CHILDREN AND COMMUNITY SERVICES AMENDMENT BILL 2010

Consideration in Detail

Resumed from 21 September.

Clause 17: Sections 125A and 125B inserted —

Debate was adjourned after the following amendment had been moved by Ms L.L. Baker —

Page 15, after line 24 — To insert —

(4A) A child in the facility, or any person on behalf of a child in the facility, that person may —

(a) request the person who is in charge of the facility to arrange for the child to be visited by an assessor.

The SPEAKER: Members should be aware that further amendments have been circulated by the parliamentary secretary. They are available but are not on the notice paper.

Ms L.L. BAKER: Between last night's debate and coming to the house this morning, I appreciate that the parliamentary secretary has circulated a new amendment. Given that it relates to the same piece of information in the bill that we were talking about last night, it would be appropriate for me to withdraw my amendment and for us to discuss the parliamentary secretary's amendment.

Amendment, by leave, withdrawn.

Mr A.J. SIMPSON: I thank opposition members for their support of this amendment. I spoke to the Minister for Child Protection last night. The member for Maylands raised a very good point last night about an independent assessor. We have made some changes to this bill. I thank members for their support. It has been refined to allow the government to work with it. I appreciate the opposition's support for this amendment. I move —

Page 15, after line 24 — To insert —

(4A) A child in a facility, or a parent or other relative of a child in a facility, may request the person in charge of the facility to arrange for an assessor to visit the facility and see and talk with the child.

Mr M.P. WHITELY: What a tortuous process to get to a good amendment! I thank the parliamentary secretary for taking the time. Obviously, he had a word with the Minister for Child Protection and convinced her about the merits of the clause. The parliamentary secretary has taken on board the concerns expressed by the member for Alfred Cove. The amendment has actually come back even better than the original amendment proposed by the opposition.

Mr D.A. Templeman: I think he should be in cabinet! I can see it now, the member for Darling Range!

Mr T.G. Stephens: He would make a great Leader of the House!

Mr D.A. Templeman: I am endorsing him now!

Mr M.P. WHITELY: Having praised the contributions of the parliamentary secretary and the member for Alfred Cove—we saw the dynamics at play last night—and the contribution of the Deputy Premier, who could obviously see the merit of the argument, and the member for Kalgoorlie, who played a very good role as an Independent member of the chamber, I cannot, unfortunately, be so praiseworthy about everybody involved in the process.

As part of my contribution to yesterday's debate, at 9.20 pm I pointed out that a really good amendment had been proposed and that it might be a good idea if we postponed the debate on the clause to give the parliamentary secretary the opportunity to talk to the minister overnight.

The SPEAKER: Member for Bassendean, I hope that you are going to address the amendment at some point.

Mr M.P. WHITELY: I am addressing the amendment and how we came to arrive at this amendment.

The SPEAKER: Thank you, member.

Mr M.P. WHITELY: The journey towards this particular amendment was somewhat tortuous because it was not until 10.31 pm, some 71 minutes later, that we arrived at that position. Those of us in the chamber saw the spectacle and we saw how —

The SPEAKER: Member for Bassendean, I would ask you to address the amendment. I think everybody in this house understands how we have arrived in this place at this point. I am sure that there is much appreciation of that on both sides. However, I would like to hear some words addressing this amendment.

Mr M.P. WHITELY: The way that we got to this improved amendment, to which many members made a valuable contribution, including the member for Alfred Cove who pointed out that the wording of this amendment could be too broad, was a somewhat tortuous route. I think that we could have got there a lot quicker, if in this place we had a culture of judging issues on their merits. Responsibility for that culture lies with those in positions of leadership, particularly the Leader of the House and the manager of opposition business in the house.

Mr R.F. Johnson: I will just say that during consideration in detail I take my instructions from the minister or the parliamentary secretary. If the parliamentary secretary says that the minister is not prepared to accept the amendment, that is what I act on.

Mr M.P. WHITELY: A few things the Leader of the House said last night are worthy of repeating, including that the minister had refused to countenance the idea; she is listening downstairs in her room and she thinks it is a bad idea. Clearly, that was not true or there has been a change of heart overnight. We ended up in a very good place.

Mrs L.M. Harvey: The amendment has changed.

