Mr R.F. JOHNSON: Continuing from the comments made by the member for Churchlands, I partly understand the inclusion. I do not have a problem with communities trying to help protect and care for children. The community of Western Australia should be doing that. It is significant that paragraphs (d), (e) and (f) clearly refer to the protection of children. It is why I believe this Bill should be predominantly a child protection Bill.

Dr E. Constable: The object of the Bill should be about child protection.

Mr R.F. JOHNSON: Indeed. I am pleased that the minister is prepared to negotiate with us over the title. Nevertheless, the term "protection" should be included. If the best interests of children are paramount - which is the ideal of everyone - protection is the number one criterion for the wellbeing of children. The objects and principles of the Bill are very important. In her response to the member for Churchlands, I would like the minister to reiterate her understanding of the most important part of this Bill. Is it the protection of children? Is that the most important part or is it secondary to some other object or principal she may have in mind?

Ms S.E. WALKER: I am sorry I was not present for all of what the member for Churchlands had to say. I am also concerned about what was raised by the members for Churchlands and Hillarys concerning the objects and principles of this Bill. When this Bill was drafted, reference must have been made to other Acts in other States. Queensland introduced its Child Protection Act in 1999. The principles for administration of the Act state, in part -

(a) every child has a right to protection from harm;

I said yesterday that my analysis is that about 70 per cent of the Bill relates to the protection of children. Paragraphs (d), (e) and (f) of clause 6 are about the protection of children. Therefore, I proposed my amendment for the Bill to be renamed the "Children's Interests (Care and Protection) Bill". The minister said she did not want the word "protection" in the title.

I return to the drafting instructions created by the Liberal Party. I correct the minister. She told me to be careful in my comments. My response in the second reading debate was to the minister's claim that the Liberal Party had stood still and progressed nothing during its term in office. The minister then wanted to claim credit for what the Liberal Party did progress! The minister has held her portfolio for three years, and she has now brought to Parliament a Bill based on a measure created by the coalition that never made it to the party room or Cabinet. The minister wants credit for that measure. The instructions for the original Bill outlined that it was to contain provisions to enable the department to carry out activities necessary or desirable to fulfil the purposes of the legislation. It then spelt out that purpose (b) was to protect and provide care for children.

When I first read the Bill before us, I had a flurry of activity to find the heart of the community's concern regarding child welfare. I discovered that it is the protection of children. Everything about protection in the Bill seems to be subsumed under community and family and wellbeing. That is not what is in people's hearts regarding children. Why is the protection of children so far down the list of the objects and principles of this Bill, particularly in light of the Queensland Crime and Misconduct Commission report? The minister should have known about that report, which recommended that authorities not focus on the family in ensuring child safety. The recommendation was to create a department of child safety to get the care and protection of children right back on top of the priorities where it belongs.

Ms S.M. McHALE: The six objects of the Bill are not in any order of priority. They run from the general to the specific, which is very much a drafting procedural matter. There is no better object than to promote the wellbeing of children. That is being done. Every one of us should ensure that the wellbeing of children is promoted. If we do that, and ensure that the wellbeing of children is at a good level, we will not face some of the social ills we currently confront.

Member for Churchlands, we can either take a fairly narrow view to ensure that we have a good system of child protection, or we can take a broader view. Child protection is a community concern. A body of research tells us that communities are strengthened - recognising definitional issues about what is a community - through social capital and facilities. In this way, we can have a positive impact on the capacity of families to provide greater protection for their children. The work conducted around the Gordon report is a classic example of why it is critical to focus on communities when dealing with individual child abuse. Communities have the overall responsibility to protect children.

Mr R.F. Johnson: You don't legislate to build communities. You need legislation to protect children.

Ms S.M. McHALE: The object of the Bill is to ensure the wellbeing of our families and children. It is recognised that it is important to work with communities. I am quite comfortable with the objects of the Bill. Yes, there are definitional issues about communities. A community can be based around a church, a neighbourhood, a sporting organisation -

Dr E. Constable: A school.

Ms S.M. McHALE: Yes; I thank the member. A school community can work around parents and provide protective behaviours. If that occurs at a community level, it can filter through to support families.

Those are the broad objects and principles of the Bill, and I am happy to live with those. They set a good standard and provide a good message to the community that we will operate within those concepts or principles.

Dr E. CONSTABLE: I do not have too much argument with most of what the minister has just said. They are fine thoughts in developing communities, communities within communities and so on. However, that is not what the Bill is about. They are general principles of the department or the minister. This Bill is not about that. Show me, minister, where in the Bill there are provisions that develop communities. Tell me how much of the department's budget is directed in that manner. It is everyone's object, but not the object of this legislation. Those are just puffy words when it comes to this legislation. They are good and fine sentiments, but separate them from the legislation. The Bill will not do what the minister suggests it will do. As members keep saying, at least 70 per cent of the legislation, although I think more, involves the protection and care of children. It is not about developing communities and promoting community wellbeing. The minister outlines a very fine, general underlying principle, but it is not an object of the legislation. Convince me that it is, minister. I am not convinced yet. Show me how the legislation in any small or great degree applies those objects concerning communities.

