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CHILDREN LEGISLATION AMENDMENT (WOOD INQUIRY RECOMMENDATIONS) BILL 2009
Second Reading

Debate resumed from 1 April 2009.

The Hon. MARIE FICARRA [11.14 a.m.]: All members agree that it is so important that our society ensures the protection of children and the vulnerable. For too long, the soft pleas of the vulnerable have gone unheard. Children have been abused and neglected and their cries for help ignored by this Labor Government. Professionals and non-government organisations have stated the obvious: reform of child protection is needed. However, it has taken a very long time for some type of substantive action to take place. In 1997 the Wood royal commission exposed many tragic stories regarding the care and protection of children and young people in this State. It should concern us, as legislators, very much to think that 10 years later the parliament is still learning of horrific stories involving children and young people, and it should make us determined to act decisively.

Let us cast our minds in sympathy to those whom the system failed. Seven-year-old Shelley Ward was allowed to starve to death although her family had been the subject of notifications to the Department of Community Services over a 14-year period. Toddler Dean Shillingsworth was found in a suitcase. A 10-month-old baby, Missy, was beaten senseless after having been on the Department of Community Services' radar by virtue of at least four reports. Another toddler, three-year-old Emily, was the victim of a brutal bashing by her mother's boyfriend and died a painful death.

On 18 December 2002, some five years after the royal commission, which exposed varying acts of abuse against children and young people, the New South Wales Labor Government announced a $1.2 billion plan to protect the most vulnerable. Clearly, this plan alone has not worked. Between 1 December 2002 and 20 December 2003, the New South Wales Ombudsman, Mr Bruce Barbour, reported there were 121 deaths of children known to the Department of Community Services. This amounts to a death rate of 9.31 children a month. In 2003 a three-year-old boy died after being violently sexually abused at the hands of two paedophiles, despite seven notifications to the Department of Community Services. The department was notified repeatedly of concerns. However, this poor child was found dead, having suffered severe injuries, with one of his attackers attempting to revive him using electrical wires. That is horrific—even worse, it was avoidable. I put all those deaths on record because they must never be forgotten. Sadly, 2004 saw a further 96 children die. In 2005, 109 children died. In 2006 the number of deaths increased further to 114. What is most startling is that the New South Wales Ombudsman's 2007 report exposed that the Department of Community Services knew one in six of these children. The Ombudsman said:

> Approximately half of the children that were the subject of reports to DOCS identified in the report at the time of death had had their files closed.

It is absolutely beyond belief that although the department knew that these children were at risk of harm their files had been closed. Back then, Mr Barbour rightly stated:

> We see too many files closed, too many cases not attended to in circumstances where they should be.

So the alarm bells were ringing loud and clear, but did this Labor Government hear them? No. The New South Wales Ombudsman also reported that the number of children reported to the Department of Community Services had increased by more than 45 per cent since 2001. Clearly, in light of the tragic deaths that I have outlined, together with the high numbers quoted and the continued reports of cases involving serious abuse, one must wonder why the New South Wales Labor Government failed to pick up that its system had been failing.
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Labor should have proactively pursued the data and reports being highlighted by the New South Wales Ombudsman and others. Labor should have done more to properly protect the children and young people of this State, but it failed them. Faced with the obvious crisis in child protection in New South Wales, the Government announced that former Justice James Wood would head a special commission of inquiry into systemic problems relating to the protection of children and

young people in New South Wales. Some may argue that we already knew of the tragic deaths and stories of serious abuse and that immediate proactive action should have occurred. But instead an inquiry was held. Has this inquiry gone far enough or has it, indeed, just further delayed action necessary to protect the children and young people of New South Wales? At the time of the announcement the Leader of the Opposition called for the Labor Government to put aside the inquiry and launch a more effective and impartial royal commission. The Leader of the Opposition, Barry O'Farrell, rightly asked:

> How many more children have to die while slow progress is being made?

After months of travel, with so many people repeating their tragic stories, on 24 November 2008 Commissioner Wood presented a three-volume report on his special commission of inquiry into child protection services in New South Wales. On 3 March this year the Premier and the Minister for Community Services announced the Government's response to the Wood report and accepted 106 of the report's 111 recommendations, either in full or in part. I have referred already to the failed $1.2 billion package announced in 2002 by the Government. We must ensure that the Keep Them Safe package announced on 3 March 2009 is not a repeat performance of the 2002 sham, which failed to protect so many children and young people and saw tragic deaths and the destruction of so many lives. I have read the three-volume report and considered carefully the issues it raises. I agree wholeheartedly with Justice Woods when he stated:

> Non-government organisations are also key players in the system and provide universal, secondary and targeted as well as tertiary services to children, young people and their families aimed at minimising the risk of abuse and neglect as well as supporting those children and young people who have been harmed, some of whom will have been removed from their families and placed in out-of-home care.

In view of this comment I note with concern the March newsletter of the Council of Social Service of New South Wales [NCOSS], which outlines what that organisation believes is missing from the Labor Government's response to the Wood report. It states:

> There is no mention of Community Services Grants Program or any additional resources for the CSGP and this is extremely disappointing.
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> There is not a great deal of detail about many of the key actions proposed and there will need to be much more work done to flesh out the actions.
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> Measures and indicators to determine progress are still to be developed.

I note that when the Wood report was released the Council of Social Service of New South Wales called on the Government to "provide a clear commitment to the way forward backed by resources". I would be interested to hear the Government outline its response to this very legitimate call. The Coalition does not oppose the bill, as it is at least a start in addressing the systemic problems that we have seen in the protection of children and young people in New South Wales.

My colleague the shadow Minister Community Services, Ms Pru Goward, and the Hon. Robyn Parker, have outlined some serious issues that the Government must address. Schedule 1 to the bill proposes to change the threshold level of harm for mandatory reporting from "risk of harm" to "risk of significant harm". This change is intended to reduce the level of mandatory reports to the Department of Community Services helpline. We have already seen a significant number of case files closed and later the tragic death of those children who had their case files closed by the department. The new provisions on mandatory reporting introduce a network of child wellbeing units in other government agencies such as Education, Health and Police purportedly to ease the load on the Department of Community Services. These units will deal with reports that do not meet the significant risk threshold. In view of past history, many people and many agencies are extremely concerned about this proposal. I share Ms Pru Goward's concern that this approach is low on accountability and involves very big risks. She stated:

> The number and location of the wellbeing units is unclear and departmental resource shortfalls might limit the likelihood of mandatory reporters' concerns being followed up, just as the present system of central reporting to the DOCS hotline suffers from insufficient resources.

The legislative provisions with regard to record keeping and follow-up action need to be more stringent with regard to the wellbeing units. The Opposition wants the standard reporting templates rolled out as soon as possible so that we move forward in a timely manner. I have already mentioned the concerns of the Council of Social Service of New South Wales about the Government's package. The Government must ensure that it allocates adequate funding to cope with the necessary reporting requirements as well as the day-to-today administration.

I raise a particular concern regarding the change in provisions by way of item [7] of schedule 2.2, which requires that persons employed as children's registrars be qualified lawyers. There has been no direct consultation with those directly affected, who are currently performing the role of children's registrars and providing that service with excellence and dedication. The people currently employed as chamber registrars in the Attorney General's Department are very professional and experienced. There is currently a mix of both legally qualified and non-legally qualified, highly experienced children's registrars. There are seven in total. Four of them are legally qualified and the others are of an equivalent standing to their colleagues.

This matter is causing enormous uncertainty and insecurity for those who perform such a worthwhile and outstanding service to the public but who have been totally disregarded because there has been no consultation at the coalface. The whole purpose of alternative dispute resolution is to make the system less legalistic, and hence less intimidating. However, the recommendation is to make all Children's Court registrars legally qualified for no valid reason. This makes the system formalised, non-user friendly and legalistic. The inclusion of these provisions will make the system more adversarial and could exacerbate the situation, bringing dispute and conflict into an area where conciliation should be the preferable way forward.

I note that the Department of Community Services submission claims that in the past Children's Court registrars were always lawyers, but I am advised that this is not the case. If this requirement is introduced, should it not apply to all registrars in the New South Wales court system who are presently not required to be lawyers? The requirement for Children's Court registrars to be lawyers is ridiculous, impractical and unnecessary. Those registrars could be trained in mediation and alternative dispute resolution. They should be able to continue the excellent job they have done—many without legal qualifications—for many years.
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I am horrified that the Labor Government has acted to limit the power of the New South Wales Ombudsman to review and report. I confidently state that if it were not for Mr Barbour exposing child deaths through the reportable deaths reports the Labor Government would have done nothing to stop the increasing deaths and serious abuses of children. Justice Wood recommended, based on the weight of the evidence before him, that the Ombudsman take over responsibility for the Child Death Review Team. Yet the Government has removed the Ombudsman's authority to include information on the deaths of children known to the Department of Community Services within three years of their death. Justice Wood stated that his two recommendations in this regard would together ensure that the Ombudsman continued to provide oversight regarding child deaths with a view to identifying systemic problems within government. In chapter 23.121 of the report Justice Wood said:

> Those deaths which do not meet the revised criteria—

that is, children who are not known to the Department of Community Services—

> will still be the subject of scrutiny by the CDRT (Child Death Review Team). By transferring the role of convenor to the Ombudsman, information from those deaths can still inform child protection work.

I quote from a letter sent by the New South Wales Ombudsman to Ms Pru Goward, the member for Goulburn and shadow Minister for Community Services, on 27 March 2009, which is very recent:

> It has been my consistent view that Mr Wood's recommendations should be considered as a reform package to be implemented in conjunction with one another. The important links between the three proposals provide for balanced improvement to oversight of child protection services through the avenue of reviewing child deaths. The result of not implementing the proposals as a package will, in my view, result in oversight that is less efficient and less effective.
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> In the first instance, there will be greater duplication between the Child Death Review Team and my office. The scope of the Child Death Review Team's work is linked to the scope of my work, in that under the legislation, the Team may not review a reviewable death. In other words, if my office does not review certain deaths, then the Child Death Review Team can. My main concern is that the deaths of children with a child protection history could now be undertaken within two separate agencies, both with the capacity to make comment on and recommendations about child protection systems and practices. This is likely to result in confusion for, an undue burden on, the agencies under scrutiny.
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> I also note that neither agency will be able to examine the deaths of vulnerable children in a holistic context. In the main, my work over the past six years has found that the profiles of children who die who have a protection history mirror those of children across the child protection system. This is why my child

death review approach has to date been focused on reviewing how agencies have acted, and can act, to ensure the safety of children generally.

What more do we need? Why do we ignore these calls from an experienced, dedicated and passionate senior member of the public service, the Ombudsman? The people of New South Wales really have faith only in people such as the New South Wales Ombudsman. Because of the child deaths they keep reading about in newspapers and hearing about over the airwaves that horrify them they no longer have faith in us as legislators. The Department of Community Services has known about these cases and yet it has not followed up on them or acted on them with due diligence. We need to do whatever we can. The New South Wales Ombudsman has strongly stated his views, not only to the Opposition but also to the Government and the crossbench members, and we have a duty to listen. If we do not, and further deaths occur, we should hang our heads in shame.

The Government has, I believe, misrepresented the intent of Justice Wood in this regard. The Government has reduced transparency and accountability, and reduced the authority of the Ombudsman to review child deaths. The bill requires that the Ombudsman review all child deaths only biennially and that the death of children or siblings of children known to the Department of Community Services no longer be included in that review unless the child has died of abuse or neglect or in suspicious circumstances. The Coalition supports a proper and transparent process. This can only be facilitated by an annual review conducted by the Ombudsman—unrestricted, accurate, undoctored, and not downgraded in significance.

The Government wants us to believe that $25 million to be provided over five years for foster care assistance would cater for 500 children. The foster parents, who give of their all, will need more money to provide additional food, clothing, extracurricular support services, and dental and medical services. Some may need a larger car or a larger house. The additional money announced by the Government is equivalent to $10,000 per child per year, which is equal to the minimum foster care allowance that is available at present. The Government needs to make clear whether it will pay foster parents the full amount of additional allowance for each child, in addition to the provision of additional facilities, from this $25 million or whether the allowances will be funded separately.

Not only are foster parents poorly supported financially, they are voiceless in the Children's Court regarding their understanding of the needs of children in their care and their relationship with their birth families, which are matters for the court's consideration. Foster parents remain concerned that they are only told that their child will be required in court at the last minute, when it is too late for them to participate in the proceedings. The Coalition encourages the new President of the Children's Court to recognise the role and contribution of foster carers, and to ensure their inclusion in proceedings. We would welcome court registrars trained in mediation being involved in alternative and less adversarial dispute resolution processes involving foster carers.

