

**CHILD CARE SERVICES AMENDMENT BILL 2011**

*Second Reading*

Resumed from 6 April.

**HON SUE ELLERY (South Metropolitan — Leader of the Opposition)** [2.06 pm]: The opposition will support the Child Care Services Amendment Bill 2011. I want to make a couple of comments about it and the state of the industry that it seeks to further regulate. There are about 1 500 licensed childcare services in Western Australia, of which about 500 are long day care, about 700 are family day care and about 200 are out-of-school care, offering places to over 40 000 Western Australian children. WA has a proud history of providing childcare services and the regulation of child care. We have long led the nation in having the best staff-to-child ratios when it comes to quality of care. Indeed, the leadership of the industry in Western Australia has been a stable one, with people such as Rae Young and Virginia McSparran, amongst many others, in the community sector; and Bernadette Giambazi and her family in the private sector. Western Australia has had some really good women running childcare services in both the community and private sectors. For a little while we did have a slight blip with what I and others refer to as the McDonald's version of child care when ABC child care did its bit, but that was just a blip in what has been a proud history in Western Australia.

It is an important time for child care in the national scene. In December 2009 the state and federal governments agreed on a framework to provide an outline for quality care for early childhood education and school-age care. The draft regulations to sit underneath that framework were agreed by WA and others in February this year. They have been put out for comment; indeed, there was an extended period of comment for Western Australians through to about the middle of May. That is important work that has already been agreed between the commonwealth and the state and more work will be done as the jurisdictions respond to the matters that have arisen as a result of that consultation. However, most of the matters that will come out of that national work are not reflected in the bill before us. They relate to a range of matters that will have a significant impact on child care in Australia, particularly in WA. Some of the key changes arising out of that national work for WA relate to the new assessment and ratings system. All services will be assessed against a national quality standard. There will be new educator qualification requirements, with a minimum certificate III qualification. Long day care services will be required to provide a teacher or, in those services with fewer than 25 children, access to a teacher for some of the time from 2014. The early years learning framework and the school age care framework will provide guidelines for consistent and quality early childhood education and care across Australia. This means that a child who moves with their family to any other jurisdiction across Australia will be cared for and taught under the same framework. There will be a new national body to monitor all the changes that are being put in place. Regulatory authorities will remain state or territory based and will be responsible for approving and monitoring compliance. There will be a change to family day care schemes, whereby individual licences will be removed and a kind of group arrangement will be put in place. As I have said, those are the changes that are happening at a national level, and this bill really does not make reference to any of those matters.

In my first speech in this place, I talked about how I had been an industrial officer for what was then the Liquor, Hospitality and Miscellaneous Union and is now United Voice. I represented childcare workers, support workers in the disability sector and aged-care workers. That was 10 years ago. I know; does it look as though I have been here for 10 years? It is hard to believe, is it not?

**Hon Simon O'Brien:** Absolutely not!

**Hon SUE ELLERY:** Thank you.

**Hon Peter Collier:** Younger and younger every day!

**Hon SUE ELLERY:** Yes; that is the right answer!

At that time, I said that those groups of workers were looking after the most vulnerable in our community—little children, people with disabilities and people who, as a result of what happens as they age, are not able to care for themselves—but they were paid so little. It seemed that we as a community valued so little the work that those people who look after the most vulnerable were doing. I know that the work that is being done as part of the national agenda is aimed at addressing some of those issues. But it is a shame that, 10 years on, things have not changed significantly.

We are told that this bill has three drivers. Some of the matters are from the reviews of the Western Australian regulations that occurred during 2006 and 2007. Some of the matters are related to rights and obligations that have been picked up as a result of some prosecutions conducted against childcare operators who have not done the right thing. Some of those issues arose when the courts identified that they had limited power to take particular action and go to the kind of evidence that needed to be provided. Some matters have been driven by

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the agreement that Western Australia entered into with the commonwealth. None of the changes in the bill is necessary to give effect to the national regulation changes. The sector and providers certainly support the changes in the bill before us. Arguably, the amendment in the bill to insert proposed new section 5A, which separates the supervising officer from the licensee, will provide a basis for some of the changes that will happen as a result of the national work. It will be an enabling proposition, but it is arguable whether it is necessary. Some of the key changes include that the supervising officer will be required to be on the premises all of the time, whereas they are currently required to be on-site 25 hours a week. The supervising officer will be required to be certificated. This will add an additional part to the approvals process. The State Administrative Tribunal will be given the jurisdiction to hear matters related to breaches of regulations and licence appeals. This is designed to prevent people from, if you like, jurisdiction shopping between the State Administrative Tribunal and the Magistrates Court.

There is a new penalty regime in the event of a breach. A new component of the penalty regime includes a reprimand and fine, as well as suspension or cancellation—those two things exist now—and a defined cap on the period of any suspension of a licence.

The approvals process in the bill before us differentiates between an individual applicant and a corporate applicant. Licence applications will be on approved forms. The licence approval process now includes a stop-the-clock mechanism, so that if further information is sought, the process is stopped so people do not run out of time to demonstrate compliance, and the mandatory time lines are not affected.

The bill clearly distinguishes between managerial officers and other staff or management committee members, so that responsibility for breaches is clearer. This is an important thing for those community-based organisations that have committees of management. Sometimes those committee members find out only once they have been on the committee for some time exactly what their financial and legal obligations are in the event that action is taken against the centre. That terrifies them, and they run off screaming into the night, never wanting to sit on the management committee ever again.

The bill provides new powers for investigation staff to be provided with, for example, computer passwords, access to the computers themselves, and the power to talk to and gather evidence from any contractors who have been on site. This provision in particular arose out of a prosecution in which the court held that the agency had no power to question a contractor about when a particular fence may or may not have been fixed. That was the critical issue, because the hole in the fence is the one through which the child got out and onto a busy road. The bill inserts into the main act the power to get an entry warrant, whereas previously there was reliance on the power in another act.

The bill provides the authority to publish the names of centres breached. Currently, that is an operational matter that requires ministerial approval every month. This will fast-track the process of having to do that. In respect of family day care, the intention is to license the schemes as opposed to individual providers.