Dr J.M. WOOLLARD: I hope in response to the comments of the member for Churchlands concerning communities the minister can explain how the Bill will stop a recurrence of last year's fiasco in relation to the Swan Valley Nyungah Community. I raised this matter during the second reading debate, as it fits under the objective of promoting the wellbeing of children, other individuals, families and communities. What is being introduced in this Bill that will stop a similar community, perhaps at Ningaloo or somewhere else, being closed down and moved on if its land becomes very precious to government?

Mr R.F. JOHNSON: I make one last comment on this clause. Many points have been covered. I return to an earlier point that has been picked up in conversation since. The House is dealing with legislation. When a Bill becomes an Act, it is the law of the State. Does the minister agree?

Ms S.M. McHale: Absolutely.

Mr R.F. JOHNSON: Will we make it law to promote the wellbeing of children, other individuals, families and communities? Will we make it law to acknowledge the primary role of parents, families and communities? Will we make it law to encourage and support parents? How can we make it law to do those things? We can make it law to protect children generally, to protect children from exploitation and to protect and promote the best interests of children. Those things can be done because they refer to protection. I come back again to comments I have made on this Bill. This Bill is about protection. The law that we are trying to make in this Bill is about the protection of children, and so it should be. All this flim-flam about community development can be the minister's policy. It would be a good policy. I do not for one minute discount the policy being a good one. We should be encouraging communities to work together for the wellbeing of not only children but also everybody in the community. However, that is a policy; it is not a law. Therefore, I believe that paragraphs (a), (b) and (c) of the objects in clause 6 are basically just motherhood statements. They should not necessarily be in legislation; they should be in the Minister for Community Development's policy.

Mr C.J. Barnett: They would be in a second reading speech.

Mr R.F. JOHNSON: That is absolutely right. It is the sort of thing that the minister, as the Labor Minister for Community Development, would send out to the people of Western Australia.

Ms A.J. MacTiernan: Why wouldn't it be bipartisan?

Mr R.F. JOHNSON: Because she is the minister. We would support it. I love it when the Minister for Planning and Infrastructure interjects on me, because it always gives me a second wind. She knows better than to interject on me but she never learns.

Ms A.J. MacTiernan: Yes, but we live in hope that one day you will learn.

Mr R.F. JOHNSON: No. One day the minister will learn that she should not let her mouth run ahead of her brain. She should do it the other way round: she should think what she is going to say and then say it; and in many cases perhaps she should not say it. Then we would get through legislation quicker. The Minister for Planning and Infrastructure is a friend of mine and I like her. I do not like saying these things about her. However, I want to get back to this Bill, because it is important, and I seriously mean that.

Ms A.J. MacTiernan: The only Bill you are interested in is the one on television at 7.30 pm on a Tuesday.

Ms S.M. McHale: At 8.30 pm.

Mr R.F. JOHNSON: The Minister for Community Development corrects the Minister for Planning and Infrastructure. It is 8.30 pm on a Tuesday. The minister must watch it, together with many other English migrants to this country. It is the favourite program of many Western Australians. It is a good program. Some of them prefer it to *Blue Heelers*, or Blue Sheilas, as my kids call it. However, that is by the bye; we are not talking about that now. Once again the Minister for Planning and Infrastructure, not the Minister for Community Development, has sidetracked the whole debate by wandering into the Chamber and having a go at me. I am very sensitive about the comments she makes about me. I have told my wife about it. She said, "You stand up to the bully, Robbie." That is what she said to me.

Ms S.M. McHale: Robbie?

Mr R.F. JOHNSON: Yes, Robbie. That is what she said to me. She said, "Don't you let her get away with that sort of behaviour; it's not good enough. That woman is such a bully." That is what my wife said.

The DEPUTY SPEAKER: Some attention to clause 6 would be appreciated by the Chair.

Mr R.F. JOHNSON: Madam Deputy Speaker, I could not agree with you more. If I could get some protection from the Minister for Planning and Infrastructure, I would really appreciate it. I am going to run out of time now. I started off with some serious comments on matters about which I had concerns. I urge the minister to consider some of the flim-flam in this legislation. I say that in a sensible way, not in a derogatory way. It should not be in legislation; it should be in a policy. I believe my party would endorse that policy. I am sure it is a policy that we will send out to the electors before the election when we tell them what we want communities to do. However, we have a duty to make laws to protect the children of Western Australia.

Ms S.M. McHALE: I thank the member for Hillarys for his light-hearted relief. It is good to have that break in the tension from time to time. I also thank the Minister for Planning and Infrastructure.

Mr R.F. Johnson: You can always rely on her.

Ms S.M. McHALE: Yes. This is quite a serious Bill, so it was good to have those interjections.

Interestingly enough, it was good enough for the Liberal Party, when it was in government, to recognise the role of communities in this area and to put that in its legislation. We have taken that up, and not necessarily built on it in any great way. However, we believe that it is important to have objects of the Act that link to the functions of the chief executive officer. To answer the member for Churchlands' question, the functions of the CEO, as defined by clause 21, go to the issue of working with communities. Therefore, there is a relationship between the objects and the legislative requirements for the functions of the CEO.