Indigenous children make up one-third of all children in out-of-home care in New South Wales. From the experience I have gained through serving on the New South Wales Reconciliation Committee during my term in the other place, along with my membership of this House's social issues committee and particularly my involvement in its inquiry into indigenous disadvantage, I can affirm that the Opposition looks forward to a special package of measures for Aboriginal children being brought to the Parliament. We are disappointed that this is not seen as an urgent priority. The significant number of indigenous clientele seeking services via the Department of Community Services demands special measures. The Government should be reporting to this Parliament on its negotiations with the Federal Government over a partnership approach and its determination to implement recommendation 10.5 of the Wood report, which mostly concerns services to indigenous families.

The Opposition does not oppose the bill but we believe that the Government has missed a great opportunity for bipartisanship with regard to the most important issue facing all members: the welfare of our children. Instead, the Government seems intent to wreak its revenge on the Ombudsman for being too independent and too outspoken on child protection and welfare. The Government time after time refuses to listen to the informed opinion of non-government organisations, with which it has poor working relationships. This Labor Government has failed to listen to the real concerns of foster parents and has failed to harness their genuine understanding, love and passion for the welfare of children in their care. Solid and positive opportunities have been missed—a great shame that rests with this Government.

The Hon. ROBERT BROWN: There will probably be no more important bill debated in this House this year than the Children Legislation Amendment (Wood Inquiry Recommendations) Bill 2009. Debate on the bill should be confined to issues concerning the children of this State—in an atmosphere devoid of political point scoring. Last November the Hon. James Wood, AO, QC, handed down his report from the Special Commission of Inquiry into Child Protection Services in New South Wales. The bill is effectively the Government's response to that report, along with implementation of the policies in its own document Keep Them Safe: A Shared Approach to Child Wellbeing, which is backed by a commitment to provide $230 million in a new funding package.
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The Shooters Party has carefully considered this detailed and complex piece of legislation on this highly emotive issue. It has spoken both to interest groups and to the Opposition. I particularly thank the Hon. Robyn Parker for her input and Mr Ian Cohen and his staff for their help in our deliberations. When such complex legislation comes before the House the crossbenchers do not have as many resources available to them and the Shooters Party often has to rely on the information provided to it by the Opposition and the Government.

The Hon. Robyn Parker: You have more than we have.

The Hon. ROBERT BROWN: Not in total, perhaps. The Shooters Party has spoken to the Minister's office and to the Commissioner for Children and Young People, Gillian Calvert. The Department of Community Services [DOCS] has also briefed the party. When the Shooters Party spoke to Gillian Calvert she indicated that she could speak without any fear of politicising her position because she is retiring. The Shooters Party has not approached the Ombudsman, believing that the Ombudsman should not be put into a position where he could be seen to be lobbying. It has held those discussions in an effort to fully comprehend the ramifications and impact of the proposals of Justice Wood and the Government. The Shooters Party agrees with the Premier that the Keep Them Safe document represents a genuine effort by the Government to establish the framework for a new way of caring for children and families—and that is stating the bleeding obvious. The continual reporting of children being harmed and dying in this State is blight on each of us.

The care and protection of children and young people is, and always has been, a shared responsibility; it is not just the responsibility of the Government. It starts with parents and families, but sometimes those families struggling, for any number of reasons, need encouragement and help before they reach breaking point and we end up with hurt and traumatised children, or children that are neglected. The proposal by the Government sets a fairly solid course to do just that based on solid recommendations from a very in-depth inquiry. Most of us consider that the Department of Community Services is the only department that does or should help children and families but the problem is far wider than one department can properly cover.

There have been extensive discussions with former and present employees of the Department of Community Services and, quite frankly, theirs would have to be one of the most difficult jobs. All of government needs to be part of the response, as well as all legislators in this place. Each and every child deserves the chance to reach their full potential and children deserve the right to continue to live—that is a basic. I publicly acknowledge the efforts of the employees of the Department of Community Services and my heart goes out to them. Their job is not an easy one because of the issues they deal with daily. I believe that in most cases they are unfairly criticised, and have been unfairly criticised in the past. Not everyone understands just what those workers do and what they have to deal with. "Walk in my shoes", is the old saying. Sometimes the frontline troops, and the important contributions they make, are forgotten.

The Government has moved to change the threshold for matters that must be reported so that the Department of Community Services can focus its resources on those children and families in the greatest need. This should allow families who need help and services to get them sooner. If it works, in reality the entire community will benefit. The Wood inquiry made many recommendations: 111 in all. The Government has accepted the vast majority of those recommendations. The child death review recommendations have caused much debate in recent weeks. Only a couple of issues have come down to the wire, and no doubt amendments will be moved at the Committee stage.

I accept the assurance of the Government that there has been no stripping of the powers of the Ombudsman and, indeed, recognise its support for the Ombudsman scrutinising public administration. The bill does not reduce the scrutiny of the Department of Community Services by the Ombudsman. Claims have been made that without accepting all of the Wood

recommendations the death of a little boy late in 2007 would no longer have been included in the Ombudsman's annual review. That assertion caused the Shooters Party concern. But after questioning that assertion it has no reason to believe that it is true. Indeed, the Government wrote to me in the following terms:

Currently the Ombudsman reviews the deaths of children according to a range of criteria, including children who died in suspicious circumstances or because of neglect or abuse…
And the most important part of that communication:

> …this role will continue.

The Ombudsman also reviews the deaths of children who are "known" to the Department of Community Services and the deaths of children whose siblings are "known" to the Department of Community Services up to three years before their deaths. That is the case no matter what the reports were about at any particular time, nor what caused the child's death.

Justice Wood concluded that the focus on children who were "known" to the Department of Community Services in the annual review of deaths led to a public perception that a large number of deaths could have been prevented if the Department of Community Services had intervened. The Ombudsman also conceded that many of the death—such as those involving drowning, illness, falls, and car accidents—had no relationship to the notification that Department of Community Services received about the child or its siblings. Therefore, Justice Wood recommended removing the category of children "known" to the Department of Community Services from the Ombudsman annual report; instead including those children in the review of child deaths by the independent Child Death Review Team and the review work undertaken by the Department of Community Services. Justice Wood also recommended the Ombudsman report every two years rather than annually, thereby allowing more time for trends to be identified and recommendations for change as a result of the reviews to be implemented. The Government accepted both recommendations and the Shooters Party does not take issue with those decisions—they are pretty good decisions.

Justice Wood also recommended the administration and responsibility for convening the Child Death Review Team be moved from its current location in the Commission for Children and Young People to the Ombudsman. In considering arrangements for the oversight of child protection services during the inquiry Justice Wood found duplication of effort between the review team and the Office of the Ombudsman and tension in who undertakes research functions and for what purpose. Many of the representations received by the Shooters Party from people who have worked in the Department of Community Services supported the contention that there was "tension" in that arrangement. Any tension has the potential to create inefficiencies and inefficiencies in this game means another child dead or injured.

The response of the Government to that recommendation was: "The team is functioning well and is better able to carry out its important work in its current location". Hence, for the last couple of weeks the Opposition and crossbenchers have had to work out what they believed to be the best outcome for the children of this State apropos that particular recommendation. That recommendation seems to have taken up most of the time for debate. It has been no easy task. In the end, the Shooters Party has not been convinced by the argument of the Government that the status quo should remain. It has come to the view that the recommendation by Justice Wood in relation to the administration and responsibility for convening the Child Death Review Team being moved from its current position in the Commission for Children and Young People to the office of the Ombudsman should be adopted.

This is a serious issue—I am stating the bleeding obvious there—and I am disappointed that in some cases there have been attempts to play politics with the issue. This issue is above and beyond politics. Child protection is a shared responsibility. It is the responsibility of each member of this House and the other place. It is incumbent upon all of us to enact the best possible laws and to assiduously research these issues so our decisions are based on what we believe is going to be the best outcome; not from the point of view of which bureaucracy gets the power but from the point of view, first, the fastest and most efficient way to deliver a service and, second, the best way to collate that information to monitor trends and predict future issues. That will ensure those working in child protection will have the best chance to give each and every child at least the opportunity to reach their full potential.
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The Hon. TREVOR KHAN [11.50 a.m.]: I congratulate the Hon. Robert Brown and the Hon. Ian Cohen on their contributions to the Children Legislation Amendment (Wood Inquiry

Recommendations) Bill 2009. Both members made heartfelt and considered contributions to the debate and, plainly, have taken a great deal of interest in this legislation. I too take on board the words of the Hon. Robert Brown that this matter is above politics. It is about achieving the most effective outcome for many children in our State. I am sure that the objectives expressed by the Hon. Robert Brown are endorsed by the Hon. Robyn Parker, the Hon. Penny Sharpe and all other members of the House.

We are dealing with an amendment to the Children and Young Persons (Care and Protection) Act 1998. It seems that much of the debate has centred on the issue of protection. It is appropriate that we deal with that issue in an attempt to prevent circumstances of neglect by parents and physical and emotional abuse of children by parents and others. However, another part of the Act that we must give equal weight to is the care component. It is not only an issue of protection; it is also an issue of care. We must ensure that the children who end up in the care of the Department of Community Services receive the proper level of attention and support. After the children have started off badly in life, in many cases having received little from their parents, the State, or the director-general of the department, must provide them with the best of care and nurturing to ensure that when they reach adulthood they have had, as much as possible, the same opportunities and the same care and attention as any other child in our community.

We cannot have a system that allows second-best outcomes: people may be satisfied that we have plucked children from immediate harm but the children should not be eventually left in an emotional and physical limbo for the balance of their childhood. That is not good enough. It is not what this Chamber expects, it is not what the Parliament expects and, most importantly, it does not fit within the expectations of our community. With those preliminary comments, I will return to the bill. I am sure that many members, if not all, know that in my former life I practised law in Tamworth for over 20 years.

The Hon. Michael Veitch: Very successfully too, you tell us.

The Hon. TREVOR KHAN: Yes. As a lawyer in a regional centre I was exposed to many different areas of law. My primary areas of practice were family law and child protection matters. It is fair to say that my experiences in child protection matters were the most difficult because I was dealing, as were all parties involved, not just with a complicated piece of legislation, particularly post-1988, but also with extreme emotional issues. Clearly, the parents, to a greater or lesser extent, maintain a very strong emotional attachment to their children and, from my experience, in most circumstances, in fact the vast majority of cases, the children had a strong connection with their parents.

As to the other people involved, we cannot ignore the important role played by the officers of the Department of Community Services. As well as having an intellectual and career commitment to their job, in many cases they have a strong emotional attachment to the children. Indeed, they have a strong desire to ensure that the children are cared for as best as possible. All those factors create a soup of emotion that makes practising in this area very difficult. I am unable to forget the circumstances of the children. I remember many years ago a mother and child in court gripped together as decisions were handed down as to the care of the child. The mother, with all her shortcomings, was distressed beyond belief. I had to perform the role of loosening the grip of the mother on the child so that the child could be taken away. Those circumstances are not experienced in criminal law and certainly not in commercial law, but they are regularly experienced by many practitioners in child protection law. Knowing the emotion that is involved, I say at the outset that I fully recognise that the officers of the Department of Community Services experience those same difficulties on a day-to-day basis. No doubt, it is one of the reasons the department has had such difficulty over many years recruiting and retaining staff.

It can be seen from what I have said that I do not come to this issue in a vacuum, either emotionally or in regard to understanding the law and its application. During my time as a lawyer practising in this area I witnessed the highs and lows of all the parties, including lawyers. As I have said, it must be understood that tensions exist in child protection matters, and they are experienced not only by the parties directly involved. There are far more people involved who need to be considered in the equation. So often we talk about a child in need of care. But in many cases, perhaps the majority of them, it is children in need of care. One is immediately confronted with the circumstance that decisions have to be made about the disposition of two, three or more children and care plans have to be developed for those children taking into account the potential, in many cases the certainty, of splitting the siblings from each other.

When practising in country areas lawyers find that "family" has a more extended terminology than

simply parents and children. They are often confronted with the grandparents, aunts, uncles and other extended family members who consider that they have a role to play. They want to be involved in the proceedings and engage with the department. All too often the sheer logistics of taking into account the various competing interests, desires and expectations lead to many difficulties and tensions in the decision-making process. However, often the central issue is the parents. Although most of my practice related to dealing with the parents, I had to accept that many were far from perfect. Many of the parents have been engaged with the department for many years in one way or another and they confront a variety of problems, including drug and alcohol dependency, endemic unemployment, poverty, poor educational outcomes, domestic violence, homelessness, mental health issues, general health problems, and physical disabilities.