In the course of the briefing I sought information on two matters, and the officers undertook to provide that information to me. However, I note that they have not, so I ask the minister to follow that up, please. The first matter was about a document that may or may not have been tabled in the house—the officers were not sure at the time—setting out the status of the implementation of the recommendations from the earlier review. In respect of new section 51(3), there is a question about whether a new liability is created and what that might mean. As I said, the officers indicated that they would provide me with further information, but I have not received that yet.

Child care is all the more important to a community when we have a tight labour market, which certainly in certain sections of the Western Australian economy we have right now. Employers want to be able to attract and, more importantly, retain parents to work for them, whether those parents have young children or older children. But those parents—it is usually the mothers—need to be confident that the childcare arrangements, whether it is an informal arrangement involving members of the family such as the grandparents, formal home-based care, family day care, long-day care or a combination of all those things, including out-of-school care, are going to work for them and, more importantly, for their child. At the same time, the low wages in the childcare sector mean that childcare operators, at a time of a tight labour market, really struggle to hold good staff, as they can earn considerably more working in practically any other sector.

Child care in Australia is funded through the childcare benefit and the childcare rebate, which are responsibilities of the commonwealth government. It is the case that all the jurisdictions agreeing to lift the qualifications and, therefore, the pay of childcare workers and to impose some new standards will lead to higher costs. I think that is inevitable. It is not clear, though, because there are divergent views on this, what the dollar value of those increases will be. How the balance of those costs will be met, whether it is by further adjustments to the rebate or by parents, remains to be seen, but it is a critical issue. The opposition has not been party to any of the COAG

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discussions on what the cost implications of the national quality framework might be. We have not been party to the drafting of the new regulations, so I trust that if the cost to parents went up as a result of what has been agreed by the state and commonwealth governments, we will not find ourselves in a position in which the state government, which has already signed up to the agreement twice—it signed in December and again in February of this year—says that the costs are all the commonwealth's fault. The state has agreed to the changes because they are good changes. The state agrees that the wages of childcare workers need to be linked to better qualifications and, as a consequence of agreeing to that, it has agreed to a flow-on of increased costs to some extent. The opposition has not been party to any analysis done by the Western Australian government, through Treasury or maybe the small business unit, or anybody else for that matter. Therefore, I invite the minister to put on the record that the Western Australian government will indeed be a strong advocate for WA parents but equally recognise that the decision to improve childcare workers' qualifications and all the other factors that go with this legislation, which WA agrees with, have a cost. Western Australia has agreed to make these changes that we know will lead to increased costs; therefore, this decision was made by the commonwealth and the state together.

I will touch a little on some of the issues that people in the childcare sector drew to my attention in my consultations with them. They are a bit concerned about some changes that arise from the draft Education and Care Services National Regulations, which are not in the Child Care Services Amendment Bill—I am digressing slightly—but I want to put on the record the sorts of matters that they are concerned about. Although people might think that some of these changes are really small, they can have a significant impact on people who operate small businesses.

The draft regulations require one changing bench and mat for every eight children. If the babies' room at a childcare centre caters for more than eight children, an extra changing bench will need to be put in. If the centre is purpose-built with everything already built in to the walls of the babies' room, the people who operate the centre will have to take into account the extra cost that goes with that. Most purpose-built centres in Western Australia already have properly constructed nappy-changing benches that are designed to cater for more than eight children and usually only one staff member at a time can change a nappy in the room because the other staff members are required to be with the majority of the children. Therefore, I think some clarification is needed to ensure that a mat, for example, can be put on the floor to change a baby's nappy, so that there are no construction costs to change what is already a purpose-built centre.

There is a requirement that ratios be maintained, for example, over the lunchtime period. If that is the case, I have seen costing estimates based on a 100-place childcare centre that indicate centres might need to increase the fee for families by an extra \$10 a day. If we add that up over a year's budget, it is a lot of money.

There is a requirement that a person with a supervisor certificate be present at all times. Some people in the sector say that there should be a suitably qualified person at all times—that is, someone with a delegated power—because if the directors or coordinators of childcare centres are required to be onsite all the time, they will have to conduct some of the other responsibilities they have with people outside the childcare centre outside the hours that they are required to be in the centre. Therefore, they say that further discussion is needed about how that will work on a practical level. They are just some of the issues that I know the sector is concerned about getting clarified.

I want to touch a bit on the importance of recognising that the time has come—we cannot back away now—from making changes to the qualifications for childcare workers and addressing those workforce issues. I have already said that this group of workers look after little children who are vulnerable, and provide, some for more hours than others, the foundations for a child's education. These workers offer invaluable support to families and are really the cornerstone of greater workforce participation: if mums and dads are happy and confident that their children are being looked after, their capacity to contribute to the workforce and the labour market is significantly enhanced. Despite the crucial contributions that childcare workers make to ensure that parents can participate in the wider labour market, childcare workers remain poorly paid. Many skilled, dedicated childcare educators simply cannot afford to remain working in the sector. These workers are predominantly women and many of them are young. Once they start to think about getting a mortgage, they start to think about leaving the sector, because if part of a couple's dual income is that of a childcare worker, they simply could not afford a mortgage.

About 40 000 kids in Western Australia attend government-supported early childhood education and care programs, and the dominant part of that sector is long-day care, which is attended Australia-wide by about half a million children. Across Australia, about 58 000 childcare workers are employed in primary contact roles in long-day care alone. If we take our 10 per cent of that figure, that is about 5 800 or 6 000 people working in child care in Western Australia.

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Issues that need to be addressed in the discussion about better qualifications for childcare workers are their low wages, the lack of opportunities for career progression and the expectation that they will perform work outside the hours for which they are paid. A person's capacity to take on that extra work willingly tends to increase if they are paid better; if they are paid pretty badly, their willingness to do work outside the hours that they are paid for diminishes slightly. The absence of any pay parity between early childhood and education carers and workers in the school education sector, and a lack of adequate programming and staff development time, are important matters facing the sector. The bill before us today goes some way to give effect to some operational matters; the changes to prosecutions are particularly important. The opposition is happy to support this bill.