Dr E. Constable interjected.

Ms S.M. McHALE: We do not necessarily need any more. We did debate whether we could legislate for community development. Clearly, we cannot do that in a longwinded way or have many clauses on it. It is reflected in the legislation because we felt it was important - just as the Liberal Party thought it was important when it was in government and was constructing its drafting instructions - to recognise the relationship of communities in supporting families. Therefore, we picked up that idea.

Ms S.E. Walker interjected.

Ms S.M. McHALE: I am sorry, member for Nedlands. I have already said - and I will not go over points more than three times - that the objects of the Act are not in any order of preference.

Ms S.E. Walker: They should be. That is what we are saying.

Ms S.M. McHALE: They go from the general to the specific. I am quite happy with that. They are very clear. The protection of children is clearly in the objects of this legislation. It should be remembered also that this Bill, as it was in the previous Government's day, is a bringing together of three different Acts. I believe they marry together quite well. It makes for a long Bill; nevertheless, I believe it works, and it will make it easier for people who are referring to legislation on children because the body of legislation is in one place. Given that, the objects and principles go beyond child protection. The legislation in Queensland that was referred to is solely about child protection. It is not about

child-care licensing, employment or pornographic exploitation of children, and it is not about financial assistance to families. This Bill incorporates those three pieces of legislation.

Ms S.E. Walker: You have your priorities wrong, minister.

Ms S.M. McHALE: We have our priorities absolutely spot on. The work that we have done and our record on children are very strong and entirely defensible.

I will answer the member for Alfred Cove's question, which was: how can we make sure that the situation that occurred at the Swan Valley Nyungah Community does not happen again? I remind the member of what we have done to minimise the chances of that happening again; hopefully it will prevent it happening again. Quite simply, our action recognised the problem of having a community of that nature, which we believe was dysfunctional. We believe it was not a protected community, and we made the decision to close it. We did more than that. We put in additional resources to ensure that we increased the number of child protection workers - 25 of them. We committed to an additional 24 other workers, who will work with Aboriginal families. We will locate Aboriginal support workers in a number of communities and community organisations. They will work with those communities and engage with young people to get them to report abuse. We want people to report abuse so that we can deal with the families and the harm, refer the people to the appropriate jurisdictions and make sure that they are connected to services. I know that the member for Nedlands will ask, "What about SafeCare?" She needs to understand that there must be a suite of services.

Ms S.E. Walker interjected.

Ms S.M. McHALE: The member for Nedlands is so transparent on occasions that I am prompted to do it. We are developing a strong relationship with the Aboriginal and Torres Strait Islander Commission and making sure that we have those sorts of conversations. Life is different.

Dr E. CONSTABLE: I have a couple of final words. I agree with the minister that the way the objects are written from the general to the specific is fine. They follow one from the other and make sense. The order is not all that important; the content is important. I also believe it is a great thing that the minister's department has a policy relating to the development of communities and the things that go with that. It is one of the responsibilities of the CEO to make sure that happens. However, I say again to the minister that that is not what this Bill is about. This Bill is about parents, families and the minister's department protecting children. The minister stated a while ago that communities have overall responsibility to protect children. I do not think that is in this Bill at all. That is a general view or notion that the minister and her department might have, and I do not necessarily disagree with it. However, it is not what this Bill is about. For example, the community does not have a role to play in the protection of my young grandson; his parents, his grandparents and the rest of his family do. Not even the neighbours in the suburb in which they live in Sydney have anything to do with protecting him. Certainly, there is no nebulous community out there that protects him. The State protects him through the law, and so it should. However, it is not a community. There may well be some groups in Western Australia in which the community has a wider role in the protection of children, and the minister used the Gordon inquiry as an example, but not in the case of my grandchild and most children in this State. They do not belong to communities whose prime responsibility is their protection. We have to be very careful about how we say this. I do not think there is great disagreement here but the point needs to be made that this Bill does not legislate for communities to protect children. It is a policy, a view and a direction that we have through the Department for Community Development. It is not one with which I disagree, but it is very hard to pin it down.

Ms S.E. WALKER: Unlike the member for Churchlands, I do think that the protection and care provisions listed under the objects should be at the top of the list, because this Bill is mostly about protection. The minister said that she wants people to report child abuse, which is my whole point. People will have to shuffle through this legislation to find out what child abuse is. Under part 1 of the Child Welfare Act it is written in old-fashioned wording, but it is there nonetheless; people can find out what child abuse means and when a child is in need of care and protection. However, in this piece of legislation we have to read through 24 pages before we get to the provisions specifying when a child is in need of care and protection; that is my concern. It is an ideological shift, and there is a difference. It is the shifting from the State to the community of the responsibility to intervene for the care and protection of children. Should the community have the overall responsibility for the protection of children? No, the community elects us to make laws to ensure that children are protected. How is the community supposed to protect children? This Government has not said that there should be mandatory reporting. No professional has to mandatorily report when he or she sees abuse going on.