Mr M.P. WHITELY: The amendment has changed and it is a better amendment because the government took the time to reflect overnight on the issues that we raised, member for Scarborough. A valuable contribution was made across the chamber. Frankly, had it not been for the presence of the Deputy Premier in the chamber—somebody with enough seniority on the government side to say that we had better slow down, address the issue and find a mechanism whereby we can go forward on the matter—we would have been in the unacceptable position of having sent faulty legislation to the other place and the rights of children would be open to potential abuse.

Therefore, I say well done to the parliamentary secretary and well done to the members for Alfred Cove and Kalgoorlie, and to the Deputy Premier—but not quite so well done to the Leader of the House.

Mr P. PAPALIA: I want to add my congratulations to those of the member for Bassendean for the work done by the parliamentary secretary and his team, and for the positive fashion in which other members contributed to the debate yesterday evening.

I, too, think that this new amendment is an improvement on the previous one, member for Scarborough. I think that the member for Alfred Cove made a good point; namely, that we would not want to have spurious issues raised by individuals with an axe to grind or by those who are not in the immediate family or who are not carers of the children concerned. I think this is a good amendment and I am very happy to support the ultimate conclusion. In fairness, I do not think that the claim by the Leader of the House about the nature of his actions was entirely accurate.

Mr R.F. Johnson: You can think what you like. I assure you that I saw the notice that came down. I do not mislead this house. Why don't you talk to the amendment?

Mr P. PAPALIA: The point that I wish to make about this being a much better amendment is that it is a good thing that this house considered the proposed amendment, found some flaws, and made an amendment to the amendment, which is now being considered. The legislation that will go to the upper house will be significantly improved as a result. I do not think it appropriate that we pass legislation with the expectation that it will be fixed in the upper house.

Mr R.F. Johnson: You did it all the time when you were in government.

Mr P. PAPALIA: Minister, I was a backbencher in government for 18 months. I will take responsibility for the things that I had something to do with, but not that. However, I will say that for the minister to have implied across the chamber yesterday evening that the matter was not important and that it would be dealt with in the other house was inappropriate and inadequate. I am sorry that the Leader of the House made that implication. I am glad that we have come to this point. This is a good amendment and I again commend the parliamentary secretary for his efforts.

Ms L.L. BAKER: I seek clarification on this splendid new amendment. Does the parliamentary secretary foresee any circumstances in which a child, having asked the person in charge of the facility, would not be granted permission to see an assessor?

Mr A.J. SIMPSON: Straight off the bat, I would have to say that there would be no reason that a child could not see an assessor. The only time that may have to be taken into consideration would probably be the first day of

admission into care, before there has been time to assess the child's needs or wants. In that case, the child could see an assessor on the second day in care. However, I do not see any reason why a child would not be able to see an assessor.

Mr M.P. Whitely: While you are on your feet, minister, what about the child's relatives? Is there any reason the child could not see them?

Mr A.J. SIMPSON: I do not see any reason to refuse a visit from relatives; the idea being that they were a part of the support and trying to protect the —

Mr M.P. Whitely: Again, while you are on your feet—sorry, I will ask when you have taken your seat.

Mr A.J. SIMPSON: Thank you.

Mr M.P. WHITELY: I refer now to the definition of a child's relative, parliamentary secretary. When it refers to any other relative of a child, how broad is that definition?

Mr A.J. SIMPSON: The member for Bassendean has raised a very good point. We live in a strange society in which the term can mean, as is quite clearly stated in the act —

> ***relative***, in relation to a child, means …the following people —
>
> (a) the child's —
>
> (i) parent, grandparent or other ancestor;
>
> (ii) step-parent;
>
> (iii) sibling;
>
> (iv) uncle or aunt;
>
> (v) cousin;
>
> (vi) spouse or de facto partner,
>
> whether the relationship is established by, or traced through, … marriage, a de facto relationship …

I would say that process is quite broad. We have not locked out anyone.

Mr M.P. Whitely: Yes; that sounds reassuring.

Amendment put and passed.

Mr A.J. SIMPSON: I move —

> Page 15, line 27 — To delete "subsection (3)." and substitute —
>
> this section.

Amendment put and passed.