**HON MIA DAVIES (Agricultural)** [2.28 pm]: I rise on behalf of the Western Australian National Party to state that we will support the amendments to the Child Care Services Act 2007 in the Child Care Services Amendment Bill 2011. I thank the Minister for Community Services for providing us with a briefing on the bill. We have a keen interest in childcare services and any potential change to the sector, with particular reference to the impact that it will have on regional Western Australia. I understand that the bill is designed to reduce red tape for the many not-for-profit organisations and small businesses in the childcare sector. Furthermore, I understand that it aims to improve or strengthen the Department for Communities' childcare licensing and standards unit to monitor, investigate and work with the sector to ensure compliance with regulations. As Hon Sue Ellery just outlined, this bill is the first step in the reform for the sector that is being driven at both a state and federal level. I understand that at a state level a fairly wide-ranging and extensive review was undertaken during 2007 and 2008. Everybody had the opportunity to provide feedback. At a federal level, this state is a signatory to the Council of Australian Governments' reforms for the provision of quality early childhood education and care.

Some members have heard me speak about childcare services previously in this house. Most recently, I stated that the National Party remains unconvinced that the federal government understood the impact of some of the proposed changes on childcare services, particularly in the Wheatbelt. The federal member for O'Connor, Tony Crook, Hon Brendon Grylls and I were so concerned about it that we actually invited the federal Minister for Child Care, Hon Kate Ellis, to visit Western Australia, in particular the Wheatbelt region. She also spent some time with us going through different types of childcare services throughout the Wheatbelt. During this visit, providers had the opportunity to raise concerns directly with the minister. I believe the minister left with a better understanding of the unique challenges we face in the provision of child care in that part of the world. Small Wheatbelt communities operate in a unique environment. It is very difficult for those people who operate a not-for-profit organisation or a small business—which most of these organisations are—especially given some of the proposed staffing changes. We continue to advocate for these circumstances to be recognised and accommodated as the national quality framework is rolled out. I understand that everybody involved, particularly those people I talked to, was given the opportunity to provide feedback to the minister. Any move to reduce red tape or regulatory burden on these organisations will be welcomed. That was the feedback provided to me. The aim of the amendments is to reduce business licensing time and costs, increase the sector's understanding of the legislative requirements, and provide clarity around the requirements for the safety and health of children. Perhaps one of the most significant changes is the broadening of the jurisdiction of the State Administrative Tribunal to make sure all licence holders are held to the same level of compliance.

I note from the minister's second reading speech that a range of resources are under development to assist in the implementation of the changes coming through as part of this legislation. In my experience, and in my electorate, these services are run by a group of dedicated volunteers. The regulations and resulting paperwork are fairly burdensome. The Wheatbelt Organisation for Children's Services has been fantastic in providing support to some of these organisations in making their way through the regulatory burden. I welcome advice from the minister on the nature of the resources that are being talked about and how these services will be assisted in dealing with new regulations as they are rolled out.

**Hon Robyn McSweeney:** Can you go back over that again—what were you wanting to know specifically?

**Hon MIA DAVIES:** The minister mentioned in her second reading speech that a range of resources were being developed to assist in the implementation of the changes. I want some clarification on that so that the industry is aware of how that will be rolled out and what will be available.

I note from a recommendation in the "Report on the Children's Services Regulations Review" that the development of alternative regulations for rural and remote childcare services continues, with a view to increasing the capacity of operators to provide flexible, high-standard services. I am not sure whether that comes down the track with the changes to the national quality framework or whether that is in this bill, but if it is, perhaps we need advice further down the track.

I conclude by saying that the Nationals support the bill. Parents and carers seek quality child care wherever they live. We are ever mindful of the challenges that some of our regional providers face in this sector. To this end,

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we seek an assurance from the minister that the issues raised in the review have been addressed and accommodated, if not in this legislation, in future tranches of legislation.

**HON ALISON XAMON (East Metropolitan)** [2.34 pm]: The Greens (WA) will also support the Child Care Services Amendment Bill 2011. We note that the legislation is the first stage of regulatory reform of childcare services. The objective is to protect and promote the best interests of children in licensed childcare centres. We know that more than 800 000 Australian parents place their children in some form of child care each week. Access to suitable child care is, and remains, a key factor in the workforce participation of parents and carers, but this is particularly so for women. I note that only women have stood up to speak on this bill. It would be interesting if some men would like to stand up to talk about their experience with child care and how necessary they have found it in their lives. We know that the use of childcare services is not a luxury; it has become an economic imperative for many, if not most, families. These days a dual income is often necessary to support a mortgage. Long gone are the days when people chose to use child care only if they felt they absolutely had to. It is now the case that most families are likely to need some form of child care at some point.

Personally, I have had a lot of experience with childcare centres both as someone who has worked in and sat on the board of childcare centres and as someone with three children who have been in a variety of services across a range of providers. I have seen quite a diverse range of quality in some of these services. I particularly want to acknowledge Murdoch University Child Care Centre. My two university degrees were achieved part-time while I was working. As such, even though there is 10 years between my eldest and youngest child, all three of them at some point had some experience with Murdoch University Child Care Centre. I note that one in particular, because it was heavily subsidised by Murdoch University, and it is interesting to note the high standard of care that was able to be delivered as a result. Staff at the centre often had been there for more than a couple of decades. The manager of that service, Mo Green, who retired recently, had been there for 25 years. She is an absolutely wonderful woman. It is interesting to note what can be achieved in a childcare centre when money does not become a primary consideration both in the quality of care being delivered and the level of staff satisfaction. I particularly wanted to acknowledge that. It is also important because we recognise the importance of a high-quality early learning environment and early childhood development. When centres are not under the crunch to provide money to shareholders, that is more likely to be achieved. That results in lifelong positive outcomes .

In WA our childcare sector is predominantly made up of small businesses and community-based organisations. It includes providers in metropolitan as well as regional and rural areas. I note that special mention has been made of the needs of rural and regional communities, including the consultations that led to the drafting of this bill. It is welcome news. As Hon Mia Davies pointed out, there are special needs and requirements for the delivery of these services. Having said that, like Hon Sue Ellery, I acknowledge that there needs to be a balance between the affordability and quality of care and the availability of care. In addition, childcare staff need to start receiving appropriate recognition, wages and conditions, because it is a tough job. A high turnover of staff is not in the interests of parents, who want their children to have a relationship with their carers, and it is not in the interests of the services. That is more likely to happen when there are low wages and when people feel as though they are able to achieve better wages elsewhere. We know that the government has a central and very tough role to play in trying to achieve that balance. Our primary concern must be to recognise that the state needs to ensure that there is no unacceptable risk to our children when they are being entrusted into care.