However, in many cases, parents, in their own minds at the very least, were attempting to do their best; unfortunately, their best must be recognised as just not good enough. As I said earlier, almost without exception the parents love their children, as we all love our children, and in most cases the parents and children have strong bonds of affection. Sadly, children—particularly older siblings—often perform roles in those families where they are forced to care not only for their siblings but also, regrettably, for their parents with all their shortcomings.

It is into this environment that the department is obliged to intrude and sometimes the parents do not understand that the intrusion is intended to help and protect their children. Not unexpectedly resentments may arise that sour the relationship between the parent, or parents, and the department. On some occasions the response of the department, which, in the vast majority of cases, contains caring and well-intentioned people, unfortunately does not reflect an insight into the bonds of love that exist between the parent and the child or children.

Pursuant to sessional orders business interrupted and set down as an order of the day for a later hour.

Full Day Hansard Transcript (Legislative Council, 2 April 2009, Proof)

Proof

Extract from NSW Legislative Council Hansard and Papers Thursday, 2 April 2009 (Proof).

CHILDREN LEGISLATION AMENDMENT (WOOD INQUIRY RECOMMENDATIONS) BILL 2009
Second Reading

Debate resumed from an earlier hour.

The Hon. TREVOR KHAN [10.09 p.m.]: Earlier I spoke about the tensions between the various parties involved in child protection proceedings. I could go on at considerable length about that, but at this stage, taking into account the hour, I turn to some of the specifics of the Children Legislation Amendment (Wood Inquiry Recommendations) Bill 2009. I was fortunate enough to be briefed by the New South Wales Bar Association and the Law Society of New South Wales on some of the implications of the bill, and I thank those two bodies for assisting me in better understanding those issues. It is apparent that the Wood inquiry greatly benefited the vulnerable children of this State by identifying current practices and legislation that need to be modified. As we know, the inquiry heard evidence of systemic mismanagement of case files and of failures to respond to reports and to care properly for children entrusted to the care of the director general.

Those shortcomings have existed in the Department of Community Services for many years, and through this legislation there is an opportunity to overcome some of them. None would quibble with the exemplary work done by all those involved with the Wood inquiry, and it is good to see that Wood's recommendations underpin this bill. However, what was made plain to me by the Bar Association and the Law Society, whose members have extensive experience in this area of the law, was that the fundamental objective identified in the Wood inquiry was the need for greater transparency and accountability in the Department of Community Services. While the Bar Association and the Law Society agree with the general tenor of the bill, they identify some flaws in the bill in its current form.

Indeed, I find little justification in the Wood report for some of the proposed changes, which themselves are seen as restricting the department's accountability and transparency. Specifically, at least four areas of amendments to the existing legislation do not reflect the tenor or substance of the Wood report. The first area relates to the Ombudsman oversight amendments. Essentially,

this bill will remove the automatic review function currently conducted by the Ombudsman of child deaths where the child is known to the Department of Community Services. I suggest that this change is contrary to Wood's recommendations, which focus on greater scrutiny and accountability by the department. In respect of the oversight issue, I acknowledge and agree with the contribution made by the Hon. Robyn Parker on this point.

The second area relates to the disclosure of notifications to the police. The new amendments provide that the department, in sharing information with the police, can disclose the details of a notifier. The capacity to disclose the notifier does not appear to arise from any recommendation made by Wood and potentially may discourage notifications made for child welfare purposes. What impact will the new amendments have on notification? What, for instance, will happen when the notifier is a next-door neighbour in, say, a public housing estate? What if the notifier is one party in a household and the other party in that household is not aware of the notification being made about a neighbour? What ramifications will outing the notifier have on that notifier? What potential impact will the circulation of the details of the notifier have within the community? What impact will the effect of one or more instances of the outing of a notifier have on future notifications to the department? I submit that the amendment that is sought to be made in this respect potentially falls outside the necessary scope of the legislation and may have serious ramifications for both the notifier and, if it discourages notifiers, any child who may be the subject of abuse.

The third area relates to section 82 reports. Currently under the legislation there is capacity for the court to order reports from the department after the making of final orders to check that appropriate follow-up—for instance, of counselling, medical appointments and the like—is being undertaken in respect of a child placed in care. This goes back to the very issue I raised earlier: we are not simply talking about protection but the ongoing care of children who are placed in the care of the director general following the making of final orders. The new regime will limit reporting to one report within 12 months. Both the Law Society and the Bar Association consider that this one-size-fits-all approach is inconsistent with not only the substance but also the tenor of Wood's recommendations. It is worthwhile looking to a briefing note provided by the Law Society and the comments made therein. It states:

> As currently drafted the Bill limits the provision of section 82 reports to one report in any particular matter and limits the provision of these reports to within 12 months of the making of the final care order. The Wood Inquiry made no such recommendations.
>
> Section 82 reports provide the main mechanism by which the child's representatives in particular, but also the Court, can be informed about whether or not the proposed care plan for the child is actually being implemented. In many cases, unforeseen problems arise and children who are meant to be living with one carer end up in multiple placements, siblings who were envisioned to be living together are separated and permanent placements are not found. Whilst in most cases only one report is ordered at about 12 or so months after the orders are made, in some cases—particularly where it is clear that difficulties can be anticipated—more than one report is ordered and they are spread out over 18 months to 2 years (it would be a rare case that required reports more than 2-3 years after final orders).
>
> The requirement of providing reports to a court at several intervals after final orders are made is a means of ensuring that a caseworker somewhere is actually looking at and thinking about what is happening with a child.
>
> When Professor Parkinson recommended the implementation of section 82 he submitted that it provided a mechanism of ongoing review to enable the court to monitor the care arrangements for a child. Given that such arrangements change over time, it is essential that the Court retain the power to order more than 1 report and make them returnable over a longer period than 12 months in appropriate cases.

I now provide one example of where multiple reports may be appropriate. Let us suppose that we are confronted with a child or children who have been the subject of sexual abuse over a period and part of the plan put to the court provides for sexual assault counselling for the child or children. Because of the complexity of the child's problems and the time it will take for those issues to be dealt with, a court may consider it appropriate that an early report be obtained not to gain information as to the final disposition of the child but, for instance, to ensure that the counselling has commenced. It may also be the case that the court orders that further reports be obtained to ensure that the counselling continues to be undertaken over a period and as to the position of a child or children once that extensive period of counselling has been undertaken and completed.

If there is only one report at up to 12 months, as proposed in this legislation, one might find that a child who has been the subject of serious sexual assault over a period falls between the cracks because of changes in caseworkers or changes in foster arrangements, and the court finds out only after 12 months that the counselling proposed in the plan—the counselling that was seen as so necessary for the future care and welfare of that child—has not occurred at all.

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That circumstance borders on the criminal but regrettably it can, and does, happen. The limitation to one report may lead to a loss of accountability and transparency and, most importantly, to a loss of certainty in ensuring that a child who has been neglected over a period has been taken in hand and cared for appropriately. Wood did not propose the limitation to one report, and in those circumstances it is inexplicable that this amendment would limit the capacity for oversight.

As the Law Society of New South Wales pointed out, section 82 reports are an important mechanism for the person who is the child representative. In many cases because of the fallibility of the parents—or regrettably, in some instances the sheer disinterest of the parents once a placement has been made—the only people outside the department who can provide oversight are the courts or the child representatives who may maintain a watching brief for the period that the section 82 reports are in place. I suggest that the amendment dealing with section 82 is flawed and should be considered carefully by the House.

I move to new section 151, temporary care placements. In circumstances where no parent can be found, or where a parent is incapable of making an informed decision, the new provision allows for a temporary care placement to be made administratively. It does not involve the necessity of taking the matter before a court—be it within 24 hours or 72 hours—and a placement of that sort can be for up to six months. It is proposed that a temporary care placement be made without the oversight of the court and without the oversight provided by the appointment of a child representative. Wood did not envisage that proposal and it is inconsistent with the tenor and substance of Wood's recommendation regarding transparency and accountability on the part of the department.

A circumstance in which it is said that a parent is incapable of making an informed decision—without appearing to be too cynical—is likely to be when either parent, but most likely the mother, suffers from a drug or alcohol problem and/or some level of mental disability. But I suggest that there is another circumstance where the director general could conclude that the parent is incapable of making an informed decision. Namely, it is where the drug- or alcohol-affected and/or mentally disabled parent is not in agreement with the department on the question of the child going into care. One might think if that parent accepted that the child should go into care there would not be a determination that the parent is incapable. In fact, it is quite the reverse. A determination would be made in circumstance where the parent bucks up and says, "No, I do not really agree with you taking my child." In those circumstances, it may well be decided that the parent is incapable of making the decision, and there will be implications.

For example, if the department decides that a mother who has a drug or alcohol problem and/or suffers from a mental disability is incapable of making a decision and places the child in temporary care, what arrangements will then be made to search for the other parent? Perhaps the child's father is around. What arrangements will the department make to search out grandparents or other people who may otherwise care for the child? If the matter went before a court that is precisely the sort of inquiry the court would make: What is being done to find the father? What is being done to find other parties who may have an interest in caring for the child? If it is to be an administrative process there is no guarantee that anything like that will occur. If it is done administratively then clearly, of necessity, no child representative will be appointed. The child representative is there to assist in representing the interests of the child irrespective of age. In a sense, we are leaving it up to the department to place the child, without any oversight or overview. Wood did not consider that, and it is entirely inconsistent with his recommendations. It is also entirely inconsistent with the problems identified to date. I suggest that the capacity to make temporary care placements in those circumstances is dangerous in the extreme.

Finally, I move to new section 86, contact orders. A great deal has been said about this. Mr Ian Cohen referred to new section 86 and the appropriateness of alternative dispute resolution procedures. Wood clearly saw that it was appropriate to consider other means of dealing with contact arrangements apart from the litigation process in place under the current Act. But it must be remembered that the court obtained the capacity to make contact orders when the current legislation was enacted—it did not exist under the previous Act. Parliament made the considered decision, based on inquiries conducted before the Act was proclaimed, to give the court the capacity to make contact orders. The reason for that decision was considered and sensible.

Contact orders are important. It is necessary to ensure that children maintain contact with a variety of people. That does not only mean parents. In some circumstances a child does not benefit just from regular contact—for instance, on each alternate weekend—with their parents. There are also grandparents. Contact arrangements can be put in place for siblings, particularly when it is difficult

to find foster parents who are able to care for multiple children. I have more than 20 years experience in this jurisdiction and I have observed that the department plainly has an interest in ensuring that children maintain contact with their parents. But the department looks also at other conflicting issues and policy objectives. For instance, it considers the conflicting issue of the resource allocation involved in maintaining the contact.
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One constantly hears proposals in courts that contact with the parents, for instance, will be once every three months or once every six months. If that is the proposal how do a parent and a child maintain a reasonable bond, irrespective of whether the child is to be returned to care? Indeed, why are those arrangements proposed? I suggest there are two reasons. The first is the allocation of resources. Do we have enough people to make the arrangements? Added to that is the difficulty of dealing with the conflict and tensions that sometimes exist between the department and the parents. The second is the inconvenience to foster parents. One wonders whether limiting contact visits because they inconvenience foster parents is done necessarily in the best interests of the child or whether it is done to maintain the relationship between the foster parents and the department.