Mr A.J. SIMPSON: I move —

> Page 16, line 8 — To delete "designation" and substitute —
>
> appointment

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 18 to 23 put and passed.

Clause 24: Section 3 amended —

Ms L.L. BAKER: I want to make sure that I am in the right spot. I have a copy of the Children and Community Services Act. I refer to section 24, part 3 on page 21 of that act. The section refers to the delegation of the CEO. I also refer to page 22 of the blue bill. I seek some information from the parliamentary secretary. I could not find reference to this in the bill. What the government is doing is in line with its position on the Public Sector Management Act and the ability to outsource services. The government is clearly deleting the following subsections —

> (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.

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

The government is putting in express authorisation to delegate a power or duty. Is that being done in the spirit of being able to outsource to the non-government or private sectors? My concern relates to the outsourcing of the running of a secure-care facility to a Group 4–type arrangement. Can the parliamentary secretary explain why those deletions are being made and what the ramifications are likely to be?

Mr A.J. SIMPSON: The member for Maylands is not referring to clause 24 of the bill. Rather, she is referring to clause 51 of the bill, which seeks to amend section 24 of the Children and Community Services Act. That is fine. I will address the member's question about secure-care facilities and the outsourcing to non-government agencies. As members know, non-government agencies provide great support to social networks throughout Western Australia. They deliver great services to the community. The running of secure-care facilities will not be outsourced. Secure-care facilities will be operated by the department. Outsourcing will not come into secure-care arrangements. Secure care is secure care. It will not be outsourced to government or non-government services. It will be handled from within the department to limit access to secure-care facilities so that they do not lose their security.

Ms L.L. BAKER: I have a problem with the fact that the government is changing the nature of delegating by this amendment. The parliamentary secretary is asking us to trust him when he says that it will not be outsourced. I have no reason to distrust the parliamentary secretary. However, at some point in time someone else will get his job and I am not sure whether I will be able to trust that person to not want to outsource the service. What preventive mechanism in the bill provides an assurance that a different parliamentary secretary representing the minister will not recommend to the minister that the Kath French Centre or any other secure-care facility be outsourced? This legislation will stand for a long time—at least until it is amended. I am hesitant to sit down on this point until I am confident that that will not happen in the management of the secure-care facility, which at the moment houses only nine young people who are vulnerable and at risk. They have already been passed around and do not live with their birth parents. They have a range of complex issues relating to substance abuse and/or behavioural issues. I do not know what the circumstances are. We have heard during this debate that many different complex issues come to bear before a child is admitted to such a facility for 21 days. I would like to be assured by the parliamentary secretary that there is a mechanism in this bill on which I can rely.

Mr A.J. SIMPSON: The outsourcing is not connected with secure-care facilities. All the other agencies that it deals with can outsource. Other services that the department provides can be outsourced, but not the running of secure-care facilities. For that to happen, the government of the day would need to legislate. The provision to outsource secure-care facilities is not in this legislation.

Mr M.P. WHITELY: I am not 100 per cent comfortable with what the parliamentary secretary just said. What I want to know—I think I can speak for the member for Maylands—is where in the bill can we find the provision that states that a secure-care facility must remain in direct departmental control? I understand that that may be a policy decision. However, the parliamentary secretary has indicated that it is in the legislation. Where in the legislation does it state that a secure-care facility must be run by the department and cannot be outsourced?

Mr A.J. SIMPSON: There is no provision in the bill to outsource the running of secure-care facilities. Is the member concerned that one day in the future someone will outsource the running of secure-care facilities?

Mr M.P. WHITELY: We are worried that that could happen as a result of a change of policy or ideology. There is no legislative protection to stop that from happening. I understand that the bill does not state that it can be outsourced; I would be up in arms if it did. But it does not say that it cannot. If the limitations on the delegation of authority are removed, it is possible for the chief executive officer to delegate to Group 4—that was the example given earlier—and for the director of Group 4 to delegate that authority to anyone working for Group 4. That is the obvious purpose of these deletions. At the moment the CEO can delegate only to an individual and that individual has to be working within the department. Frankly, the CEO could not delegate to the director of Group 4 unless the director was working there every day, 24 hours a day. There is an inbuilt protection in the way the delegation of authority is currently structured. If the government removes that inbuilt protection and allows a double delegation—whereby power can be deleted to the director of Group 4, who can then delegate to someone working for Group 4—the government will be enabling privatisation of the facility. That could not happen under the current provisions because there is no capacity to delegate down the chain.