I recognise the changing nature and the increasing corporatisation of the delivery of childcare services. I was one of the parents who was affected by ABC Learning Centres. I saw first-hand the way that those services had been delivered and also the impact of that. We need to note that it is important that we make sure that we facilitate the delivery of services in a way that is not just about achieving bottom dollar because, for many, child care is an essential service.

This bill will improve and update regulatory and investigative powers, including broadening the jurisdiction of the State Administrative Tribunal to the childcare area. That is a step in the right direction. It is also important that there is not an overly onerous regulatory burden and that small not-for-profit groups and small businesses are supported in their efforts to deliver quality services, because, as I mentioned, when centres cease to operate, that impacts on parents and children in a negative way.

I note that the government anticipates a reduction in licensing time and the cost of applications, as well as simplifying the requirements. I imagine that has been welcomed by industry. As has been mentioned, the history of this bill is that the state Labor government established the Childcare Regulations Consultative Committee in 2006 to review the regulation for child care and to recommend improvements. I note that Hon Kate Doust was the chair of that committee and that Hon Sue Ellery was the minister.

**Hon Kate Doust:** David Templeman was the chair first of all.

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**Hon ALISON XAMON:** I thank Hon Kate Doust for clarifying that. I note that extensive consultations were conducted and that more than 1 100 responses were received, including 350 from parents and, I note, 35 from children. Over 300 childcare service providers and staff participated in metropolitan workshops and rural and remote video conferences. As a result, the committee reported in 2008 and delivered 28 majority recommendations. I note that, according to the explanatory memorandum, the amendments contained in this bill relate to clarifying the definition of managerial officer, reducing the regulatory burden for services, broadening the jurisdiction of SAT, updating and broadening a range of compliance measures available to the chief executive officer, enhancing authorised officers' investigative powers to allow better investigation into allegations of concern about licensed childcare services, amending the connection between the application and assessment process for a childcare licence, and the regulatory requirements for the assessment of a supervising officer. By expanding SAT, we will ensure that it has vocational licensing jurisdiction over childcare matters. Currently, SAT has limited jurisdiction in the childcare area and can cancel licences only in very limited circumstances. By providing SAT with expanded powers, these amendments will allow for the ability to impose disciplinary actions following breaches of regulations that are currently prosecuted as criminal charges in the Magistrates Court. This means that childcare licences will now be treated in a similar fashion to many other licensed vocations.

According to the government, the childcare sector has welcomed the transition of disciplinary proceedings from a court-based process to SAT. I note this move is also consistent with recommendation 57 of the fourteenth report of the Standing Committee on Legislation on its inquiry into the jurisdiction and operation of the State Administrative Tribunal.

I note that the legislation grants the CEO the power to assess, grant, not grant and place restrictions et cetera on an applicant for a licence. This amendment will enable better screening. This follows recent cases in which the capability of childcare providers has been questioned or demonstrated to have been below standard. I welcome the fact that the CEO will be given more powers of assessment, but I would like clarification on the safeguards that will ensure that the decisions that are made to either grant or deny a licence are made in an open and transparent manner; that is, will the applicant be provided with comprehensive information regarding the reasons for refusal and will they be given that in a timely manner? If the minister can elaborate on any processes that have been outlined as to how that will be managed, that will be much appreciated. I note that it allows for a targeted assessment of the financial side of applications, as the current version can pose difficulties for new applicants without a financial reputation.

The bill provides that licences cannot be granted to someone who has previously been disqualified from being a managerial or supervising officer of a licensed childcare service, and makes it an offence to employ a managerial officer who is disqualified. The bill allows a service to continue to operate when an application to extend a licence is being determined. Obviously, this is good as it enables continuity of service and is essential for business; however, it also means that decisions need to be made fairly promptly. I also note that the bill allows the CEO to amend or refuse to amend a licence and provides the CEO with a power to suspend a licence if they believe that there are reasonable grounds that if the service were to continue to operate, it would pose an unacceptable risk to the children at the service.

The bill removes specific reference to commonwealth agencies, and now refers to function and jurisdiction, which is a good tidy up. It also clarifies the functions of licensing compliance staff to include: monitoring compliance with the act and any licence terms or conditions; checking that all staff have working with children clearances; and investigating suspected contraventions of the act. The bill provides staff with the powers to obtain evidence needed to allow prosecution or compliance action by the State Administrative Tribunal, and to inspect premises without a warrant. The bill also provides for the regulations to adopt any text, thus facilitating the adoption of national quality standards and other related texts.

I note that the amendments enable the CEO to publish information about childcare services, licensees or other persons involved in the provision of a service in good faith when it is in the public's interest to do so. I welcome the transparency, and I note that it is understandable that parents desire access to information about the people and organisations that provide care for their children, but I am concerned that this has the potential to undermine the basic principle of innocent until proven guilty. I am certainly interested to hear what safeguards will mitigate that as much as possible. Services can also be the subject of vexatious claims by parents. Perhaps a parent has a dispute over the payment of an account or the like, and they may decide that they want to cause trouble for a service provider or something else. Prematurely publishing concerns raised has the potential to ruin businesses and people's careers, and to close services, which has a flow-on effect of potentially being enormously detrimental to the other parents utilising those services. I recognise that it is a balancing act, because if a genuine problem needs to be investigated, we want to make sure that parents are informed, but the flip side is making sure that we are not unfairly maligning a service that may subsequently be found to be not guilty of whatever the

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allegation may be. I seek an outline of the safeguards to prevent the premature publication of false accusations, and an idea of the procedural fairness guidelines that are in place. Will there be guidelines or regulations created on this issue?