In essence the department has conflicting objectives that may not necessarily work in the interests of the child. It is for those sorts of reasons that years ago contact orders were put in place. Whilst Justice Wood recommended that alternative dispute resolution procedures be adopted, it is my understanding of his report that he did not see that as the final outcome: he expected that once an alternative dispute resolution process had been gone through and failed there would be some other mechanism at the end. There must be some fall-back position, otherwise, one might think that in some instances it may work in the department's favour to simply be recalcitrant in discussions during the alternative dispute resolution procedure. I will quote a briefing note:

> In summary the reasons why this recommendation is opposed are as follows:
>
> 1. There needs to be an independent mechanism of review of any decision made by the Director-General to alter or reduce a child's contact with his or her family. Such review mechanism must be accessible and transparent. The Children's Court has been providing that mechanism for many years and should continue to do so in the future.
>
> 2. Any agreement made about contact between the child's representative, the parent and the Director-General that is not able to be enshrined in court orders lacks certainty and clarity …
>
> …
>
> 4. After final orders are made about a child in the Children's Court the management of the case is transferred to the Out of Home Care Team within the Department. This means the delegates of the Director-General who proposed and, or agreed to the care Plan about the child (generally "front line" child protection caseworkers) will hand the matter over to other delegates of the Director-General (the out of home care team) or to external agencies (e.g. … Life Without barriers etc). Those persons who were not a party to the negotiations about the child's contact with the birth family may well take an entirely different view as to what is appropriate contact for that child. In the absence of any court orders about contact, the latter caseworkers will be able to completely vary the contact arrangements that were proposed at court. If the Court is deprived of jurisdiction over contact disputes, the family will have nowhere to go to enforce the contact arrangements agreed to when final orders were made. The effect of this will be that the child will see the birth family less than was envisaged by the child's lawyer and the Court at the time the Care Plan was approved and the family will have no remedy to go to about this. Such an outcome will be disastrous for many children in long term Out of Home care.
>
> 5. The fact that a parent is found by the court not to be capable of raising the child full time does not necessarily mean the parent has nothing to offer the child as a contact parent. This is particularly the case with slightly older children who have had the time to bond and attach to their birth family. The maintenance of such a bond is essential for the child's sense of self and of self worth. Children need to be able to maintain a connection with their primary attachment figure who is almost invariably a member of their birth family—be it mother, father, and older sibling or a grandparent. It is unconscionable to allow the maintenance of that important relationship (through contact arrangements) to be subject only to administrative whim rather than judicial assessment. Further to allow it to be subject to mere administrative assessment with absolutely no access to an avenue of review or appeal is the antithesis of making the child's welfare the paramount considerations.
>
> 6. The absence of court ordered contact also disadvantages birth families who are not experienced in engaging with or advocating a position with bureaucracies. Indigenous children make up more than 30% of children in out of home care. Indigenous families and non-English speaking families traditionally have difficulty in dealing with Government and near-Government agencies in terms of advocating a position—such as the desire to see their children. In the absence of court' orders, a family will have to put their

> own "case" to the Department about their desire to see their children. This will significantly disadvantage indigenous families and families from non-English speaking backgrounds. Currently, such families are entitled to representation and advocacy by legal representatives in the court process to produce contact orders. This recommendation will remove that right.
>
> 7. If contact is decided administratively rather than judicially then there will be a strong tendency for the adoption of a "one size fits all" approach. Proposed contact standards already exist with the Department and it can reasonably be anticipated that if the decision making power is vested solely within the Department then these will be applied across the board. The current approach of the Court determining contact allows a detailed consideration of each child's needs on a case by case basis. Each child and each family are different. What suits one family may be wholly inappropriate for another. The power to make contact orders allows this individual assessment of each child's contact needs.
>
> …
>
> 9. The Court's ability to monitor the progress of a child in his or her placement through the use of section 82 reports will be significantly compromised if the court has no power to make orders about one vital aspect of a child's life—contact with significant persons. If a concerning issue about contact appears in a section 82 report then the child's representative, the parents and indeed the court will be powerless to do anything about it. Only the Director-General will have any power to Act. This undermines the safeguards provided by the section 82 reporting system.

Both the New South Wales Bar Association and the Law Society of New South Wales have given great assistance to the Liberal Party and The Nationals in consideration of this bill. Their attention to the detail of the matter has been extraordinary given the limited time they had available to address the matters in the bill, and the considerable volume of the bill. I understand that both the Bar Association and the Law Society have given significant and extensive briefings to the crossbenchers, and I congratulate them on their diligence in this matter. Their commentary on the matters and their long-term commitment to these issues should be recognised and considered very carefully by this House.

Reverend the Hon. FRED NILE [10.38 p.m.]: On behalf of the Christian Democratic Party I support the Children Legislation Amendment (Wood Inquiry Recommendations) Bill 2009. This bill seeks to give effect to the recommendations of the Special Commission of Inquiry into Child Protection Services conducted by the Hon. James Wood. The bill deals only with those recommendations requiring legislative change. The most important aspect of this new approach embodied in this legislation is, firstly, to raise the reporting threshold before a report of a child is made from risk of harm to the level of significant harm. Second, to establish an alternative mandatory reporting scheme for principal government mandatory reporters so that those government agencies can promptly respond to the needs of children where those needs do not require a statutory child protection response. In October 2007 I raised this issue in the House when it became clear that the department was being swamped by a huge response of suspected abuse or neglected children.
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On that occasion I asked the Minister for Roads, representing the Minister for Community Services, a question without notice:

> Has the Department of Community Services Helpline had a dramatic increase in calls regarding suspected abuse or neglect of children, from 108,000 calls in 2001 to 240,000 in 2006? Does the mandatory reporting by police, mainly in domestic abuse cases, constitute the bulk of reports to the department's Helpline?

Then I proposed a solution:

> Will the Government reorganise the priorities and operation of the department's Helpline, which has been described as "child protection by computer", to prevent cases of child abuse and even murder, as occurred recently in the tragic murder of Dean Shillingsworth?

The Hon. Eric Roozendaal responded:

> This is a very important matter and I will pass on the question to the Minister for Community Services for an appropriate response.

A month later on 28 November 2007 I received a response, which stated:

> Yes. The Department has received a significant increase of child protection reports from 107,394 in 2000-01 to 241,003 in 2005-06.
>
> During 2005-06, the largest number of child protection reports came from Police (33.4% of all reports). Reports received from Police involving domestic violence as the primary reported issue constitute 19.5% of all reports to the Helpline.

That is violence to children. The response continued:

> The Government has initiated a Special Commission of Inquiry, headed by the Hon. James Wood, AO, QC, to examine how child protection services in NSW can better deal with the increasing number of child protection reports and improve the care of vulnerable children. Helpline operations will be examined as part of the review.

The figures have jumped from 241,000 in 2005-06 to the current level of more than 300,000in 2008. The Department of Community Services was swamped. The problem was that such a large number of reports—many of them minor and not requiring investigation—concealed the serious cases, now described as cases involving significant harm. The challenge was how to separate the cases and identify those that were serious and in need of a prompt response from the Department of Community Services. Hopefully, under this new arrangement the children who have been abused, physically or sexually, or neglected will not slip through the cracks, but will be identified and receive the care they need. For those reasons, I am very pleased to support the bill.

The bill limits the powers of the court to make orders governing how the Department of Community Services exercises parental responsibility. The bill includes a limitation on the court's power to order contact. I note that these changes can be implemented only when an alternative method of dispute resolution is determined. The Government has announced that proclamation of this section will be postponed subject to the Attorney General obtaining advice on possible alternative dispute resolution processes. That is a correct policy. This matter must be carefully examined so that we get the right solution.

A further initiative in the bill expands the range of people who are subject to background checks to include people such as adult household members in a carer's home and volunteers in high-risk situations. I have raised that issue many times as a member of the Committee on Children and Young People. I am pleased that this proposal has been adopted. It will involve additional costs and additional staff. The Government must ensure that the budget meets those needs. The bill will address the inability of any single child welfare agency to respond effectively to the present level of reporting of child abuse and neglect. It will ensure that services for children can be provided by those agencies in closest contact with the children. It will enable the Department of Community Services to respond to the needs of children at risk of significant harm. That means bringing into the picture all the various departments that are involved with the welfare of children. The onus will not rest solely on the shoulders of the Department of Community Services but spread across the relevant departments.

The bill will focus the Ombudsman on reviewing deaths where there is a causal link between a child's death and the operations of the child protection system. I support that proposition. A number of serious cases provided the initiative for the Government to establish the inquiry, including the tragic case of Dean Shillingsworth, whose body was found stuffed in a suitcase that was floating on a Sydney duck pond in October 2007, and a month later the case of a seven-year-old girl weighing just nine kilograms found dead in her home. These cases indicated there were problems and that the Department of Community Services was not coping. The Wood inquiry found that only 13 per cent of reports of at-risk children resulted in a home visit by a Department of Community Services caseworker, another 13 per cent of children reported were not at risk of harm, and 21 per cent required further assessment but received none. Another 33 per cent received some attention but were not visited by a caseworker.

Mandatory reporting saw an 80 per cent increase in the number of phone calls to the department's hotline, which ended up at more than 300,000. The reason for that large number of reports is that, firstly, it was mandatory and, second, a fear by teachers, police officers and others that they should err on the side of safety and report all cases. Rather than miss a situation where they may be accused of not doing their job, they adopted the safe policy of reporting everything. That meant a great deal of cases were reported that did not require any action at all. Further, fines could be imposed on teachers, police officers and other members of the community who work with children. The Minister for Community Services, Linda Burney, said that the inquiry had been initiated following the deaths of young children in tragic circumstances. Mrs Burney said:

> We will never forget the suffering of these children.
>
> Their deaths prompted a thorough re-examination of our practices and how we as a community address child protection.

Mrs Burney said that New South Wales, like other developed countries, was dealing with complex underlying issues such as mental illness, substance abuse and domestic violence. She made the important point:

> We are seeing parents who themselves received inadequate parenting and we are encountering communities where isolation and disadvantage are entrenched.

As I said, the number of reports to the Helpline in 2007-08 reached 303,121. I refer to an issue that has been raised, which I do not believe has received a satisfactory explanation. The inquiry received more than 600 submissions but, as far as I am aware, only 47 have been made public. There is an issue as to whether more submissions should be made public. Many submissions were received from former Department of Community Services caseworkers, some of whom resigned after years of working under stress at the child welfare coalface. They are amongst the submissions being kept secret. I do not understand why a submission from a Department of Community Services caseworker would be kept secret, as they may provide valuable information that could assist in rectifying the problems. It is not appropriate to keep those submissions secret.
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The new system will bring in other departments, so that cases will be handled not only by the Department of Community Services.

One issue that has caused concern is the role of the New South Wales Commissioner for Children and Young People, and I think Gillian Calvert is still acting in that role until a new person is appointed. To improve the system so that children get the help they need, this legislation will cut the number of calls to the Department of Community Services. The threshold for mandatory reporting of children at risk of harm has been raised to significant risk. The definition of "significant" will be further clarified. This will be an improvement as now most of the children reported to the Department of Community Services do not get help and many reports of children in imminent danger are lost in the pile.

Under this plan the New South Wales Police Force is amongst six departments to set up a specialist Child Wellbeing Unit to help filter children-at-risk cases. At this stage police officers make about 100,000 reports a year to the Department of Community Services. Virtually every child they encounter at a domestic violence incident has been deemed at risk. The new police specialist unit will be expected to act as a filter for officers' reports. More than that, it will be expected to refer families whose children are below the threshold to appropriate services for help, either in the community or to other departments. Spreading responsibility and referral to specialist units in half a dozen departments, including Health, Education and Housing, must be an improvement, although it will need to be monitored. The new model will require unprecedented levels of cooperation between bureaucracies, a very efficient IT system and information-sharing laws to prevent children from falling through the gaps. If no-one picks up a story of accumulating harm because information is scattered, lives will be lost. Duplication of effort may also be problematic.

I believe this is a step in the right direction and from my investigation there has been widespread support in the community for this initiative. For example, the Association of Children's Welfare Agencies chief executive Andrew McCallum welcomed the Government's realisation that child protection matters were not just for the Department of Community Services. He said that the non-government sector was best placed to deliver non-statutory services and that there was no reason why that could not start straight away. A number of other bodies have made positive statements, such as the following from UnitingCare Burnside:

> The NSW Government today responded to the Wood Report on Child Protection with *Keep Them Safe: a Shared Approach to Child Wellbeing*. UnitingCare Burnside welcomes this new approach to children's safety and wellbeing.
>
> Burnside CEO Jane Woodruff was pleased to see that the NSW Government will be investing in children and families in need, early in the life of the child and early in the life of the problem.

The Council of Social Service of New South Wales welcomed the release of the report of the Wood Special Commission of Inquiry into Child Protection Services and stated:

> The community sector has been waiting for the Report to be handed down so that it could work with Government and the general public to fix a system that is failing far too many children, families and communities …
>
> NCOSS will work with the sector and Government to ensure that the Report's recommendations are properly assessed.

The executive officer of the Secretariat of National Aboriginal and Islander Child Care said:

> SNAICC supports the central recommendation to only have issues of significant harm referred to the Department of Community Services. We have to support all non-government and government agencies that work with children to act earlier and support vulnerable families to minimise the harm to children and end the flood of child protection notifications to DOCS.

One controversial issue relates to the role of the Ombudsman. I have received a copy of the letter that he sent to the Premier in which he raised his concerns about the decision not to fully implement Mr Wood's proposed reforms in relation to child death reviews. I will not read the whole letter; I assume other members have seen a copy of it. The Ombudsman indicates that he is very unhappy with the approach adopted by the Government and wrote to the Premier to complain that the Government had ignored a recommendation that would give him more power to investigate child deaths. This has become one of the controversial matters in the legislation.