Mr A.J. SIMPSON: The member raises a good point about that process.

[Interruption.]

Mr A.J. SIMPSON: Somebody owes a bottle of wine now for the ringing mobile!

Mr M.P. Whitely: Somebody is bad to the bone.

Mr R.F. Johnson: Margaret Quirk!

The ACTING SPEAKER (Mr A.P. O'Gorman): The member for Girrawheen is called to order for the first time!

Mr A.J. SIMPSON: The member raised a good issue. I can give the member a commitment that the running of secure-care facilities will not be outsourced under this process. The secure-care facilities are the first of their kind. We have gone through this process and copied off the Victorian model, but I do not believe that any reason exists to outsource. At the same time, as members of Parliament, we could raise the issue if outsourcing did happen. However, I cannot see how it would ever come to that point. If the member wants to interject, I am happy to take the interjection.

Mr M.P. Whitely: No, keep going.

Mr A.J. SIMPSON: I make the point that outsourcing will not happen because there is no reason for it to happen in the process. A lot of similar agencies outsource, and those agencies can outsource half their agency. However, if the areas involved relate to the department's responsibility and part of running its programs, the department will not start more outsourcing without some sort of protection process. It will not start another process and go through a non-government organisation without some protection in place with more legislation for that process.

Mr M.P. WHITELY: I am not across the legislation to the extent that the member for Maylands is across it. Does this delegation of power or duty from the CEO relate to all facilities that are run by the department, or does it simply relate to the secure-care facilities? Is this a general provision or a specific provision? It is a general provision, is it? I can understand that the government may decide to outsource the provision of some services to a not-for-profit organisation or whatever, and I understand as a technical point that the government may want to give that duty to the CEO of the organisation, who can then delegate down to officers of that organisation. That is a fair interpretation of the provision of a service. But does the clause relate to all such services of the department or is it specific to secure-care facilities only?

Mr A.J. SIMPSON: It is specific to the CEO. It is a general provision, so it is in that process. It is the same as I said before. Can I make a point here, Mr Acting Speaker? We are talking to clause 51. We have jumped a bit. I have given a bit of freedom here, but we have not actually started debating clause 51 yet. We have jumped from clause 24.

The ACTING SPEAKER: Members, we are on clause 24.

Mr M.P. Whitely: It is section 24, clause 51.

Mr A.J. SIMPSON: We are on clause 24 at the moment. We are not on clause 51, which this discussion relates to.

The ACTING SPEAKER: Members, we will deal with clause 33, to which the next amendment on the supplementary notice paper relates. Then we can get to clause 51 and deal with all of those issues under discussion.

Clause put and passed.

Clauses 25 to 32 put and passed.

Clause 33: Section 69A inserted —

Mr A.J. SIMPSON: I move —

Page 24, lines 20 to 30 – To delete the lines and substitute —

(1) An individual is eligible to make an application under subsection (2) in respect of a child if —

(a) the individual has been the carer of the child; and

(b) the child has been the subject of one or more of the following types of protection order —

(i) a protection order (time-limited);

(ii) a protection order (until 18),

for at least the period of 2 years immediately preceding the day on which the application is made.

(2) An individual who is the carer of a child may, if eligible to do so under subsection (1), apply to the Court for the revocation of a protection order (time-limited) or protection order (until 18) and the making of a protection order (special guardianship) in respect of the child.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 34 to 50 put and passed.

Clause 51: Section 24 amended —

Mr P. PAPALIA: Pursuing the same line of questioning, can the parliamentary secretary indicate why the original line limiting delegation was removed in this new legislation he is presenting? As I understand it, the original act had the limitation on subsequent delegation to other people, and that line has been removed in this amendment. The parliamentary secretary's indication might give us the reasoning behind the process.