In 2009, the government introduced name-and-shame provisions for childcare providers that are found to have breached state regulations. A list is available online on the Department for Communities website; this was done in response to concern from parents that they were being kept in the dark about violations of care and safety standards. As part of the national childcare quality reforms, a rating system will be introduced and recorded on the MyChild website. I support the new requirements, including increasing the percentage of qualified staff who need to have, or be working towards, a diploma or certificate from 50 per cent to 100 per cent, and employing an early childhood teacher for 60 per cent of a centre's operating hours. Clearly, those increased standards will result in a flow-on of quality care and, hopefully, job satisfaction in the profession and, therefore, the desirable outcome of people who feel as though they want to stay in their places of employment. However, it may be worth using the opportunity presented by the Child Care Services Amendment Bill, to note—this is an issue that was brought to my attention—the need to ensure that teachers working in the childcare sector are not disadvantaged by doing so. By that I mean the new national requirement is for childcare centres to employ qualified teachers—I know this is not under the Minister for Community Services' portfolio—but that the review of the Western Australian College of Teaching Act highlighted that childcare services do not qualify as schools under the act, which makes it difficult for teachers who work solely in child care to maintain their WACOT registration given the requirement for recent teaching experience in a school. This issue was raised by both Early Childhood Australia and the Department for Communities during the review of the WACOT act. I would like to hear from the minister how she envisages this issue will be addressed.

**Hon Robyn McSweeney:** No, because it is not in this bill. You can take that up with the Minister for Education and with WACOT.

**Hon ALISON XAMON:** I certainly accept that the issue, as I mentioned, ultimately lies with the Minister for Education; however, there will be flow-on effects and overlaps and it is therefore something that needs to be looked at.

**Hon Robyn McSweeney:** Perhaps the time to raise that would be when the other bill comes in—the national quality education and care bill. But that is another bill and it will come in after this bill. We will have time to discuss that then.

**Hon ALISON XAMON:** Thank you, minister. We certainly need to make sure that there are no more disincentives for teachers to work in the childcare industry.

I note that federal minister Ellis has denied claims that the new system will push up costs between 10 and 15 per cent in the next four years, but shares some of the concerns Hon Sue Ellery raised about the inevitability of cost increases. In early April, the minister raised concerns in the media about proposed national childcare laws that could fine childcare centres up to \$50 000 for Christmas and Easter activities. I note the federal minister has stated that the draft regulations, endorsed by federal, state and territory governments in February of this year, do not ban any cultural activities, but ensure that children are not forced to take part in them.

I also noted a report in *The West Australian* not so long ago that claimed dozens of childcare centres are failing to meet basic hygiene and disease control standards; that 37 per cent of the 95 WA childcare centres visited by the National Childcare Accreditation Council in July and December 2010 did not have effective food safety and hygiene practices; and that 26 per cent failed to ensure that dangerous parts and products were being kept out of the reach of children. That is certainly concerning. Western Australia is a signatory to the Council of Australian Governments' reforms to improve the quality of early childhood education and care, including the introduction of a national quality framework. The second stage of Western Australia's regulatory reform program will be to enact nationally consistent legislation.

Under the old system, childcare providers are licensed by the state government and the federally funded National Childcare Accreditation Council inspects the quality of services for accreditation. Under the new system, a new national body will be, or has been, created to oversee the system and ensure consistency between states. The national quality framework began its transition period in July 2010 and a new system will be introduced from January next year, with Victoria passing the legislation in October. I note that the MyChild website will rate childcare providers in several key areas.

My final point is that I certainly want to ensure that in the move to a national standard we do not see a drop in standards in WA. For example, I understand that other states do not necessarily regulate individual family day care providers as we do, but only licence family day care schemes. I have to say, that is not good enough; we do it better here. Although reform is positive, we should maintain licensing for anything we currently licence, rather

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than reduce standards to conform to a national system. I will be particularly interested to hear the Minister for Community Services' views on whether we are likely to retain the high standards that we currently enjoy.

On that note, the Greens (WA) will support the Child Care Services Amendment Bill 2011. It is a step in the right direction and we look forward to seeing what will be included in subsequent rounds of reform.

**HON LINDA SAVAGE (East Metropolitan)** [2.55 pm]: I also rise to speak in support of the Child Care Services Amendment Bill 2011. There has already been a very comprehensive speech by Hon Sue Ellery and contributions from Hon Mia Davies and Hon Alison Xamon that have covered a great deal of issues pertinent to this bill.

As has been noted, there are many hundreds of thousands of children in child care every week; I think the figure is approximately 40 000 in Western Australia and 800 000 Australia-wide. A bill like this is a very important step for regulating and beefing up the operational matters that are essential to ensuring that parents can send their children to child care with confidence. That is important for so many reasons. Obviously, it is primarily important for us to know that children in child care—infants and toddlers—are safe and that everything is in place to ensure that the environment is to the highest standard possible.

These days, child care is invaluable to families. In fact, as has been said, it really is a cornerstone of greater workforce participation for women, as well as playing a smaller respite and child protection role. The role of childcare centres, in whatever form they take, is very much more than babysitting, particularly for children who spend long hours in child care. It can initially be a quite traumatic experience for any parent to leave their child in a childcare centre. I had help at home for my older two children when I first returned to the workforce, but for my last child there was the great benefit of the childcare services provided by Bernadette Giambazi. I still recall rushing there very early in the morning, two mornings a week, to leave a 10-week old baby, and then collecting him later in the day.

**Hon Robyn McSweeney:** I wouldn't have liked to do that!

**Hon LINDA SAVAGE:** I suppose it was necessity to some extent, but choice also.

The service that was provided for the two days a week that he attended that childcare centre was outstanding. It gave me an insight into what it means for a parent to hand over a precious baby or toddler to someone else. It also gave me an insight into what incredibly hard work it is to look after someone else's baby or young child until they are quite a bit older. It is constant, and at times unrelenting, but also joyful as well. It is really hard work to care for babies and children because, of course, they cannot do anything for themselves and they are entirely dependent upon the people who care for them. I know what hard work it is, from practice, personally, and from having watched other people do it. It is important always to remember that it is one thing to look after our own baby or child; it is a very special thing for another person to take on the care of the child for us. Childcare workers are to be particularly valued. That is why issues have been raised about their pay and the recognition of how important this work is in the crucial early years of development, and, for some children over extended hours during the week, sometimes for the entire working week and, it is between seven in the morning and seven at night when the child is awake, compared to night-time when the child is home and, hopefully, is more likely to be asleep. The potential is less for enriching and quality time between seven in the evening and seven in the morning and, in any event, because it is the middle of the night, may be much less enriching!