I have had discussions with the outgoing Commissioner for Children and Young People about the issue of the Child Death Review Team and the commission, and I understand that those two bodies agree with the Government not implementing the recommendation in the Wood report. The Child Death Review Team is responsible for collecting information on child deaths, including those children who may have died in accidents or from natural causes. This team identifies trends and patterns and makes recommendations to prevent those deaths. It reports annually to Parliament. Additionally, every three years the team tables a special report that looks at an aspect of child deaths in detail, including sudden unexpected deaths of infants. Because the Child Death Review Team is a committee of the commission, an independent agency reporting directly to Parliament, every Child Death Review Team report is oversighted by the Parliamentary Joint Committee on Children and Young People. The Commission for Children and Young People can work across systems and sectors to advocate for and extend the implementation of the Child Death Review Team recommendations. Keeping the child Death Review Team with the commission rather than the Ombudsman means that the commission can follow through on implementing the Child Death Review Team's recommendations through its relationship with community groups, the non-government sector, professional associations and the Government, and research, policy, training and community education functions.

The Child Death Review Team continues to be oversighted by the Parliamentary Joint Committee on Children and Young People. This seems to be the better parliamentary committee rather than the Committee on the Ombudsman and Police Integrity Commission. The Committee on Children and Young People focuses on children. This means it has built knowledge and understanding about children's lives, the causes of their deaths and the services they use. This strengthens its oversight of the Child Death Review Team. The Committee on the Ombudsman and Police Integrity Commission, on the other hand, has a legal anti-corruption focus. Corruption and poor governance rarely cause child deaths in New South Wales or play a major role in preventing them. This makes that committee's oversight potentially less relevant than that provided by the Committee on Children and Young People.

The separation of roles between the Child Death Review Team supported by the commission and the Ombudsman's reviewable deaths function has worked well since 2002. For that reason I support the legislation as proposed by the Government. I am pleased to support the bill before the House. Like all other legislation, but especially in the very specialised area of the welfare of children, this legislation needs to be carefully monitored to ensure that every aspect works according to the best possible services for children. Children are at the centre of this legislation and they must remain there and receive all the protection and help that they may need.

The Hon. PENNY SHARPE (Parliamentary Secretary) [10.59 p.m.], in reply: I thank all members who have contributed to this debate. There have been some very well considered contributions and I believe that a genuine debate has been had canvassing the issues. I particularly acknowledge the contributions of Mr Ian Cohen, the Hon. Robert Brown and Reverend the Hon. Fred Nile on this important piece of legislation. I also acknowledge the thoughtful contributions by the Hon. Robyn Parker and the Hon. Trevor Khan. The bill contains significant reforms and has

required close attention by all members. The Government has responded very carefully to all of the matters raised. I note that the Opposition has welcomed the bill as a comprehensive response to the Hon. James Wood's special commission of inquiry.
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These landmark reforms are vital to the future wellbeing of children and it is critical that they are enacted and implemented without delay.

As a result of the Government's comprehensive response to the Special Commission of Inquiry we are entering a new era in child protection. This new phase of reform follows a very significant change that has occurred over the past several years as a result of the $1.2 billion reform package that the Government introduced in 2002. Justice Wood acknowledged in his report the progress that has been achieved as a result of that package. He found that enormous gains had been made despite the Department of Community Services dealing with an increasingly complex client base and a spiralling number of reports.

Justice Wood concluded that the contemporary challenge facing the child protection system in New South Wales is no different to that facing all child protection systems across Australia and overseas. New South Wales is not alone in facing a rising number of reports of children in need of help or protection. Those reports concern families who are confronted with serious challenges—problems that are usually interrelated and often intergenerational. Such problems include domestic violence, drug and alcohol abuse, mental illness and socioeconomic disadvantage.

It is important to note that many parents who have difficulty caring for their children were abused themselves as children. The Government's response to the Wood inquiry—known as Keep Them Safe—is aimed at breaking the cycle. As the Minister for Community Services has said on many occasions, the best protectors for a child are the child's parents. This is a critical point. Parents are responsible for the care, love, nurturing and protection of their children. When parents experience difficulties relatives, friends and local communities step in. When the child still faces the risk of harm government must intervene. But child protection is not the sole domain of a single agency, and nor can it be. Justice Wood made that clear, and the Government agrees: it is a shared responsibility.

Agencies such as health, disability services, education, police and juvenile justice are at the front line in connecting children and young people to help and support as early as possible. Prevention and early intervention are key themes in the Government's response to the Wood report. We need to get help to families early, before their problems escalate, and we need to make a special effort to support Aboriginal children, who are so dramatically overrepresented in our child protection system. Under the new threshold contained in this bill only those cases where children are at risk of significant harm will be reported to the Department of Community Services helpline.

The special commission made some very pertinent points about our current threshold for mandatory reporting. Justice Wood stated that around 30 per cent of reports currently made to the Department of Community Services did not warrant statutory intervention, that New South Wales has the lowest reporting threshold of anywhere in Australia, and that the level of cooperative response to the needs of children was low. In response to these legitimate concerns the changed reporting threshold is about getting all relevant Government agencies involved in working with children and families who need additional support. Contrary to the Opposition's comments, it is not about lessening accountability; it is about getting services to families who currently have little or no assistance, and getting them there sooner. It is not about lessening the workload of the Department of Community Services.

Under these proposals the Department of Community Services will continue to work with children in need of statutory protection. A change in definition will not alter the reality of when the department has to intervene and take a matter before the Children's Court. What will change is the additional support available to those children and families who have been identified by Child Wellbeing Units as needing help but who do not require statutory intervention. What will change is that the Department of Community Services will have better information coming to it from Child Wellbeing Units about those families needing statutory intervention. Information about children coming to the attention of these units will be shared to make sure that children do not fall through the cracks. I note that all speakers in this debate have worried and deliberated about that issue but it is not the case, and it is wrong to suggest that less significant incidents will be "unmarked and unrecorded".

The bill also gives effect to Justice Wood's finding that barriers to the sharing of information need

to be overcome. There are other changes in this bill that will improve the court process in relation to the care and protection of children. The issue of how child deaths are reviewed and monitored has attracted a great deal of attention and I will make some comments on that. First, let it be clear to all members that the Government believes that a rigorous external review of child deaths is an essential part of the child protection system. Secondly, members should be aware that all of the Government's proposals are motivated by a desire to see improvements in the operation of our child protection system.

The Ombudsman currently has responsibility for the review of seven different categories of deaths, known as reviewable deaths under the Community Services (Complaints, Reviews and Monitoring) Act 1993. Those categories of reviewable deaths are children in care; children reported to the Department of Community Services in the previous three years; the siblings of children reported to the Department of Community Services in the previous three years; children whose deaths are or may be due to abuse or neglect or that occur in suspicious circumstances; children who are inmates of a detention centre, correctional centre or lock-up; persons living in, or temporarily absent from, certain residential care; and persons who receive certain disability services.

The special commission recommended removing the category of children reported to the Department of Community Services in the previous three years, and the category of the siblings of children reported in the previous three years. The special commission's view, which the Government supports, was that the automatic review of a child death by the Ombudsman simply because the child or the child's sibling was reported to the Department of Community Services within the previous three years does not improve our understanding of the relationship between child fatalities and the child protection system. The Opposition pointed to recent increases in the "known to DOCS" category of child deaths. The Wood report states that this is not a reflection on the child protection system. In his report Justice Wood stated:

> In his report of reviewable deaths in 2006, the Ombudsman said that in most cases the circumstances of the child's death had no connection to reported child protection concerns".

For example, there is little to gain from an Ombudsman's review of the death of a child from leukaemia just because his or her sibling happened to have been notified to the Department of Community Services for a minor matter two years earlier. The bill implements the special commission's recommendation 23.2 by removing the two categories of reviewable deaths relating to children reported to the Department of Community Services in the past three years from the definition of "reviewable death". This will mean that the Ombudsman will no longer review those deaths that fall solely within those categories. However, if the death also falls within one of the other remaining categories within the definition the Ombudsman would still review it.

I emphasise that the Ombudsman will continue to review the deaths of children whose deaths are or may be due to abuse or neglect or that occur in suspicious circumstances. The Coroner advises the Ombudsman of deaths that fall into these categories. Contrary to assertions made by the Leader of the Opposition in question time on 5 March, the tragic death of Dean Shillingsworth would certainly have been a reviewable death under an amended Community Services (Complaints, Reviews and Monitoring) Act 1993. I emphasise the point that reviewable deaths which are investigated by the Ombudsman will continue to include children in care and children whose death is or may be due to abuse or neglect or that occurs in suspicious circumstances.

This amendment was recommended by Justice Wood and supported by the Children's Guardian and the Coroner, yet the Opposition has opposed it. On the other hand, the Opposition has said it does not support departures from the recommendations of Justice Wood. The Opposition cannot have it both ways. As the Opposition is aware, where a child is reported to the Department of Community Services the report may or may not be substantiated. The role of the Ombudsman in reviewing child deaths is to identify systemic issues that, if addressed, might prevent future deaths. Automatically including the death of every child "known to DOCS" as reviewable, does not add to our understanding of these systemic issues.

The Opposition and other parties have also made comments about the Government's decision to retain the Child Death Review Team in the Commission for Children and Young People. The Government made this decision after very careful and serious deliberation. The views of Justice Wood, the Ombudsman, the Commission for Children and Young People, the Child Death Review Team and peak groups such as the Council of Social Service of NSW, the Association of Child Welfare Agencies and the Aboriginal Child, Family and Community Care State Secretariat [AbSec]—the peak group for Aboriginal out-of-home care agencies—were sought and taken into account. It was not a decision taken lightly. The Government refutes absolutely the Opposition's

effort to somehow make this out as an attempt by the Government to reduce scrutiny for political purposes. The Government rejects that suggestion and finds it offensive. I acknowledge the contributions from Mr Ian Cohen and the Hon. Robert Brown, who noted that the decision we have come to on this matter is not politically motivated and has been considered thoughtfully and genuinely.

The decision to leave the team in its current location was based on the view reached after careful consideration that the team would be better able to carry out its important functions under the existing arrangements.
~break/Mercer

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While the Ombudsman's function is to oversee Government activity, the Child Death Review Team has a much broader research role in relation to the deaths of children. The Commission for Children and Young People is much better placed to give effect to the findings of the team, for example, by working with groups in the community who are able to influence the safety and wellbeing of children. They have done this successfully, for example, in working with the NRMA and other groups to bring about various changes in response to a series of deaths of young children in driveways when parents were reversing their four-wheel drive cars. The Commission for Children and Young People is simply far better placed than the Ombudsman to review deaths overall, and to then work with different groups to bring about changes to reduce deaths.

The team is working well now. There has been a 38 per cent reduction in child deaths over the past 10 years, which is something we all welcome. After careful analysis of all the arguments and the evidence, the recommendation to move the team from the Commission for Children and Young People to the Ombudsman could not be supported by the Government. The Child Death Review Team will continue to carry out its role in relation to the review of child deaths other than those that fall within the Ombudsman's reviewable deaths jurisdiction. This would include deaths that fall within the categories that will no longer be reviewable by the Ombudsman.

The Opposition's claim that "children will die and no-one will know about it" is false. As to the matter of the Ombudsman's annual report into child deaths, the Government is implementing the special commission's recommendation that the report now be delivered every two years. The special commission was of the belief that biennial rather than annual reporting would provide a better overview of trends in child death data and result in a more meaningful discourse about what those trends mean in relation to the operation of the child protection system. It would also enable more meaningful comment about progress by agencies in implementing changes recommended by the Ombudsman.

I come now to other issues raised during the debate. It should be noted by all members that the majority of the legislation will not commence until January next year. This will allow sufficient time for everyone involved to prepare for the new system. This will be particularly important for working out the innovative approaches to be adopted for resolving disputes about contact between children in care and their families. The special commission identified that a court is not the best place to work out local, flexible and responsive ways to deal with disputes over contact between a child and his or her birth parents. The Government supports that conclusion. However, the Government further believes that an alternative dispute resolution process should be devised to assist here. The exact nature of this process needs further work and an expert advisory group appointed by the Attorney General is a starting point for that work. This group will include representation by the legal fraternity. This part of the legislation will not be proclaimed until a satisfactory system has been developed, which will include an appropriate review mechanism where alternative dispute resolution is unable to resolve a contact dispute.

The Government notes the Opposition's comments about consideration of Aboriginal children in the bill and the Government response to Justice Wood's report. The Government's response, while providing significant initiatives, does recognise that legislation is not needed to introduce them. Rather the Government will work with Aboriginal organisations to build their capacity to provide services earlier to Aboriginal children and families and play a bigger role in the provision of out-of-home care. The special commission emphasised the many reasons for the over-representation of Aboriginal children in the system and the need to tackle systematic disadvantage to improve outcomes for Aboriginal children. The Government's action plan "Keep them Safe" outlines a comprehensive set of special measures to work towards reversing the current intolerable trends and a commitment to consider how all actions in the plan will contribute to improving outcomes for Aboriginal children.