Mr A.J. SIMPSON: I thank the member for Warnbro for the question. This relates to limitations on CEOs in organisations. The member can imagine that we are working through a situation in which a number of agencies will work together. We are going through a process of secure care, which we spoke about before. We need to ensure that the department can work with all the other agencies and work through the departmental process. If a CEO controls one area, he or she must go through another process to move young children through the other agencies. It needs to have more control. It is the idea of trying to ensure an overarching control in working together with different departments.

Mr P. Papalia: This amendment to the legislation is to enable multi-agency delegation?

Mr A.J. SIMPSON: Correct. It is to bring agencies together to talk to each other.

Mr M.P. WHITELY: I am a little confused. If I can try to paraphrase what the member is saying, I think he is saying that a number of different government agencies may be involved in the delivery of a service.

Mr A.J. SIMPSON: It will not be so much for delivery, but it will be mainly to bring in a number of government agency services—for instance, medication, doctors, psychiatry and so forth.

Mr M.P. WHITELY: I think the parliamentary secretary might want to take some advice. The advisors are shaking their heads.

Mr A.J. SIMPSON: My understanding is that this is to enable the process to move forward. Under case management, a case can be transported down to, say, Parkerville Children and Youth Care to utilise the resources there. The provision provides the opportunity to move the case and deal with other agencies such as Parkerville.

Mr M.P. WHITELY: Let me give the parliamentary secretary an example that he might be able to confirm to be an example of what he is talking about; otherwise, he could indicate that I have misunderstood. Is the parliamentary secretary talking about a child being moved from a service that is run by the Department for Child Protection to a service that is run by the Department of Education?

Mr A.J. Simpson: Not education.

Mr M.P. WHITELY: Are we talking about moving within services provided by government or are we talking about when you are moving them from government to the private sector?

Mr A.J. SIMPSON: We are talking about the private sector carrying out functions of the government. Delegation case management for certain children has been considered as part of the Ford review under a recommendation of an expanding role for non-government agencies. This arrangement occurs in Victoria and New South Wales where certain case management functions are delegated to non-government service providers. The delegation would occur only when children are being cared for under a stable or long-term placement arrangement with a non-government organisation. A parent's responsibility is vested into the CEO for children under relevant protection orders, and the inherent duty of care associated with parental responsibility is non-delegable. Parental responsibility is a legal relationship rather than a power of duty under the provision of the act. The proposed external case management arrangements do not include delegation of statutory responsibility of a child protection investigation and abuse of care obligations. A pilot program recently undertaken in Parkerville has been placed on hold and there are no immediate plans for delegation on case management.

Mr M.P. WHITELY: To paraphrase that, is the parliamentary secretary basically saying it is transferring kids from the direct care of the department to a private sector organisation, be that a not-for-profit organisation or whatever?

Mr A.J. Simpson: Yes.

Mr M.P. WHITELY: Obviously, we must have had a change in circumstance. This is not my area of specialty. We must have had circumstances in the past in which kids have been in the care of not-for-profit organisations. If they have been, they must have been doing it illegally, otherwise there would not be a need for this clause.

Mr A.J. SIMPSON: There would be delegated case management in that process. They get around it at the moment by delegating case management to the department. The department has to do the case management all the way down the line. It cannot hand over a case to Parkerville or —

Mr M.P. Whitely: Historically, they could have been in a private sector facility run by Sister Kate's.

Mr A.J. SIMPSON: Yes.

Mr M.P. Whitely: But the care responsibilities always remain with the CEO.

Mr A.J. SIMPSON: Correct, the case manager.

Mr M.P. Whitely: The case manager being the CEO delegated within the government agency.

Mr A.J. SIMPSON: Yes.

Mr M.P. WHITELY: I finally want to get my head around what has caused these changes. We are saying that for facilities, maybe a hostel where kids who are in care are kept —

Mr A.J. Simpson: Like Parkerville?

Mr M.P. WHITELY: Yes. We are seeing a transference of the—what is the best way to describe them?—loco parentis responsibilities of the CEO to the person who runs Parkerville. Is that what we are saying? That is the legal parent, if we like. That responsibility transfers from the CEO of the department to the director or CEO of Parkerville. Is that what we are trying to achieve here? If we are, why? What is the rationale for it?