When I read this Bill I found it to be a very sad Bill - it is not a reflection on the department or the advisers - because I felt that it subsumed the rights of children. Everywhere within this Bill the protection of children has been moved down the list. A prime example of that is in this clause in which the protection and promotion of the best interests of children, which are paramount, are now at the bottom of the heap. The minister cannot see it because she does not want to see it. She wants to paint this rosy glow of wellbeing, but that is utopia. We are here to make laws that say that the State, through the department, intervenes to protect children who are suffering, at harm or at risk. It is all very well to list these objects and principles but the law must send a clear message to the community. This legislation does not do that.

Clause put and passed.

Clause 7: Principle that best interests of child paramount -

Ms S.E. WALKER: What is interesting about this principle is that the court does not deal with it until "significant harm" has been assessed under clause 28(2)(c). Enormous hurdles must be overcome before a court can act on this principle because now not only is the threshold lifted to "significant harm", but also, instead of just stating the types of abuse, there is a whole new set of orders, the first being a supervision order. Is it fair to say that this principle has been subsumed by clause 28 under which "significant harm" must be determined before the best interests of the child come into play?

Ms S.M. McHALE: No.

Clause put and passed.

Clause 8: Determining the best interests of a child -

Ms S.E. WALKER: Subclause (1)(a) refers to the need to protect the child from harm. Why is that not significant harm?

Ms S.M. McHALE: Earlier, I tried to state that the definition of "significant harm" is in the court determining whether the child will be taken into care. In determining the best interests of the child, there is a threshold that is lower than that which is required for the courts to decide whether the child should be taken into care. Clearly, the word "harm" should be used here because this then sets out how the department will intervene or determine, as I said earlier, the issues around the welfare of the child. It would not make sense for this clause to contain the word "significant".

Ms S.E. WALKER: Under clause 7, determining the best interests of the child is a function that can be performed by a person or the court. Officers determining whether a child was in need of care and protection, would have to first consider if significant harm had been done. However, once a court has determined the best interests of the child, can it consider whether the child just needs to be protected from harm? Is that what the minister is saying?

Ms S.M. McHale: The member is going around in circles.

Ms S.E. WALKER: Then I will take up another matter. Can the minister tell me where in that clause is any provision that relates to the importance of early development in the long-term outcome? I know that subclause (1)(k) refers to development, but are there any other clauses in which the department has thought about the importance of early development in the long-term outcome?

Ms S.M. McHALE: Paragraphs (k) and (m) deal with developmental needs. In terms of early intervention, it is a process or a set of services and it is not about determining the best interests of the child per se. However, I think the answer to the question is found in paragraph (k).

Ms S.E. WALKER: Does clause 8(1)(k) refer to the long-term developmental needs of the child?

Ms S.M. McHale: It can mean the short or long-term needs.

Ms S.E. WALKER: I just wanted to get that on the record.

Dr E. CONSTABLE: I have two or three points to make about this clause. Clause 8(1)(h) refers to the child maintaining contact with parents, siblings and others. I am particularly interested in the area of children separated from their siblings maintaining contact with those siblings. I imagine that such separation would occur quite often, for whatever reason. I would like the minister to go into some detail about how contact with siblings can be ensured. I draw the attention of the minister to a report of the Queensland Crime and Misconduct Commission issued in January this year which found that when siblings were placed with different families, visits occurred only if organised by carers. If children live a fair distance from each other, or the carers do not have the resources to organise them getting together, that separation may become significant to the children's welfare over a long period. The other issue about siblings is when some siblings remain in the family with their parents, and a child may have been removed to protect him or her from a parent. How can this work, when the object of the visit is to maintain contact with siblings? I have other issues, but perhaps the minister could deal with that of siblings first.

Ms S.M. McHALE: I am conscious of a particular case the member for Churchlands has raised with me. A number of situations pertain to this point. There could be a case in which a large family is coming into care. It is difficult to find placements for large families; for example, families of five or more children. We have policy and practice guidelines to the effect that, whenever possible, the children are to be kept together, so we start from that. We have a contract with the Parkerville Children's Home, which has a cottage that caters for larger families. That cottage may on occasions be already occupied, so that is problematic. Whenever possible we endeavour to keep the children together, but when that is not possible, and the children are split up, the department understands the importance of ensuring the continuity of their relationship. That would be built into the care plans for ensuring that they have as much contact as possible. When a child is removed from the home, contact with siblings can be maintained via supervised contact, if the family situation is still problematic. There are families for which supervised contact is necessary to ensure that untoward things do not happen. There could also be unsupervised contact. The cost of doing this is significant, but it is a cost that the State must bear.

Dr E. CONSTABLE: I thank the minister for those comments. I would also like to draw the attention of the minister to paragraphs (f) and (g), in which importance is placed on the child's wishes and permanency planning. I infer from those paragraphs that children are able to refuse the option of reunification with their parents. I would see that happening in many circumstances, but particularly after long periods in care. If that is the case, are children's wishes often overridden so that reunification takes place? How much weight is placed on the wishes of the child not to be reunified if he or she has been in a stable situation in care and is happy in that situation? What are the options for a child who does not want reunification with parents? It is interesting to look at paragraphs (f) and (g) together, because if they are weighed up against the emphasis being placed on supporting the capacity of families to care for their own children, in what circumstances would the wishes of the child and permanency planning override reunification?