The Opposition has raised concern that there is not more in the bill for non-government organisations. This is because the special commission's recommendations about an enhanced role for non-government organisations [NGOs] do not require legislative change to be implemented. The Government values the contribution of NGOs in providing services and supports an expansion of their role. The Government has committed more than $100 million in the stage 1 funding package to the non-government sector. It is claimed that the previous $1.2 billion budget enhancement provided little additional support to the NGO sector. This is simply wrong.

More than $200 million of this money was spent on the NGO sector in providing early intervention and out-of-home care services. As a result, expenditure on NGO services increased by 27 per cent between 2002-03 and 2008-09. Justice Wood acknowledged the significant progress achieved through the 2002 package. I have sought to respond comprehensively to particular issues raised by the Opposition, which has acknowledged the general merit of this bill. I have done so in detail and will further set out reasons why the amendments are being sought during the Committee stage. I thank everyone again for their contribution. I commend the bill to the House.

Question—That this bill be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

The Hon. ROBYN PARKER [11.16 p.m.]: I move Liberal Party amendment No. 1 on sheet c2009-007D.

No. 1 Page 8, schedule 1.2 [7]. Insert after line 31:

> (3) The Director-General must, if the Director-General declines the request for assistance, provide written reasons for declining the request to the person or body that made the request. Those reasons may, despite any other provision of this or any other Act, be disclosed in any manner by any person.

The reasons for a number of amendments that the Coalition will move relate to transparency, accountability and greater scrutiny, and making sure that all the checks and balances and reporting mechanisms are in place. This amendment is about improved cooperation in the sector, which is imperative. Although bodies including non-government agencies are required to take reasonable steps to coordinate decision making and the delivery of services for children and young people, there is a limit on the amount of cooperation that non-government organisations [NGOs], who will be the main service coordinators, can expect from the Department of Community Services [DOCS].

The director general is not specifically required to do anything more than receive requests for support from NGOs with whom DOCS has service contracts. At present the director general is not required to take any action other than assessing the request for assistance. Given some of the history between DOCS and NGOs we felt the director general should be required to give written reasons for not providing assistance as requested and to report regularly to the Parliament on outcomes for requests for assistance from non-government bodies. In essence we are talking about reporting back and some transparency and accountability.

Mr IAN COHEN [11.18 p.m.]: The Greens do not support Opposition amendment No. 1. What on the surface appears to be a sensible amendment is unfortunately unworkable in our opinion. The amendment seeks to require the director general to provide written reasons if the director general declines a request for assistance. Proposed section 22 states the director general must—I emphasise the word "must"—provide either advice or material assistance or make any such referral considered necessary in response to a person or non-government agency seeking assistance. In discharging the duty created by proposed section 22 (1), which is "to provide assistance in the form of advice, material assistance or referral", the director general is fulfilling his statutory duty to respond to the direct request for assistance.

The director general has no discretion as to whether he or she provides any of these forms of assistance. They must provide a response to a request for assistance. This is an important point. This would mean, technically speaking, that the director general would have to breach his or her

statutory duty in order to trigger a written report under the proposed Opposition amendment. I can see where the Opposition is coming from with its amendment seeking the director general to provide reasons in situations where an NGO comes to the director general with a child who is not necessarily the subject of a mandatory report and the NGO is seeking the provision of particular services for that child. However, I think the NGOs have a range of issues in dealing with DOCS at various stages within the child protection system and I do not think the majority of those difficulties are related to a section 22 request for assistance.
~break/Doyle
<58>
I found the diagram at the start of the chapter 3 in the current Act helpful in demonstrating were section 22 requests for assistance sit in the broader child protection system. There are many other stages at which non-government organisations and the department would be at loggerheads. In summary, a decline as described in the Opposition's amendment would equate with a breach of statutory duty and more than written reasons would be required to remedy that situation. Therefore, the Greens cannot support the amendment.

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.21 p.m.]: The Government opposes this amendment. The amendment seeks to require the Director General of the Department of Community Services to provide written reasons for declining a request for assistance. As pointed out by Mr Cohen, the Act requires the director general to provide whatever advice or material assistance, or make a referral or take whatever action the director general considers necessary, to safeguard or promote the safety, welfare and well being of the child or young person. The department's resources need to be focused on providing services to children and young persons and their families and not on paperwork. The department needs the discretion to set its own priorities and to apply resources where they are most needed. The proposed amendment imposes an unnecessary burden of more paperwork on the department. The Government also believes that it incorrectly assumes and is at odds with what this legislation is about, which is that the department remains at the centre of all service delivery, and it is seeking to have that shared.

Question—That Opposition amendment No. 1 be agreed to—put.

The Committee divided.

Ayes, 11

Mr Ajaka	Miss Gardiner	Mr Pearce
Mr Clarke	Mr Khan	*Tellers,*
Ms Cusack	Mr Lynn	Mr Colless
Ms Ficarra	Ms Parker	Mr Harwin

Noes, 21

Mr Brown	Mr Macdonald	Mr Tsang
Mr Catanzariti	Reverend Nile	Ms Voltz
Mr Cohen	Mr Primrose	Ms Westwood
Mr Della Bosca	Ms Rhiannon	
Ms Griffin	Mr Robertson	
Ms Hale	Ms Robertson	*Tellers,*
Dr Kaye	Ms Sharpe	Mr Donnelly
Mr Kelly	Mr Smith	Mr Veitch

Pairs

Mr Gallacher	Mr Hatzistergos
Mr Gay	Mr Obeid
Mr Mason-Cox	Mr Roozendaal
Mrs Pavey	Mr West

Question resolved in the negative.

Opposition amendment No. 1 negatived.

<59>
Mr IAN COHEN [11.29 p.m.], by leave: I move Greens amendments Nos 1, 2 and 3 in globo:

No. 1 Page 10, schedule 1.2. Insert after line 36:

[13] Section 65A

Insert after section 65:

65A Referral of matters before the Court to ADR

(1) The Children's Court may make an order that the parties to a care application attend an alternative dispute resolution service in relation to the proceedings before the Court or any aspect of those proceedings.

(2) The Children's Court may make an order under this section:

(a) on its own initiative, or

(b) on the application of a party to the proceedings.

No. 2 Page 11, schedule 1.2. Insert after line 3:

[14] Section 71 (1A)

Insert after section 71 (1):

(1A) If the Children's Court makes a care order in relation to a reason not listed in subsection (1), the Court may only do so if the Director-General pleads the reason in the care application.

No. 3 Page 12, schedule 1.2 [21], lines 30 to 36. Omit all words on those lines. Insert instead:

(7A) For the purposes of subsection (7) (a), the permanency plan need not provide details as to the exact placement in the long term of the child or young person to whom the plan relates but must provide the further and better particulars which are sufficiently identified and addressed so the Court, prior to final orders being made, can have a reasonably clear plan as to the child's or young person's needs and how those needs are going to be met.

Greens amendment No. 1 clarifies an issue in proposed section 86 (6). It appears on some interpretations that proposed section 86 (6) may inadvertently restrict alternative dispute resolution [ADR] to proposed section 86 contact orders. In simple terms this amendment will make it clear that alternative dispute resolution can be used in all care and protection proceedings in the Children's Court. I refer next to Greens amendment No. 2. The proposed amendments in the bill expand on the grounds or reasons upon which the Children's Court may make a care order. The bill states that the court can make a care order based on the list in section 71 (1) of the Act in conjunction with any other reasons not contained in the grounds listed.

This amendment simply requires the director general to plead grounds that are not included in section 71 before the court can make a care order based on something not contained in the list in section 71. The purpose of the amendment is simply to ensure that the basis upon which a care order is made is clearly evidenced in pleadings, affording procedural fairness and reducing parental misunderstanding about the grounds upon which the care application was made.

I deal next with Greens amendment No. 3. Before a court makes final orders giving effect to a care plan, the general concept is that the court must have a degree of confidence in the certainty and permanence of the proposed care arrangements. We do not want courts making final orders on a care plan when details relating to that plan are not particularised to the degree that the court has a picture of how the child's needs are to be met. If permanency planning is not provided with a degree of detail, the court cannot make final orders or, worse, if the court accepts non-particularised plans for the child, the care plan may not deliver the child's required needs.

The difference between the version in proposed section 83 (7) (a) in the bill and the version proposed by the Greens, as contained in Greens amendment No. 3, is only slight. However, there may be some practical differences in application. The key difference is that the Greens amendment requires "further and better particulars which are sufficiently identified so as to provide the court with a reasonably clear plan", whereas the current version in the bill requires "details

sufficiently clear and particularised so as to provide the court with a reasonably clear picture".

In one sense we might be splitting hairs, but I categorise the Greens amendment as being more specific about what is required of the director general. Many in the Chamber with legal backgrounds would be familiar with requests for further and better particulars in the legal process. I think that the use of this language more precisely identifies the level of detail required in line with the decision in both Re Rhett and Re Ashley. I commend Greens amendments Nos 1, 2 and 3.

The Hon. ROBYN PARKER [11.33 p.m.]: The Liberal-Nationals Coalition supports these amendments, which summarise the recommendations made by the Bar Association and the Law Society. We think that they enhance and strengthen the bill.

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.34 p.m.] The Government does not oppose Greens amendments Nos 1, 2 and 3. We believe that essentially they are refinements to the existing intent of the bill. Amendment No. 1 provides that the Children's Court may order that parties to a care application attend an alternative dispute resolution service in relation to any aspect of the proceedings before the court. The order may be made on the court's own motion or on the application of any party to the proceedings. The Children's Court already has the power to make directions as to how the proceedings are to be conducted, including ordering the parties to participate in alternative dispute resolution processes.

In relation to Greens amendment No. 2 the bill makes it clear that the reasons specified in section 71 (1) of the Children and Young Persons (Care and Protection) Act for making a care order are not exhaustive. The proposed amendment provides that if the Children's Court makes a care order in relation to a reason that is not specified in section 71 (1), the Director General of Community Services must specify the reason in making that care application.

In relation to Greens amendment No. 3, the proposed amendment is a redrafting of the existing provision in the bill that implements recommendation 11.16 of the Wood inquiry. That recommendation provides that amendments should be made to ensure that the judgement of Re Rhett 2008 is followed. Re Rhett addresses the information to be put before the Children's Court about the planning for long-term out-of-home care arrangements for a child. In substance, the Government believes that the proposed amendment has the same effect as the bill.

Question—That Greens amendments Nos 1, 2 and 3 be agreed to—put and resolved in the affirmative.

Greens amendments Nos 1, 2 and 3 agreed to.

The Hon. ROBYN PARKER [11.37 p.m.], by leave: I move Opposition amendments Nos 2, 3, 4 and 5 in globo:

> No. 2 Pages 11 and 12, schedule 1.2 [20], line 28 on page 11 to line 27 on page 12. Omit all words on those lines.
>
> No. 3 Page 18, schedule 1.3 [8], line 20. Omit "a parent of the child consents". Insert instead "the parents of the child consent".
>
> No. 4 Page 18, schedule 1.3 [8]. Insert after line 25:
>
> > (4) If the Director-General makes a temporary care arrangement without the consent of the parents of the child, the basis on which the Director-General formed the opinion that the parents were incapable of consenting to the arrangement must be set out in a written statement by the Director-General. A copy of that statement must, despite any other provision of this or any other Act, be provided to any person who requests a copy of the statement.
>
> No. 5 Page 33, schedule 2.2 [7]. Insert after line 10:
>
> > (1B) Subsection (1A) does not apply in relation to a person who, immediately before the commencement of that subsection, was employed as a Children's Registrar.

Opposition amendment No. 2 relates to proposed section 82. The Coalition agrees with the Wood commission, in that section 82 in the original Act should remain the same. The Government's proposal will limit the reporting period to 12 months. There is far more flexibility in the current Act and the reports can be made more often. We need a mechanism to enable the court to monitor ongoing arrangements for a child. It is often the case that care arrangements change over a

period. It is vital that the court has the ability to order more than one report over a period that is longer than 12 months. The original Act states:

> (1) The Children's Court may, in making an order allocating parental responsibility of a child or young person to a person (including the Minister) other than a parent, order that a written report be made to it within 6 months, or such other period as it may specify, concerning the suitability of the arrangements for the care and protection of the child or young person.

In essence, amendment No. 2 will provide more flexibility in reporting. Amendment No. 3 will ensure that both parents are involved in the process. A temporary care arrangement is a contract. If a temporary care arrangement is in place, attempts should be made to involve the other parent in the decision-making process. This amendment will ensure that both parents are involved in that process. Amendment No. 4 will provide oversight, overview and reporting mechanisms. If the director general makes a temporary care arrangement without the consent of the parents of the child, the basis on which the director general formed that opinion must be set out in a written statement. We are saying that there should be a written reason for not providing assistance, thus ensuring that there is accountability and transparency.