Mr A.J. SIMPSON: After we have got through this piece of legislation, they will have the ability to make some decisions on the child's welfare—the day-to-day needs of the child—from the agency's perspective. They still report back to the case manager, who is the person in charge. At the moment the case manager has to run through the day-to-day needs, such as schooling, travelling to and from school and medical care. Whereas they now go through the case manager, those powers would go to the non-government organisation.

Mr M.P. WHITELY: If what the government is effectively trying to achieve is the making of parental-type decisions closer to the child, I can understand the logic behind that. I would be much more comfortable with that being done by not-for-profit private sector organisations that have public benevolent purposes. I would not be comfortable with it being outsourced to private sector for-profit organisations. Is there anything in this legislation that says that that is the limitation of where this authority can delegate to? Can it go only to private sector not-for-profit benevolent institutions or can we set up Childcare Pty Ltd as a profit-motivated organisation that runs these sorts of institutions? I would be concerned if that was the case. Is the prevention legislative or a matter of policy, or is there no prevention at all?

Mr A.J. SIMPSON: The member raised a good point. He made a valid point about non-government organisations and the work they do in our community versus a childcare provider who is making money. There is nothing in the legislation that says non-government organisations must be used. It talks about a need.

Mr M.P. Whitely: When you say "non-government", do you mean not for profit?

Mr A.J. SIMPSON: Yes, not-for-profit organisations. A lot of the not-for-profit organisations get their funding through government agencies in one form or another to help with whatever it may be. There is nothing in the legislation. If there is a need in the future, the contract will go to the person who provides that need and we will employ someone to provide the services that we need. Nothing points to a non-government or not-for-profit organisation over a business or private enterprise.

Ms L.L. BAKER: I understand quite clearly what has been done. I do not think that it is particularly good practice. From my perspective, and I am sure from the opposition's perspective, we would have preferred to see something that prevents this kind of service from being put up for competitive tendering on the open market at some point. Whilst I certainly understand this, as I have said before in this discussion on this clause—I am not thinking that either the current parliamentary secretary or the minister plan on phoning the State Supply Commission to seek permission to put this out to tender—the fact that the government will effectively now have the capacity to do that under these changes is a matter of some concern. I would like to hear what the parliamentary secretary thinks of the amendment that enables the government to now tender for a private provider to deliver the service. I am very aware that there are quite a few firms that specialise in secure facilities

that operate in Britain, America and Scotland; they do not operate in Western Australia. It would be a great concern if a secure facility were opened up to a competitive tender of that nature.

Mr A.J. SIMPSON: The member has raised a good point. All members are very passionate about the non-government and not-for-profit organisations that work in the community. The delegation would occur only when children were in care under a stable and long-term arrangement with a non-government organisation. I understand the member's concern about how the government can say that only non-government organisations or not-for-profits can provide these services. It is hard for us to do that because not all the services are covered by those agencies. As I said before, the government provides a lot of funding for not-for-profit organisations and NGOs. If we are providing the service, we should be using the service. There is a bigger picture. A not-for-profit organisation in my electorate delivers youth services. The tender process for those services increased from $100 000 to $200 000 and a bigger not-for-profit organisation swooped in and took the money out of my community. Although the funding was increased to $200 000, which is great, it has affected my community. I have learnt from the NGOs and not-for-profit organisations that they want to get the money back onto the street where those organisations can provide their services. Unfortunately, we live in a commercial world and I do not know how we can address those issues.

Ms L.L. BAKER: I know this is opening up the debate a little, but I understand completely the point the parliamentary secretary raised, having worked in this area for a long time. I point out to the parliamentary secretary that the situation that he described happens as a direct result of government contracting policy. It is not a result of what Centrecare, Anglicare or Uniting Care West or anyone else wants to do. They did not set out to cannibalise small not-for-profits or NGOs. Each of us is responsible for this happening because of the contracting policies that are in place. There is a way of stopping it from happening if the government has the appetite to do that. The Department for Child Protection in particular is very aware that there are ways of stopping this from happening, but I do not think the government has the appetite to stop that from happening. The ball is in the government's court.

Mr A.J. Simpson: I will take that up for the member.