Ms S.M. McHALE: There is a hierarchy of steps, but the overarching principle is undoubtedly the best interests of the child. We have tried to indicate the sorts of things - although it is not an exhaustive list - that need to be taken into account in determining that. The questions of the member for Churchlands really highlight a concern that exists in practice. There are great tensions between the needs and aspirations of the natural parents and the needs and the best interests of the child. In the cases in which I have been asked to intervene and return the child to its natural parents, because it is alleged that the department has got it terribly wrong, more often than not the child has indicated that he or she does not wish to make contact with the natural parents. As hard as that is for the natural parents, the department abides by those wishes, to the great heartache of quite a number of families.

Dr E. Constable: Have children ever been reunited with families against their wishes?

Ms S.M. McHALE: Against the wishes of the child? I am advised that that has not happened. However, there would be a process.

Dr E. Constable: So the wishes of the child are right at the top?

Ms S.M. McHALE: They are right up there, and the Government has put into the Bill the idea that the principles of child participation are essential. The feedback we get from children, either through the Create Foundation or through caseworkers, is that their voices have not been heard. We are stating in this legislation that the principle of child participation in decisions that affect their lives is critically important. The member has raised some really gritty, practical concerns that the department must deal with, but I can tell her from my own experience that the child's wishes will ultimately prevail. There may well be encouragement for that child to try again with the natural parents under supervision, but if, after several efforts, the child says, "I do not want to be contacted by my mother because she scrambles my brain", we will not have that contact continue. I then get ministerial after ministerial from parents saying that the department will not let them see their children. The department will not, because ultimately the interests of the child prevail over the interests of the parents.

Mr R.F. JOHNSON: I intended to save my comments about the wishes of the child until the consideration of clause 10. They could apply to this clause, which is about determining the best interests of the child, but that is also covered in clause 10 to some extent, in relation to the principle of child participation. I intended to pick up some of the points in that clause, but I was encouraged to hear the minister say that the child's wishes are paramount and the department will always put the child's wishes first. Would that principle in clause 8(1)(f), relating to the child's wishes, override the Aboriginal child placement principles? For instance, if the child were part Aboriginal, and that child wanted to live with the non-Aboriginal grandparents, siblings, uncles, aunts or whoever, would that child's wishes override the Aboriginal placement principles as set out in legislation?

Ms S.M. McHALE: The simple answer is yes. I refer the member to my second reading speech. Unfortunately I cannot find the section, but I dealt with this matter during my second reading speech when I said that the child's interests were paramount. If it were not in the best interests of the child to follow the Aboriginal placement principles, then we would not.

Mr R.F. JOHNSON: That does not answer my question. The minister referred to the interests of the child; she did not refer to the wishes of the child. There is a big difference between the wishes of the child and what the department might consider are the interests of the child. Because the Aboriginal child placement principles are now enshrined in law, officers in the department, 99 times out of 100, would be very reluctant to go against those principles. That is what I am told is the feeling in the department. It would take a brave officer to defy or recommend something that was against the Aboriginal child placement principles. The minister has referred to the interests of the child. My question referred to the importance of the child's wishes. If a child who was of part-Aboriginal descent wished to reside or live with the non-Aboriginal side of the family - the grandparents, whether paternal or maternal, or uncles or aunts who were not on the Aboriginal side of the family - would those wishes be paramount over and above the Aboriginal child placement principles? That was the question I asked the minister and she did not answer it.

Ms S.M. McHALE: I will now. I will answer it in the most simple form: yes. The wishes of the child or the views expressed by the child are paramount. That is one of the key determinants of what is in the best interests of the child. If the child expresses a preference to live with one particular family, then those wishes start as being paramount and the department will work through that with the child.

Mr R.F. Johnson: Above the Aboriginal child placement principles?

Ms S.M. McHALE: Yes. If, for instance, the child expresses a wish to live with a particular family, on the face of it that is what the department would endeavour to do. However, we need to make sure that that placement is safe. If the department found that family members were alleged perpetrators, then unfortunately we could not abide by the child's wishes.

Mr R.F. Johnson: I do not have a problem with that.

Ms S.M. McHALE: In my second reading speech I said -

> I want to emphasise that this principle -

That is, the Aboriginal and Torres Strait Islander principle -

> complements other principles in the Bill and does not override the principle that the best interests of the child must always be the paramount consideration.

When the department looks at the paramount consideration for the child's best interests, the wishes of the child come into that.

Ms S.E. WALKER: In my second reading contribution I said that I received a submission from the Children Youth and Family Agencies Association expressing some of its concerns about this Bill, one of which related to clause 8(1)(g) and the importance of permanency in the child's living arrangements. It states that clause 8(1)(g) refers to the importance of permanency in the child's living arrangements and is a matter to be taken into account when determining the best interests of the child. It further states -

> The substantive Sections of the Bill in "*Part 4 - Division 3 - Protection Orders*" and "*Part 4 - Division 5 - Children in the CEO's care*" do not really provide adequate mechanisms to ensure permanent, stable arrangements for children who need to be in long term care.