The childcare workers whom I have had contact with, particularly as a member of Parliament in Midvale and Ellenbrook, are very much representative of the ones who cared for Declan. They are skilled, patient and hardworking, but, unfortunately, they are not adequately recognised with their pay. We hope that, through the national partnership, COAG reforms and recognition of how crucial this work is, that will be part of what will flow from this turning point we have found ourselves in in recent years recognising children's needs in their early years and the recognition of those who do childcare work.

The point has been made that, because of the pay they receive, childcare workers often cannot afford to stay in that area of work even though they may be very dedicated. That is part of what feeds into the very high turnover of staff in that industry, which has been quoted as anywhere between 30 to 40 per cent. I hope a lot of things are coming together now that will enhance their status, recognise their value and provide a career path. The benefits of that will be felt most by the children because, hopefully, that will contribute to continuity of care.

I think I mentioned last week that I had attended the 2011 Western Australian Early Childhood Education and Care Conference held on 18 and 19 June. In his opening remarks, the CEO of Child Australia, Dawson Ruhl, who was hosting the event, commented that one of the great challenges we face—this goes to all the bills Hon Robyn McSweeney said are in the pipeline—is how we integrate the continuum of care of children with education and bridge that gap. It is all part of the same continuum of care and the same period of those essential

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early years when care and education are provided to children, and, increasingly, as we were discussing, child care in a formal structure as opposed to the informal and family structures that have existed in the past.

I will not say any more, except to say that the bill has been spoken about in considerable detail. It takes another important step towards ensuring that children in licensed childcare services are as well protected as they should be and, of course, that staff working in them have protections. I support the bill and thank you for the opportunity to speak to it.

**HON COL HOLT (South West)** [3.05 pm]: I thought I should add some bi-gender support to this debate. Child care is certainly important to the women in our society but it is also important to the men in our society. Having raised four children and accessed childcare services in many regions of the state, I understand how critically important it is. As my colleague Hon Mia Davies outlined, we are supporting the Child Care Services Amendment Bill 2011 because it will tidy up some aspects of child care that we see as beneficial for regional WA. Obviously there are more bills to come, which we will address in more detail. I look forward to seeing how they contribute to those families in regional WA accessing child care. I will conclude with those few brief words.

**HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition)** [3.06 pm]: I will not spend a lot of time on my feet. I thought I would take the opportunity to say a few words given that a lot of the provisions in the Child Care Services Amendment Bill 2011 are based on the work of the committee that I chaired a couple of years ago.

**Hon Robyn McSweeney:** I would have acknowledged that.

**Hon KATE DOUST:** I thank the minister. Coming into the house and listening to Hon Alison Xamon, I must admit that, with the passage of time, I had to open the report to remind myself of the types of issues that we canvassed. I pick up on the point made by Hon Col Holt. As a consumer of child care in very many varied forms over the past nearly 20 years and still as a consumer of child care in a much more informal sense—there is no way I would leave my tribe at home alone at night, so we still use child care but in a different way to the way we did 20 years ago—I was very pleased to be asked to chair this committee because it is a very important area for government to engage in as more and more women have ventured back into the workforce and have had to address the issue of what to do with their children. As much younger parents, we always had issues about access and type of childcare arrangements. It was very interesting for me to work with such a diverse group of people on this committee and address the extensive list of issues that are canvassed in its report. I picked up on only a few of those issues. I look forward to the time when the minister brings in other legislation that deals with the other issues that were dealt with in this report.

A great amount of time—I think I heard Hon Mia Davies talking about this—was spent talking to representatives from the Wheatbelt and the Pilbara regions in particular about the issues they faced with child care. Whilst they may not be getting addressed, it is important to note them. We spent a lot of time in the committee talking about how we could make the processes easier for people in the Wheatbelt and the Pilbara.

The report that this legislation and hopefully future bills will be based on is fairly solid. It certainly chewed up a lot of time for everyone involved in the committee. The level of discussion with the various players—both people who work in the various tiers within the industry and also community members—was fairly intensive. That can be seen by looking at some of the information provided in the appendices, the survey that was conducted, the number of forums and the type of communications we had. We tried to do things a bit differently so we could access as many people as possible. We all wanted to make a substantial contribution to acknowledge and address the key areas of concern raised by the various sectors of the childcare industry and also the consumers of child care. I am fairly pleased with the work that was done. I certainly must congratulate all the people who participated on the committee for the whole period and those people who were involved for only part of the time, and very much so the staff who provided that assistance, because trying to deal with childcare issues for the whole state is quite an onerous task.

I look forward to the minister's response. I certainly look forward to seeing how the government will address via legislation the issues that were canvassed in the bulk of this report. I think there is a lot of work to be done in this area. I think we do it quite well. We certainly offer a variety of options for families. Parents in particular want to know that, regardless of the type of childcare arrangements they have, their child will be safe, healthy and happy. It is peace of mind for parents. Those members in this chamber who have ever had to drop their child off at child care—I do not know whether Hon Donna Faragher has reached that point yet—know that that environment is fine and their child knows how to pull that stunt when they go kicking and screaming, but, at the end of the day, they need to be assured that their child is safe, healthy and happy. It was quite a large focus of the committee to ensure that industry could raise its standards. We certainly focused on ratios, health and safety issues, and ensuring that people could step up and fill gaps when needed. It was about making this whole system work

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better. I look forward to those future changes. I will provide more detail when we deal with the next piece of legislation as it relates to the report that was produced.

**HON ROBYN McSWEENEY (South West — Minister for Community Services)** [3.11 pm] — in reply: I thank Hon Sue Ellery, Hon Mia Davies, Hon Alison Xamon, Hon Linda Savage, Hon Col Holt and Hon Kate Doust for their support for the Child Care Services Amendment Bill 2011. They were all given a thorough briefing. From their responses, I know that they understand the childcare industry very well. I also thank Hon Kate Doust for the work she did on the report on the review of the Child Care Services Regulations that was tabled in this house in February 2008. I know that she just spoke about some of the work that the committee did. I read through the report very recently and the recommendations in the report certainly are good recommendations. Those recommendations have been used, if not in this bill, in the bill that will follow this one on the national education and care services.