Mr M.P. WHITELY: I am relatively comfortable with the notion of being able to delegate authority because I can see the logic in delegating authority to a not-for-profit service provider. However, I am entirely uncomfortable with the proposition of delegating to a for-profit service provider the authority to make parental-type decisions. A for-profit service provider has only one motive. If we take the pure economic model, its motive is profit maximisation and shareholder wealth. The motive for the not-for-profit services that are run by public benevolent institutions will be the welfare of the children. I am comfortable with the idea that parenting decisions and responsibilities will be made for and borne by the chief executive officers, directors and delegated officers of not-for-profit organisations and service providers but I am uncomfortable with the idea of having those types of decisions being put in the hands of for-profit organisations. Frankly, they will make decisions about the bottom line, cost cutting, convenience and profit maximisation that are inconsistent with the best interests of the child.

The member for Maylands might want to listen to what I have to say next. We are amending proposed section 24(1) of the Children and Community Services Act. The government wants to insert the words "officer, a service provider or another". I think there is some merit in giving consideration to inserting the words "not-for-profit" before the words "service provider". The clause would then read "officer, a not-for-profit service provider or another". We would then overcome the problem and prevent authority and responsibility being delegated to a for-profit organisation, but we would still allow the government to do what it seems philosophically inclined to do, which is to create a greater involvement of the benevolent not-for-profit sector in the delivery of services and in the delivery of parental responsibility.

Mr A.J. SIMPSON: I thank the member, who has raised a very good point. If we start down that road with this legislation, we would end up having to do it for all legislation. The department and its CEOs understand that the not-for-profit and non-NGO organisations that deliver those services are very much under pressure. They are provided with funding through various grant facilities that are set up to help provide those services. If we started to do this at this stage, we would end up compounding the problem. We understand the situation very well. However, to put it into the legislation would probably be going too far.

Mr M.P. Whitely: Why? I missed what you said earlier.

Mr A.J. SIMPSON: We understand where the opposition is coming from, but if we did that for this legislation, we would have to do it for all legislation. It is in the forefront of everyone's mind that we are going through this process. Maybe we should look at putting it in the regulations rather than in the legislation.

Mr M.P. WHITELY: That does not leave me feeling comfortable. Waiting for it to be drawn into the regulations is abrogating our responsibility for getting the legislation right and leaving it to the Legislative

Council. We should not do that. Is there any legal barrier such as the national competition policy that would prevent us from limiting the delegation to not-for-profit service providers? Do we have obligations under any other legislation to leave the market more open? If we do, I think there is a problem. I would like to know whether there are any legal impediments to inserting the words "not-for-profit" in front of "service provider" in proposed section 24(1).

Mr A.J. SIMPSON: We are working with the Parkerville Youth and Community Centre, which is a not-for-profit organisation. No-one else out there would provide those services. I do not have advice with me today and so I cannot say whether or not we can include "not-for-profit" before the words "service provider". I can raise it with the minister and take it up with her.

Mr M.P. WHITELY: Some things are so fundamental that we cannot trust the other place to do them for us. I believe that we had the responsibility to make sure that we got the legislation right last night and to ensure that family members had the right to instigate an independent validation. We have highlighted a possible problem with the legislation and an issue that needs to be given consideration in the other place. I want an undertaking—I think I just got an undertaking—from the parliamentary secretary that he will give us feedback on why the words "not for profit" could not be inserted in front of the words "service provider". I am prepared to let the matter slide and to let the upper house do its work, if we like, in this case, because I do not think that it is quite the risk that we encountered last night. However, will the parliamentary secretary formally give me an undertaking that he will take that issue up and feed it back to me and the member for Maylands? If we are not happy with that response, we can then at least engage upper house members on our side who may want to pursue the issue in the other place.

Mr A.J. SIMPSON: Yes, I will take that matter up with my minister and I give the member the commitment that I will get back to him with feedback on it. Just as a point, this bill was introduced in June, and members have had until now to look at it. Members put a number of amendments on the notice paper and we made some changes last night. It is rather hard to get through the situation we are in today —

Mr M.P. Whitely: I'm not being unreasonable about this.

Mr A.J. SIMPSON: I understand that, but the idea of having a bill on the table for 28 days is to go through that process to read the bill and put some amendments up, so that we can have some discussion.