That organisation cites, as a point of difference, other jurisdictions, such as New South Wales, that have been more specific about the permanency needs of children. I have looked at the Victorian and the Queensland Acts. I do not know the name of the New South Wales Act. I wonder whether the minister's advisers, who told me at the briefing that they had taken bits from legislation all over Australia, looked at the provisions referred to by this organisation and whether the minister has any comments.

Ms S.M. McHALE: I cannot answer that question. Unless the member refers me to the sections of the Acts, I do not know whether they have been looked at. I am also not entirely sure what CYFAA's concerns are about clause 8(1)(g). However, in terms of permanency, what has been done in constructing the Bill is to create a protection order which is called enduring parental responsibility, which is about giving permanency to the child's life up to the age of 18, and giving permanency to the carer to be the child's guardian until that child or minor becomes 18. That is a new provision; it has not existed before. It will improve the capacity of the carers - whether foster carers or family members - to have the certainty that the department will not come in and say that it will now reunify the kids with the parents. Without going to the stage of referring to adoption - because that is a different value altogether - it allows the permanency to be planned and proper supports to be given to that family unit.

Clause put and passed.

Clause 9: Guiding principles -

Dr E. CONSTABLE: Subclause (j) states -

> the principle that a child's parents and any other people who are significant in the child's life should be given an opportunity and assistance to participate in decision-making processes under this Act that are likely to have a significant impact on the child's life.

This raises a very important question. It clearly refers to people who are encouraged to take part in the decision-making processes under the legislation, but does this include parents and other people from whom the child needs to be protected? If it does, we may need something to clarify this principle. It is worth noting that the Queensland report, the recent one I have referred to a couple of times, published in January 2004, states that when parents are disengaged from the decision-making process, reunification is less likely to succeed. A number of things are happening that are really important for us to look at and tease out. If the guiding principle is that parents should be involved, it may well be that in someone's opinion certain parents should not be involved. This is such a general statement, it implies that all parents should be involved.

Ms S.M. McHALE: I thank the member. That is a good question. It is a principle and therefore it is quite broad. I assure the member that it is intended to do several things. It is intended to respond to a number of concerns that have arisen over the years. For example, foster carers say that the department does not take their views and experiences into account, yet they feel that they have significant experience. Natural parents and grandparents say that they want to be involved with or influence the life of the child. The principle is a recognition that although the child no longer lives

with the parents, and is not in daily contact with the parents, grandparents and other significant people, those people should have the right to have their views on the upbringing and the welfare of the child heard. In practise, if the father was the perpetrator of the abuse and it was not in the child's interests for the father to either have access to or influence over the child's upbringing, the father would not be able to use that principle as an argument to gain access to or influence over the child's welfare.

Dr E. Constable: Why not have another guiding principle that tells us when that right is extinguished? Some people might demand to have access to or be involved with their children because the principle in the Bill says that they should be involved. It might be argued that reconciliation with the child would be less likely to occur without any contact, even though the parent beat his child or whatever.

Ms S.M. McHALE: For every principle, there must be a counter-principle or a negative principle. It would then become unwieldy.

Dr E. Constable: This principle could be misleading too. I understand the general principle.

Ms S.M. McHALE: It is the principle. The department deals with cases of fathers who are in prison and who want to have access to photographs of their children and make telephone calls to them, or even to write letters to them. Often the department will not allow that because the child could become traumatised. The overarching concern is that the best interests of the child are paramount. These principles are secondary to that overarching principle. In every guiding principle, the overarching principle is that the best interests of the child are paramount.

Dr E. CONSTABLE: Clause 9 begins with the words -

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

Therefore, the minister cannot answer me in the way that she has. For example, paragraph (j) states -

> the principle that the child's parents and any other people who are significant in the child's life should be given an opportunity and assistance to participate in decision-making processes under this Act . . . .

The Bill says that those principles must be observed. If one says that the officers of the department shall have discretion, there must be something in the Bill that says, for example, the principle in paragraph (j) will be extinguished under certain circumstances. If that is not the case, a parent may say to the department that he must be given access to the child or that, regardless of the fact that he is in jail, the department must allow him to be given photographs of the child and he must be allowed to write letters to the child, which the child must be allowed to see. The minister must be careful. They are general principles, but the Bill states that they must be observed.

Ms S.M. McHALE: The overarching principle of the child's best interests extinguishes the guiding principles. I am happy to put it on record that the guiding principles are subservient to the best interests of the child.