Amendment No. 5 refers to staff currently working with the Children's Registrar that have a number of years of experience but that do not have the legal qualifications currently required under this legislation. This grandfathering clause will enable those staff members to up-skill by training in dispute resolution and mediation so that they can perform the tasks that are required of them.
~Break/McDonald
<60>
Mr IAN COHEN [11.39 p.m.]: Reluctantly, the Greens do not support Opposition amendment No. 2. We have not come to this decision easily. I will explain why. Proposed section 82 limits the provision of reports under this section to one report within a 12-month period after final care orders, and invites—not allows—applications under section 90 of the Act. This appears to be broadly within Wood's recommendation 11.1 (14). The tenor of Wood's statement is that the Children's Court is not and should not be an oversight body and the original intention of the creation of section 82 was to give the court a degree of assurance as an incentive to make final orders earlier. The Government and the Minister have outlined how the Children's Guardian currently audits a quarter of all care plans on an annual basis alongside the current system of Children's Court reviews under section 82.

We seriously need to consider whether the provision of section 82 reports is a duplication of what the Children's Guardian is already doing. I am not sure exactly how we answer this, and maybe the Parliamentary Secretary could elaborate. I certainly understand the sentiment of the lawyers representing the children, that they have a more intimate knowledge of that child's specific circumstances as opposed to the Children's Guardian, who only audits the report from care agencies. Certainly the removal of a continual power to order and receive multiple section 82 reports could be equated as a measure that reduces judicial oversight. However, I think the secondary issue of the process in re-listing a matter is more important. I feel it is equally important that reports from agencies that reveal similar details to section 82 reports need to trigger leave provisions in section 90.

A second problem with the bill in relation to the changes to section 82 is that in order to resolve an issue that arises from section 82 a party will need to make a section 90 application, which requires a party to demonstrate a significant change in any relevant circumstances since the care order. This invitation to make an application under proposed section 82 (3) does not mean the court will automatically grant leave to hear a matter stemming from a section 82 report issue, and it is not certain the non-fulfilment of care plan requirements will satisfy the threshold requirement in section 90.

The current situation, where a matter or issue arising from a section 82 report can be re-listed to review the care plan, is more procedurally equitable and sensible compared with the proposed section 90 route. I can see why Wood made the recommendation and why the Government has sought to implement the recommendation. I will be moving an amendment that I think accepts the concerns of both Wood and the legal fraternity and attempts to find a balance that still that ensures we maintain a degree of judicial review.

Again at first glance Opposition amendment No. 3 seems fair and sensible. It seeks to amend the bill and the position of the current Act in respect of parental consent to temporary care orders. Under proposed section 151 (3) (a) the consent of one parent is satisfactory for a director general to make a temporary care arrangement where a permanency plan involving restoration of the child

is in place. The Opposition amendment would require the consent of both parents under section 151 (3) (a). Theoretically, I am somewhat sympathetic to the concern emanating from this amendment.

My office has had discussions with Burnside advisers who expressed two important concerns about changing the requirement to the consent of both parents. Firstly, in instances where one parent is abusive or neglectful towards a child, it is important that that child is protected from harm under a temporary care arrangement. It would be problematic to ask a parent who is abusing a child to consent to a temporary care arrangement. Secondly, in many instances, one parent cannot be located. Should a child be stopped from going into temporary care because one parent cannot be located, when the sole care giver or responsible parent does give consent? The Greens cannot support this amendment, as securing both the short-term and long-term rights of the child should come before short-term parental rights. The temporary incursion on parental rights is a small price to pay for a reassurance that the best interests of the child are being satisfied.

The Opposition certainly has the right intention with amendment No. 4. A director general determination that parents lack the capacity to provide consent is a significant determination and it should not be made lightly. Built into that concern is the length of time before the temporary care arrangement expires, and that, under the bill, can be as long as six months. The power under section 151 is a significant statutory power. In principal, the Greens support the provision of written reasons in relation to this significant statutory power. However, the question must be asked where the provision of these reasons leaves us? For example, if the parents were determined by the director general to be incapable of providing consent, and reasons outlining why in the opinion of the director general the parents were deemed incapable were provided, what avenues and remedies are open to those parents?

Do the parents who have been deemed incapable of consent head off to the Administrative Decisions Tribunal to argue that the determination of the director general as to incapacity was based on manifest unreasonableness? Put another way, do we want those parents to be involved in a protracted debate about their capacity or would we prefer the parents to focus on having the Children's Court consider the issues of restoration or protection as soon as possible to address the best interests of the child? My attention has been drawn to section 152 (6), which allows parents to initiate proceedings to review a temporary care agreement. Initiation of such proceedings will hopefully reveal the basis on which the director general made the determination as to capacity and allow much broader discussion about care arrangements for the child. I accept that parents who have been deemed incapable of providing consent may have difficulties initiating such proceedings. Further, it would be more equitable to have reasons provided to a parent before making an application under section 152 (6).

However, in bringing an action under section 152 (6) the director general would have to give reasons and justification for the determination of incapacity. Ideally, we might dissuade an application under section 152 (6) if these reasons are given separate from any application under section 152 (6). Unfortunately, there is a problem with the Opposition amendment in that anyone can access the director general's reasons for finding incapacity. This gives rise to significant privacy concerns, especially where the information contains sensitive personal information. I have suggested to the Opposition that the second sentence in the amendment is problematic. I would think that only the parents the subject of the director general's determination or their appointed agent should be able to access the written reasons for the determination. As such, the Greens cannot support the amendment in its current form and will address these issues in Greens amendment No.7.

The Greens do not support Opposition amendment No. 5. A number of legislative reforms to tribunals such as the Consumer, Trader and Tenancy Tribunal and the Administrative Decisions Tribunal have increasingly sought to appoint legally trained persons to previously non-legally trained positions. The increasing professionalism of our tribunals, specialist commissions and courts is something we should be encouraging. Communities, policy makers and the judicial system have recognised the importance of more informal legal forums to resolve disputes, but with the increasing recognition and work volume comes an equal need for procedurally consistent process.

In the context of the Children's Court, decisions made by registrars about case management and procedural applications have significant impacts on a child. While non-legally trained registrars have an important contribution and role in some courts, I understand Wood's recommendation 13.12, as the nature of the court's work and its decisions have life-altering consequences for children and young people in the child protection system. In this sense, Wood recommended that

Australian lawyers fill the registrar roles for very important reasons, and these reasons will be even more apparent with the increasing use of alternative dispute resolution. Accordingly, the Greens cannot support Opposition amendment No. 5.

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.48 p.m.]: The Government opposes all the amendments. I will deal with them in turn. Opposition amendment No. 2 will reject recommendation 11.1 (14) of the Wood commission. The recommendation changes the focus of the Children's Court power to order reports concerning the suitability of the out-of-home-care arrangements for a child following the making of final care orders. The recommendation refocuses the court on considering the effectiveness of those care orders. This amendment would shift the court from monitoring out-of-home-care arrangements, which the special commissioner said was not an appropriate judicial function.
~Break/Hunt
<61>
The refocusing of the section is achieved in the bill by linking reporting to the matters arising directly from the final orders and placing an onus on the parties to the care proceedings to apply to vary or rescind those final care orders instead of the court being allowed to make new orders on its own motion. This amendment retains the position of court oversight for children in out-of-home care; this is contrary to the explicit comments of the Wood commission. This would involve the court in non-traditional functions and would permit the court to bring forward matters on its own motion. The amendment seeks to perpetuate a one-off system of review initiated by applications to the court rather than support a systemic view of the needs of all children in out-of-home care set out in the Government's response.

Opposition amendment No. 3 provides that the Department of Community Services cannot make a temporary care arrangement for a child unless both parents of the child consent to the arrangement rather than as currently provided in the bill where one parent of a child consents to this arrangement. The Government believes this amendment fails to recognise the nature of families within the child protection system. In these families the father cannot always be identified. Even where identified, the father may not always have had any dealings with or knowledge of the child. This amendment also assumes that both parents are still alive. Temporary care arrangements can only be made if the child or young person is, in the opinion of the Director General of the Department of Community Services, in need of care and protection. The amendment will require the department to locate and obtain the consent of both parents prior to entry into temporary care arrangements for the child. For this reason the Government cannot support the amendment.

Opposition amendment No. 4 requires that where a temporary care arrangement is made in relation to a child without the consent of the child's parents on the basis that the parents of the child are incapable of consenting to the arrangement, the Director General of the Department of Community Services must provide a written statement setting out the basis on which the opinion was formed that the parents are incapable of consenting to the arrangements. The written statement must be supplied to any person who requests a statement. This is the biggest issue with the amendment, and was well argued by Mr Ian Cohen. Significant privacy concerns come into play as the amendment would allow any person to view personal information about the parents' health or mental wellbeing—for example, the media could be able to access the information.

Opposition amendment No. 5 seeks to allow a person to be employed as a children's registrar if that person has previously been employed as a children's registrar, even if that person is not legally qualified. The special commission of inquiry recommended explicitly that children's registrars be legally qualified. The bill implements this recommendation by providing that a children's registrar must be an Australian lawyer, that is, someone admitted to the legal profession. Legally qualified and experienced children's registrars can ease the burden of Children's Court magistrates in procedural and consent matters, and can perform alternative dispute resolution functions. This amendment would undermine the inquiry's recommendation. Therefore, the Government does not support it.

Question—That Opposition amendments Nos 2, 3, 4 and 5 on sheet C2009-007D be agreed to—put.

The House divided.

Ayes, 11

Mr Ajaka Mr	Mr Gallacher Miss Gardiner Mr Khan	Ms Parker *Tellers,* Mr Colless

Clarke Ms Cusack Ms Ficarra	Mr Lynn	Mr Harwin

Noes, 21

Mr Brown Mr Catanzariti Mr Cohen Mr Della Bosca Ms Griffin Ms Hale Dr Kaye Mr Kelly	Mr Macdonald Reverend Nile Mr Primrose Ms Rhiannon Mr Robertson Ms Robertson Ms Sharpe Mr Smith	Mr Tsang Ms Voltz Ms Westwood *Tellers,* Mr Donnelly Mr Veitch

Pairs

Mr Gay	Mr Hatzistergos
Mr Mason-Cox	Mr Obeid
Mrs Pavey	Mr Roozendaal
Mr Pearce	Mr West

Question resolved in the negative.

Amendments negatived.
~break/clay
<62>
Mr IAN COHEN [12.00 a.m.], by leave: I move Greens amendments Nos 4 and 5 in globo on sheet 2009-017C:

No. 4 Page 13, schedule 1.2 [22], lines 3 to 9. Omit all words on those lines. Insert instead:

(1A) The Children's Court may make an order of the kind referred to in subsection (1) (a) that involves contact between a child or young person and his or her parents only if:

(a) proceedings are currently before the Curt and the order is made as an interim order, or

(b) the Court has, under section 83, approved a permanency plan involving restoration in relation to the child or young person, or

(c) a final care order has been made that removes the child or young person from his or her parents and the contact dispute has been the subject of alternative dispute resolution under section 86A which has not resulted in any agreement between the parties to the dispute.

No. 5 Page 13, schedule 1.2. Insert after line 18:

[24] Section 86A

Insert after section 86:

86A Requirement for ADR before certain final orders for contact

(1) The Children's Court must not hear an application for a final contact order under section 86 (1A) (c) unless the applicant files with the Court a certificate given to the applicant by an alternative dispute resolution service provider. The certificate must be filed with the application for a final contact order under section 86 (1A) (c).

(2) An alternative dispute resolution service provider may give one of the following kinds of certificates to a person for the purposes of subsection (1):

(a) a certificate to the effect that the person did not attend alternative dispute resolution with the provider but the person's failure to do so was due to the refusal, or failure, of the other party or parties to attend,

(b) a certificate to the effect that the person did not attend alternative dispute resolution with the provider because the provider considers, having regard to the matters prescribed by the regulations for the purposes of this section, that it would not be appropriate to conduct the proposed alternative dispute resolution,

(c) a certificate to the effect that the person attended alternative dispute resolution with the provider and that all attendees made a genuine effort to resolve the issue or issues but were unable to reach an agreement in relation tot he contact dispute,

(d) a certificate to the effect that the person attended alternative dispute resolution with the provider but that the other party or another of the parties did not make a genuine effort to resolve the contact dispute,

(e) a certificate to the effect that the person attended alternative dispute resolution with the provider but that the provider considers, having regard to the matters prescribed by the regulations for the purposes of this paragraph, that it would not be appropriate to continue the proposed alternative dispute resolution.