Hon Sue Ellery talked about the proud history of child care in Western Australia. Western Australia has the best staff-to-child ratio throughout Australia. She also talked about the collapse of the ABC childcare centres. I want to put on record my thanks to the Department for Communities, and especially Helen Creed, who worked many long hours to try to salvage something out of the ABC collapse so that our Western Australian children were not put at a disadvantage. She did that very well.

Hon Sue Ellery also mentioned the certificate III in childcare education. I note that one of the recommendations was that all childcare workers have a base certificate III. About 85 per cent of Western Australian childcare workers have a certificate III. The member also talked about the next bill. It is very hard not to talk about education and care quality, and even though it forms no part of this bill, this bill underpins a great deal of what will come. I want the member to know that I have worked very hard with the commonwealth and have talked about our remote centres and how hard it is to get quality childcare workers in our remotes. It is very hard to get people with a certificate III, let alone a diploma of early childhood and a four-year bachelor degree, which will be a requirement in the bill to follow this one. We have made it very clear that it is going to be very hard to do that. So that is ongoing. The political landscape has changed a little since we started. When we started, I was the only Liberal member going to the meetings of the Ministerial Council for Education, Early Childhood Development and Youth Affairs. Now there are three Liberal members and three Labor members, but we are all still working towards the one national quality agenda for child care.

We must have the national quality agenda ready by 1 January 2012. I know that I am straying a bit into the bill that will follow this one, but I want to explain that if we do not have that ready, Western Australian children will probably miss out on about \$28 million a quarter in childcare benefits, so there is some urgency to deal with that bill. However, even though there is an urgency, it must be done right. I am going to the next MCEECDYA meeting on 7 July, I think it is, and we will have final discussions about where we are all up to. However, I agree with Hon Sue Ellery and all the other members who have spoken in this debate—they have all touched on it—that childcare workers do an amazing job. They look after those who are most vulnerable. Hon Linda Savage said that she put her six-week-old baby in a childcare centre. That must have been very hard for her.

**Hon Linda Savage:** It was for my third child.

**Hon ROBYN McSWEENEY:** Yes. I do not think that I could do that, and I was fortunate enough that I did not have to do that. A person is giving up that baby to someone else, so we need to make sure that the workers in the childcare centre are qualified to look after babies who are six weeks old right through to older children. I know that the training they get could always be better, especially now that we know about the early years and the development of the brain. We are slowly but steadily progressing along that pathway.

Hon Sue Ellery asked about proposed section 51(3) and the state being protected from the liability that it might have under the current act, and the changes that have been made because we have utilised a provision from the consumer protection legislation, and this is a part of upgrading that legislation to protect the state from liability. Certainly, I have spoken to the member about that proposed section—just the member and me together behind the Chair. I do not know whether Hon Sue Ellery has had any more —

**Hon Sue Ellery:** What I might do, minister, if we go into committee, is put on the record my concerns about this provision.

**Hon ROBYN McSWEENEY:** Yes. I am happy to do that. Hon Sue Ellery also referred to the NQA and the various parts of it, and how it fitted in with the 28 recommendations in the Child Care Services Regulations review. I think a lot of that is in the next bill, but I am very happy, out of session, to give the member a blow-by-blow description of the 28 recommendations and where they fit into the legislation. What is Hon Peter Collier laughing at—blow by blow?

**Hon Peter Collier:** In joke.

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**Hon ROBYN McSWEENEY:** In joke—I hope so.

**Hon Sue Ellery:** We thought you were threatening to assault me!

**Hon ROBYN McSWEENEY:** Hon Mia Davies has been an absolute champion when it comes to rural family day care and occasional care. The commonwealth government, without any hint of it coming, just decided to stop funding occasional child care, and the Department for Communities picked up that funding for 23 centres. Royalties for regions state government funding has now been put in place to pick up all the funding for that. One of the important developments for flexibility in the regions was the rural family day care regulations. Three services—I think in Morawa, Wagin and Three Springs—have been licensed under those regulations and it is likely there will be others. I thank the member for her work for the occasional day care sector in the Wheatbelt. She was an absolute champion for that.

Hon Alison Xamon strayed very much into the next bill, not this bill, but we give members a fair bit of flexibility in this place. The member asked for clarification about the provision to refuse to grant a licence. The CEO would write to the applicant with reasons and give an opportunity to respond, and applicants can always appeal to the State Administrative Tribunal. The member was also concerned about the publication of prosecutions. During the member's contribution, I said that I was the first minister to put breaches online. That is because I come from a parent's point of view and think that if a childcare centre has breaches, parents should know about it and they should know which childcare centres are best.

**Hon Alison Xamon:** Can I just clarify that, minister? I agree with you when it comes to breaches that have been identified. My concerns were about those centres that were in the process of having that breach assessed. Again, my concern was that if ultimately they are cleared, it would be awful if they had the name of their business smeared. Also, I don't want to see these centres close down because that also is terrible for parents.

**Hon ROBYN McSWEENEY:** We publish in the public domain only at the time of prosecution action being taken, once those papers are served. Therefore, it is only public once the papers are served, and extensive investigations will have taken place prior to that. The decision to prosecute is taken by the CEO, and the publication is certainly in the public interest. The member also talked about SAT and the extended powers, which is an important part of this legislation.

Hon Linda Savage talked about child care being safe and meeting the highest standards. I think all parties in this place would certainly agree with the member. She spoke from experience and took me right back to my experience. I have four children and I used day care a couple of times for my fourth child but probably because she had all the others, she did not really need it.

**Hon Linda Savage:** I don't think it was available. I mean, over 25 years ago I don't remember it being available for my first child in the same way.

**Hon ROBYN McSWEENEY:** I do not remember that either. My youngest is now 26 years old and she would have been 12 months old when she was in day care in a rural centre, so that is 25 years ago. That was when day care probably started becoming available everywhere. It certainly was not available for my first child, who is now 31 years old.