Ms S.E. WALKER: I often get letters from men who are in prison who want to know why the Department for Community Development will not allow them to contact their children. I then write to the Attorney General and find out that a prisoner is not allowed to have contact with his child because he has committed sexual offences against the child. In that case, I do not have a problem with that prisoner not having contact with the child. I always write to the Attorney General to find out what is the problem and, frankly, I am thankful that the department takes that attitude. I referred to this clause because I was concerned about the issue. Its appears that the principles in the Bill are mandatory. That problem could be solved by amending the Bill to include the words that the principles must be observed "unless it is in the child's best interests" for them not to be. My experience of prisoners when I was a prosecutor was that they have a lot of spare time to use when they are in jail. Some of them become quasi-legal experts and they trawl through these types of Bills and Acts. I would like the minister to give some thought to including the words "unless it is in the child's best interests". I think that would solve the problem.

Clause 9(f) states -

> the principle that intervention action (as defined in section 32(2)) should only be taken in respect of a child in circumstances where there is no other reasonable way to safeguard and promote the child's wellbeing;

Clause 32(2) refers to a CEO safeguarding or promoting a child's wellbeing. Does that mean that if a child is being abused, an officer must determine whether the harm is significant? Must a CEO consider every other option before he or she looks at intervention action under clause 32(2), which includes making an application for a warrant, taking a child into provisional protection and making a protection application? Before the CEO can intervene to take action to safeguard or promote a child's wellbeing must he or she consider every other option? Is that another threshold? The current threshold concerns determining the abuse. This Bill introduces a new threshold of significant harm and, once significant harm is discovered, before any intervention action can be taken, every other avenue that can be exhausted should be exhausted.

Ms S.M. McHALE: The answer to the member's first question is it is not necessary to include a provision in the Bill for that because parliamentary counsel has indicated that the provision is properly and correctly drafted. The overarching principle is just that.

Principle (f) is broadly saying that the action of taking statutory intervention - in other words, to remove a child from the care of a parent under the provisions of a statute - is now generally accepted as not being the last resort, but it is a serious and significant intervention in a child's life. We do not want that to be a first or second option before other options have been explored. It is not another threshold, but the principle states that to remove a child from care because of ill-treatment is not necessarily the best option. The department must look at other options, and a range of options is available; for instance, the perpetrator could be removed. However, there are some cases in which it will be absolutely clear that the only way to deal appropriately with the situation is to remove the child. In that instance, the most sensible and necessary reaction will be to remove the child from the parent straightaway because it is that obvious. However, the principle says that it should not be the first option and that other options ought to be examined. The other options might be quickly dismissed. The principles are based on the knowledge that taking a child into care is not necessarily, in itself, free from harm. A child could suffer psychological effects from being removed from a family, notwithstanding the dreadful situation in which the child is living. We must be aware that when a child is removed from harm, we are not putting him into another situation that could be harmful because it is abusive. Nor do we want the child to suffer long-term psychological harm as a consequence of not being raised by his natural family.

Ms S.E. WALKER: I have a bit of difficulty with this because the principle that no intervention action be taken unless there is no other reasonable option to safeguard a child's wellbeing actually refers to clause 37. That is the clause that authorises the CEO, a police officer or a departmental officer, without warrant, to take a child into provisional protection and care when it is suspected on reasonable grounds that there is an immediate and substantial risk to the child's wellbeing. Does the minister see that? The intervention action explained in clause 32(2)(b) refers to clause 37. How does that work? A child's wellbeing must be at immediate and substantial risk yet there is another threshold. Even when a child is at immediate and substantial risk, there will be no intervention until the negative consequences of doing that are looked at. Is that right; is that the minister's philosophy?

Ms S.M. McHale: No.

Ms S.E. WALKER: I thought the minister just said that it was. Clause 37 contains that provision. Under the current Act, no warrant is required to take a child into protection and care. Under this Bill, a warrant is required unless it is believed that the child's wellbeing is at immediate and substantial risk. As that may be the only circumstance in which a child can be apprehended without warrant, all other avenues must first be exhausted. Is the minister able to explain what other avenues would be looked at? Let us presume that we know a child is being sexually abused because the mother has approached the department stating that her husband is abusing their daughter. She may say that he has been doing it for a long time and has become violent. That represents an immediate and substantial risk to the child's wellbeing. The CEO has to see whether there is any other reasonable way to safeguard the child's wellbeing.

Ms S.M. McHALE: The two are not mutually exclusive. If there is an immediate risk to a child, the child will be taken into care without a warrant.

Ms S.E. Walker: Not if there is another avenue.

Ms S.M. McHALE: No, it is as simple as that. If there is an immediate risk, the child will be taken into care. As I said, the two are not mutually exclusive. Children who need urgent action may be brought to the attention of the department there and then; they need to be taken into care. Other families with which the department works may be provided with other services. There comes a point at which the department sees that the services are not working and, although a child may not be at immediate risk, it is clear that the methods of intervention have not worked. To safeguard a child, a decision will be made to refer the matter to court. We are aware of families and we work with them. In a case of child sexual abuse, the perpetrator may be moved from the home and support given to the child and the family. Mothers are also assessed to see whether they are protective. If a mother is protective - assuming that it is the father who is the perpetrator - there can be a relatively safe environment for a child. However, that has to be carefully monitored. A child can be referred for counselling and a case can be referred to the police for criminal investigation. That often happens. A package of services work with a family. The principle is that, when there is no immediate risk, the department needs to ensure it has looked at other intervention strategies. Clearly, if a child is at immediate risk, that provision would be invoked and a child would be taken into care and the court applications would be dealt with subsequently.