Mr M.P. Whitely: All of that is froth and bubble; this is the place where the real legislation —

Mr A.J. SIMPSON: I understand that but I am in a situation whereby I do not have access to the information. However, I give the member a commitment that I will take the matter to the minister and I will get back to him with the feedback on it.

Mr M.P. Whitely: If the answer is no, it'll make life a lot easier for all involved if you'd give us the reason for the answer being no.

Mr A.J. SIMPSON: No worries, member, I am happy to do that.

Clause put and passed.

Clauses 52 to 66 put and passed.

New clause 67 —

Dr J.M. WOOLLARD: I move —

Page 46, after line 5 — To insert:

67. Section 104A inserted

After section 103 insert:

104A. Body piercing

(1) In this section —

body piercing means piercing a part of the body for the purpose of inserting a bar, pin, ring, stud or similar thing.

(2) A person must not carry out body piercing on any of the following parts of the body of a child —

(a) the genitals;

(b) the anal area;

(c) the perineum;

(d) the nipples.

Penalty: a fine of $18 000 and imprisonment for 18 months.

(3) It is not a defence to a charge under subsection (2) that the child, or a parent of the child, consented to the body piercing.

(4) A person must not carry out body piercing on any other part of the body of a child unless the person has first obtained the written consent of a parent of the child to carry out body piercing on that part of the child's body.

Penalty: a fine of $12 000 and imprisonment for one year.

(5) Subsection (4) does not apply to body piercing carried out on the ear of a child who has reached 16 years of age.

(6) This section does not apply to body piercing carried out for a medical or therapeutic purpose.

New clause put and passed.

Clause 67: Section 112 amended —

The ACTING SPEAKER (Mr A.P. O'Gorman): Parliamentary secretary, you have an amendment on the notice paper.

Mr A.J. SIMPSON: Yes, you could be right, Mr Acting Speaker, I am probably looking at another paper. My apologies, thank you.

The ACTING SPEAKER: I know I am right because I am sitting here!

Mr A.J. SIMPSON: I move —

Page 46, lines 10 and 11 — To delete the lines and substitute —

approved person means a person who is approved or belongs to a class of persons approved under section 113A(1);

Ms L.L. BAKER: Can the parliamentary secretary explain this clause to the house and the definition of "a class of persons approved under section 113A(1)"? I just want a bit of general information about what this amendment will do.

Mr A.J. SIMPSON: The amendments to clauses 67, 68 and 69 are intended to comply with the department's plans to delegate certain case manager functions to an external service provider, pursuant to amended section 24, which allows such delegation to occur. The CEO will be able to approve certain persons employed by these services to exercise power under part 4, division 8 of the act. The CEO may approve a person only if the person has the required experience and training.

Ms L.L. BAKER: I thank the parliamentary secretary and that is exactly where I am at. I wonder whether the parliamentary secretary could explain a bit about what kind of person and what sort of work this amendment refers to.

Mr A.J. SIMPSON: The member for Maylands raised a very good point about who the CEO may approve as a person with the required experience and training for a job. For instance, the department of justice has people with the right qualifications to help with transporting and moving people. If other agencies are involved, the CEO has to ensure that he is happy that their people have certificates of training, clearance and so forth. One example would be working with children clearances, if the people are in that process, to ensure that we can utilise that agency's resources.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 68: Section 113A inserted —

Mr A.J. SIMPSON: I move —

Page 46, lines 21 to 25 — To delete the lines and substitute —

(1) The CEO may approve a person or class of persons for the purposes of this Division if the CEO is satisfied that the person has, or persons belonging to that class have, the

experience and training that the CEO considers necessary for the proper exercise of the powers conferred by this Division.

(2) An approval under subsection (1) —

(a) must be in writing; and

(b) may be subject to such conditions as the CEO considers appropriate; and

(c) may be revoked at any time.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 69: Section 113 amended —

Leave granted for the following amendments to be considered together.

Mr A.J. SIMPSON: I move —

Page 47, line 2 — To delete "and (2)".

Page 47, after line 5 — To insert —

(2) In section 113(2):

(a) delete "The powers" and insert:

A power

(b) in paragraph (a) delete "section 41; and" and insert:

section 41 or to a secure care facility under a secure care arrangement; and

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 70 to 84 put and passed.

Title put and passed.