We want to enhance the status of child care and to provide a career pathway. I guess, once again, we have ventured into the next phase—the national quality agenda—during which teachers will be put into childcare centres. Just as a matter of interest, the other day I went to a childcare centre that provides a full-time teacher. I asked the centre owner what she paid the teacher and she said \$28 an hour. However, her concern is that childcare centres cannot offer teachers the same holidays that a teacher in a state school has, so they cannot compete and lose those teachers to the education system. Early childhood teachers will need to have done a four-year teaching degree in early education. We used to have early childhood teachers years ago—one of my friends was an early childhood teacher—and the commonwealth paid 75 per cent of their wages, which was how it attracted those teachers to work in childcare centres. I think some more discussion is needed about how we can get those teachers, because we cannot get them out of thin air. That will be a difficulty. But Western Australia has until 2014 to put teachers in. However, a lot of childcare centres employ teachers, and they have upped the qualifications quite a lot in the last 20 years, as we would expect them to have, but I have noticed a great deal of difference even in the last five years. That gets back to how we bridge that gap.

I thank Hon Col Holt for his contribution of putting on record that not only women care about children, but men do too!

**Hon Kate Doust:** At least we know that Hon Col Holt does, but we don't know about the rest of them!

**Hon ROBYN McSWEENEY:** No, we have a lot of fathers on this side of the house who are good fathers, have been good fathers —

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**Hon Phil Edman:** And new fathers as well!

**Hon ROBYN McSWEENEY:** — and new fathers as well! We have new mothers as well.

**Hon Phil Edman:** I will be a new father for the second time in October again!

**Hon ROBYN McSWEENEY:** As members heard; that is the first time I have heard that. Hon Phil Edman is about to be —

**Hon Phil Edman:** It will be a CHOGM baby, minister!

**Hon ROBYN McSWEENEY:** It will be a CHOGM baby—wow!

**Hon Norman Moore:** I hope that it does not take as long to deliver!

**Hon ROBYN McSWEENEY:** I am absolutely speechless!

As everybody can see, when it comes to children in this house, everyone—men and women—are right there and agree that we need child care. The men probably say that we need child care more than the women do!

I also thank Hon Kate Doust for her very good contribution, as she was chairperson of the Childcare Regulations Consultative Committee. With that, I ask that the bill now be read a second time.

Question put and passed.

Bill read a second time.

*Committee*

The Deputy Chairman of Committees (Hon Michael Mischin) in the chair; Hon Robyn McSweeney (Minister for Community Services) in charge of the bill.

**Clauses 1 to 31 put and passed.**

**Clause 32: Section 51 amended —**

**Hon SUE ELLERY:** In my contribution to the second reading debate I indicated that I had raised two matters in the briefing on which I sought further clarification, and, to date, I have not received any clarification. One matter related to clause 32, which seeks to delete current section 51(3) and to insert a new set of words. I thank the minister for the conversation that we had behind the Chair about this matter, but as I was not able to get a satisfactory explanation, and I suspect that the minister might still not be able to give me a satisfactory explanation, I want to place this issue on the record. Under the current act, section 51 is headed “Protection from liability for wrongdoing”. It states —

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, —

The critical words in that subclause are “in good faith” —

in the performance or purported performance of a function under this Act.

- (2) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.

Subsection (3) currently states —

Despite subsection (1), —

Subsection (1) states that action cannot be taken against someone if they have done something in good faith —

the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.

The bill before us deletes the words in subsection (3) and inserts a new subsection (3), which states —

The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).

The current act sets out that the state is not relieved of any liability; the bill says the state is relieved of any liability. I might not take issue with it, but given we are reversing liability, there ought be some explanation as to why we are doing that. We are now saying that the state will not be held liable. That is a significant change in policy. The explanation I was provided behind the Chair in the first instance was that the words sought to be inserted are words that are, if we like, kind of a standard clause taken out of consumer protection legislation. That may well be a perfectly reasonable policy decision to make, to take that standard clause, but it actually

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reverses, as I read it, the liability. That is an important step we are taking. I think we are entitled, if at all possible, to an understanding of why we are reversing liability.

**Hon ROBYN McSWEENEY:** My understanding is that the current provision was inherited from the child protection legislation. We used the opportunity of these amendments to ensure the legislation was up to date. It is a fairly standard provision that if acting in good faith—so, not taking that away—in performing duties under this act, the state is not liable. It brings child care into line with other regulators, provides protection for the state, and provides very similar powers to section 114 of the Fair Trading Act 2010. Section 39D of the Associations Incorporated Act 1987 provides protection from liability for wrongdoing —

- (1) A person is not liable for anything that the person has, in good faith, —

I think that is the section the member wants clarified —

done in the performance or purported performance of a function under this Act, or the repealed Act.

- (2) The State is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (1).
- (3) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

It sounds like legal speak to me!

**Hon SUE ELLERY:** Thank you for that. I do not want to labour the point, but I need to understand some of the history of it because we are reversing the liability. Bearing in mind that childcare provisions used to be included under the act that covered the old Department for Community Development—child protection and child care was in one big act—those were separated when we separated the department to give child care a separate legislative base. Is it the historical case that the provision that said the state is not relieved of any liability had been in the previous bill forever—if I can call it the big DCD bill—and applied in respect of child care? Do we know if it got into the separate child care bill by way of accident and it had never applied to the child care provisions? I just wonder if there is an understanding of the history of it.

**Hon ROBYN McSWEENEY:** History is a funny thing. I believe that is indeed the case. The department has attempted to find out whether that is the case, and it cannot. In the absence of any historical meaning for it to be there, we have now put in this updated clause. That was from the previous government, and it could have even been there in the preceding government's time. It is just historical. I really cannot find any answer for it being reversed, except to say that this is the updated version now.

**Hon SUE ELLERY:** I thank the minister for that explanation. I suspect that is probably the best explanation that I can get. I do not know that it is entirely satisfactory that we are reversing people's ability to take action against the state without really knowing the history of it, but I will note my concern and hope that it does not lead us into a situation in which somebody in the future is disadvantaged as a result of our passing a clause that we do not really understand the history of. With those comments, I will accept the explanation, albeit a slightly unsatisfactory statement.

**Clause put and passed.**

**Clauses 33 to 41 put and passed.**

**Title put and passed.**

*Report*

Bill reported, without amendment, and the report adopted.

*Third Reading*

Bill read a third time, on motion by **Hon Robyn McSweeney (Minister for Community Services)**, and transmitted to the Assembly.