Ms S.E. WALKER: I am not quite sure whether it is relevant to determining the best interests of a child, but there is no reference to institutional abuse. Where does that apply to the principles and objects?

Ms S.M. McHale: Churches?

Ms S.E. WALKER: Any institution where there is abuse.

Ms S.M. McHALE: It does not matter where abuse occurs or whether harm is being experienced. All the principles come into play. Whether abuse is perpetrated by a father, departmental carer, foster carer or a priest does not really matter because everything comes into play.

Clause put and passed.

Clause 10: Principle of child participation -

Dr E. CONSTABLE: It is very difficult for me to participate because of the noise from members opposite.

The ACTING SPEAKER (Mr A.P. O'Gorman): Order! Members should take their conversation outside the Chamber as it is difficult for the member for Churchlands to hear.

Dr E. CONSTABLE: This clause deals with the principle of child participation. This clause is not just a nice principle; it contains a lot of detail. I am particularly interested in subclause (1) because it raises the question of what resources will be required to implement the principle and the sorts of people who may be involved in providing services. I am looking for a description of resources and the cost to ensure there is effective child participation in the process. I am also interested in subclause (2) because it refers to a child's age and level of understanding. Again, it is an operational aspect. Is the minister able to give some examples or explain this provision? I am thinking of a four-year-old who is distressed and may explain in the language of a four-year old that he does not want to live with mummy and daddy any more - for whatever reason - compared with a 15-year-old who may use the language the minister referred to before; that is, that his mother scrambles his brain and therefore he does not want to live with her. It is probably more complex than that, but that is the minister's example. How does an officer determine whether a child should live with his parents, be taken from them or be reunited with them? A person may make a decision regarding a four-year-old, and that child may not know what has been said. That decision could cause harm to the child. A four-year-old may express something that should be listened to. We need to know a little more about the intention of clause 10(2).

Ms S.M. McHALE: The Bill has resources implications that I am currently working through.

Dr E. Constable: You should get my submission!

Ms S.M. McHALE: I am sure I will.

Debate interrupted, pursuant to standing orders.

NORTH WEST CORRIDOR STRUCTURE PLAN WORKSHOP

Statement by Member for Wanneroo

MRS D.J. GUISE (Wanneroo - Deputy Speaker) [12.50 pm]: In January of this year, a workshop was held as part of a review of the north west district corridor plan. All the major landowners and developers attended, as well as international, national and local planning advisers - indeed, one might say the who's who of the planning fraternity was there. Part of the workshop's deliberations was to address outstanding issues with regard to the extension of Marmion Avenue to Yanchep. To that end, a resolution for action was adopted that will ensure that all the parties continue to work together to finalise the key aspects of the north west sector structure plan. Regarding Marmion Avenue, this plan will enable the location of a waste water treatment plant, the route, suitable funding arrangements and statutory mechanisms issues to be resolved within a four to six-month period allowing for the construction of Marmion Avenue to Yanchep Beach Road. The workshop dealt with a lot of key points raised in the dialogue with the City of Wanneroo.

I thank the participants in the City of Wanneroo and the Department for Planning and Infrastructure for their assistance and participation, and in particular I thank them for my gift of this replica North American Indian tomahawk given to me for the hatchet job I apparently did on the bureaucracy. It will hang it in my office in pride of place as a reminder to all in Wanneroo that we expect action. I promise to sharpen it, use it judicially and aim carefully.

BILL THORNTON

Statement by Member for Carine

MS K. HODSON-THOMAS (Carine) [12.52 pm]: I make this statement for and on behalf of the many people who have been helped by Mr Bill Thornton, who retired on 20 December 2003 from his position as the Mental Health State Coordinator of GROW, the World Community Mental Health Movement. I take the opportunity to recognise and acknowledge the commitment he gave to many thousands of people he helped during his 26-year involvement with this organisation. GROW is a rapidly expanding and broadly accepted organisation in Australia that assists people with mental illness to regain their health and happiness, and to raise awareness in the community of mental health.

Mr Thornton became a fieldworker for GROW in May 1977. His task was to be both friend and mentor to the mentally ill. In his early fieldwork years, he worked extensively in the country from Kalgoorlie to Albany and all through the wheatbelt, the south west and the north west. He has been a strong advocate and fundraiser for GROW and a good friend to staff and members alike. I have been told that he will be missed incredibly. He is a special individual who has walked the walk and talked the talk helping thousands of Western Australians during their darkest hours. I take this opportunity to pay tribute to him for his commitment to the many people he has helped along the way.

SHIRLEY STRICKLAND DE LA HUNTY

Statement by Member for Albany

MR P.B. WATSON (Albany) [12.54 pm]: I consider it an honour to have known Shirley Strickland de la Hunty. I first met Shirley when I was a young athlete with a bit of ability and not much dedication. I was dragged aside one day