(3) Subsection (1) does not apply to an application for a final contact order under section 86 (1A) (c) if:

(a) the applicant is applying for the order to be made with the consent of all the parties to the proceedings, or

(b) the application is made in circumstances of urgency, or

(c) one or more of the parties to the proceedings is unable to participate effectively in alternative dispute resolution (whether because of an incapacity of some kind, physical remoteness from dispute resolution services or for some other reason), or

(d) other circumstances specified in the regulations are satisfied.

(4) The Children's Court may make an order that the parties to the proceedings attend an alternative dispute resolution service in relation to a dispute about contact between a child or young person and his or her parents or other family members.

(5) The Children's Court may make an order under this section:

(a) on its own initiative, or

(b) on the application of a party to the proceedings.

Greens amendments Nos 4 and 5, read together, would allow the court to make an order for contact in the event that alternative dispute resolution proceedings do not result in agreement between the parties to a dispute. Under the bill proposed amendments to section 86 of the Children and Young Persons (Care and Protection) Act will mean that the Children's Court will no longer have the ability to make a final contact order. It will be restricted to making contact orders only in the instance of a permanency plan involving restoration or where an interim order is at issue.

Concerns have been expressed about removing the court's ability to make contact orders where a final care order has removed a child from his or her parents. This change, as recommended by Justice Wood in recommendation 11.1 (10), ignites the debate about whether the bureaucracy or the judiciary is more suited to develop contact orders or agreements in situations where a child is not going to be restored to his or her parent or parents. A big concern is that if contact orders are decided administratively, there will be a strong tendency for a one-size-fits-all approach—two to six visits a year. Concern has been expressed about how to provide a check and balance on what some would describe as problematic contact regimes and decisions by a very small minority of

Department of Community Services workers, as highlighted in *Re Georgia and Luke (No. 2)* whereby Justice Palmer cited significant abuses of power. On the other hand, I agree with the maxim that we should not always legislate for the worst-case scenario or the lowest common denominator.

There are a multitude of issues to consider in relation to contact. The case of *R Helen* really plays out some of the competing challenges that need to be addressed in contact orders. For example, a liberal contact order regime may be beneficial and in the best interests of the child, but there is a chance that a liberal contact order may prejudice the ability to find a permanent place of that child. Taking another approach to the best interests of the child may say that a liberal contact arrangement could mean that the child's stays without a permanent placement, which is also detrimental to the child.

These considerations also need to be balanced with the sometimes immeasurable benefits of contact between a parent and child. In the case of *Re Helen,* one can get a sense from just reading the case that maintaining the parental-child bond is an important and significant component of progressing the child's interests. In that case it was found that the contact level proposed by the director general was insufficient to meet the needs of the child.

Having listened to both representatives of the Law Society of New South Wales and the New South Wales Bar Association explain the implications of section 86 of the bill and the department's legal service representatives, it is evident that both sides have valid and reasonable arguments. A decision to favour one view over another often comes down to either a deep-seed predilection to value judicial power or to value administrative power. Justice Wood, in the context of hearing all submissions, was significantly clear that he believed that the Children's Court should not be an oversight body and that the Children's Guardian and Ombudsman fulfil this role. Justice Wood further stated:

> The inquiry is not of the view that it is in the best interests of children for the Children Court to have the power to intervene in the discretionary exercise of parental responsibility by the Minister or her delegates.

With all due respect to Justice Wood, I am not sure that I agree with that statement. I find it somewhat difficult to resolve the importance and significance attached to the statutory power of the Department of Community Services, as discussed in relation to the lifting of the threshold, and the argument that this significant power should not be constrained by the judiciary. Beyond this argument is the idea that there needs to be an adequate incentive for all parties to an alternative dispute resolution to resolve the matter.

Looking at a range of State-based tribunals and specialist courts in New South Wales, including the family law system, there is a clear precedent for judicial review or judicial appeal if the alternative dispute resolution [ADR] process does not deliver an outcome. If the alternative dispute resolution process becomes the final arbiter of contact, it is unlikely there will be any incentive on the department to negotiate flexibly. I ask members to think about their personal experience with alternative dispute resolutions. I do not have experience in this area but I have had a particular experience with alternative dispute resolutions, the details of which I shall not go into.

The Hon. Robyn Parker: Was it expensive?

Mr IAN COHEN: It was a bit actually, yes. I was quite surprised by the situation. If I had known the lie of the land, I would have taken the somewhat meagre offer made by the opposition party at the time. I found that the person in charge of the dispute resolution was far less skilled and perhaps more ready to make a value judgement and shut down the negotiation than someone who had legal training, who would deal with the situation with a little more depth and clarity. I ask that members keep that in mind because when we are dealing with young people and children, we must move from the comparatively more amateur assessments to more professional assessments. To me that is an important issue. Where the State is deciding a child's life and contact with parents at the end of proceedings, after the alternative dispute resolution—and I think this would be a conservative position—it would be fairer for the matter to go before a Children's Magistrate. That is my position on Greens amendments Nos 4 and 5, which I commend to the Committee.

The Hon. ROBYN PARKER [12.07 a.m.]: The Liberal-National parties support Greens amendments Nos 4 and 5.

The Hon. PENNY SHARPE (Parliamentary Secretary) [12.08 a.m.]: The Government opposes these amendments because under the amendments the Wood commission's recommendation

11.1 (10) would not be implemented. The Wood commission recommended the removal of the power of the Children's Court to make contact orders where the court has accepted the assessment of the Director General of the Department of Community Services that there is a realistic possibility of restoration of the child to his or her parents. These amendments would restore the Children's Court power to make contact orders in all cases, subject only to the condition that disputes involving parental contact must first have been the subject of an alternative dispute resolution process in accordance with proposed section 86A, which is set out in Greens amendment No. 5.

The amendments preserve the power of the Children's Court to make long-term contract orders but render that power conditional upon the parties first proceeding to alternative dispute resolution. The Government opposes the amendments because during alternative dispute resolution there is no incentive to reach a resolution as the parties will primarily receive legal aid and will know that when dispute resolution fails, there will be a new hearing before the Children's Court going over the same grounds.
~break/mendra
<63>
This is likely to delay the resolution of care proceedings and considerably increase the cost of those proceedings. We are not convinced that there is any compensatory gain for the child as a result of this extended process. The view of the special commission and the Government is that the nature of court proceedings is such that they cannot take account of changing circumstances as the child or young person grows older. It is more appropriate and flexible for contact disputes to be resolved through alternative dispute resolution, and this is what the bill proposes to do.

I add a personal comment. I have some familiarity with children in out-of-home care who have had contact with their parents over time. I firmly believe that the Government has made the right choice in balancing the different and competing priorities. Alternative dispute resolution concerning children and young people as they grow requires a flexible and thoughtful approach. Alternative dispute resolution provides a better opportunity than a more formal judicial process for allowing children to be heard during proceedings. Having said that, I accept that we will agree to disagree on that matter.

It is also important to note that the Attorney General will be setting up an expert advisory group to advise on the most appropriate alternative dispute resolution mechanisms to use in relation to care matters, including contact disputes. This part of the legislation that relates to contact arrangements will not commence operation until a satisfactory system has been developed. That will include an appropriate review mechanism when alternative dispute resolution is unable to resolve contact disputes, and of course leading organisations will be involved in that consultation. The Government opposes Greens amendments Nos 4 and 5.

Question—That Greens amendments Nos 4 and 5 be agreed to—put.

The Committee divided.

Ayes, 15

Mr Ajaka	Ms Hale	Ms Rhiannon
Mr Clarke	Dr Kaye	
Mr Cohen	Mr Khan	
Ms Cusack	Mr Lynn	*Tellers,*
Ms Ficarra	Ms Parker	Mr Colless
Mr Gallacher	Mr Pearce	Mr Harwin

Noes, 17

Mr Brown	Reverend Nile	Mr Tsang
Mr Catanzariti	Mr Primrose	Ms Voltz
Mr Della Bosca	Mr Robertson	Ms Westwood
Ms Griffin	Ms Robertson	*Tellers,*
Mr Kelly	Ms Sharpe	Mr Donnelly
Mr Macdonald	Mr Smith	Mr Veitch

Pairs

Miss Gardiner	Mr Hatzistergos
Mr Gay	Mr Obeid
Mr Mason-Cox	Mr Roozendaal
Ms Pavey	Mr West

Question resolved in the negative.

Greens amendments Nos 4 and 5 negatived.

Mr IAN COHEN [12.18 a.m.], by leave: I move Greens amendments Nos 6 and 7 in globo:

No. 6 Page 13, schedule 1.2. Insert after line 21:

[25] Section 90 (2A) (f):

Insert at the end of section 90 (2A) (e):

, and

(f) matters concerning the care and protection of the child or young person that are identified in:

(i) a report under section 82, or

(ii) a report that has been prepared in relation to a review directed by the Children's Guardian under section 85A or in accordance with section 150.

No. 7 Page 19, schedule 1.3 [8], lines 18–22. Omit all words on those lines. Insert instead:

(4) A temporary care arrangement cannot be:

(a) made or renewed in respect of a child or young person if the child or young person has, during the previous 12 months, been the subject of a temporary care arrangement for a period, or for periods in the aggregate, exceeding 6 months, or

(b) renewed in respect of a child or young person if the temporary care arrangement was made in the circumstances described in section 151 (3) (b).

Greens amendment No. 6 is intended to redress concerns about potential problems for reviewing issues stemming from section 82 reports or any other agency report. Commissioner Wood recommended that orders arising out of section 82 reports should be brought before the court under a section 90 application. Within section 90 matters, when there is a significant change in any relevant circumstances, leave to vary an order can be given. However, there is concern that issues arising from a section 82 report may not get over the threshold requirement. The purpose of the Greens amendment is to ensure that the section 90 threshold does not become an obstacle for rehearing matters derived from an issue raised in a section 82 report or a report completed by a care agency.
~run on, Kerry Girardin follows
<64>
The amendment achieves this by requiring the matters raised in a section 82 report or agency reports to be taken into account before granting leave to vary or rescind the care order.

With regard to Greens amendment No. 7, the Greens are greatly concerned about the bill's amendments to temporary care arrangements. The powers given to the director general in new section 151 (3) (b) are expansive, even if they are to be subject to departmental guidelines. It is accepted that new section 152 (6) allows the court to review a temporary care arrangement, but the onus is certainly on the parent to take the matter to court to challenge the director general's assessment of non-capacity and placement of the child in a temporary care arrangement. The purpose of Greens amendment No. 7 is to reduce the maximum length of a temporary care arrangement to three months where the child is placed in care after a determination that the parents do not have the capacity to consent. While the amendment does not deliver us an ideal situation in new section 151, with continued monitoring by members of this House and members of the legal fraternity any abuse will hopefully come to the attention of the public and this House. I will certainly monitor the use of this power through the House. I commend Greens amendments Nos 6 and 7 to the Committee.

The Hon. ROBYN PARKER [12.21 a.m.]: The Liberal Party and The Nationals support Greens amendments Nos 6 and 7.

The Hon. PENNY SHARPE (Parliamentary Secretary) [12.21 a.m.]: The Government does not oppose Greens amendments Nos 6 and 7.

Question—That Greens amendments Nos 6 and 7 be agreed to—put and resolved in the affirmative.

Greens amendments Nos 6 and 7 agreed to.

Schedule 1 as amended agreed to.

Schedule 2 agreed to.

The Hon. ROBYN PARKER [12.23 a.m.], by leave: I move Liberal Party amendments Nos 6 and 7 in globo:

No. 6 Page 39, schedule 3.1. Insert after line 7:

[2] Section 11 (k)

Omit the paragraph.

[3] Sections 15 (1) and 5A (1)

Omit "(other than its functions under section 11 (k))" wherever occurring.

No. 7 Page 42, schedule 3.1. Insert after line 40:

[8] Section 45B

Omit the section. Insert instead:

45B Establishment of the Team

The Child Death Review Team is established by this Act.

[9] Section 45C Composition of the Team

Omit section 45C (1). Insert instead:

(1) The Team is to consist of the following members:

(a) the Ombudsman, who is to be the Convenor of the Team,

(b) the Commissioner,

(c) such other persons as may be appointed by the Minister.

(1A) The Team is to be supported and assisted in the exercise of its functions by members of staff of the Ombudsman's Office.

[10] Sections 45C (6)

Insert "and the Commissioner" after "the Convenor" wherever occurring.

[11] Sections 45E, 45G and 45H

Insert "or the Commissioner" after "the Convenor" wherever occurring.

[12] Section 45F Remuneration

Insert ", the Commissioner" after "the Convenor".

[13] Section 45N Functions of the Team

Omit section 45N (3).

[14] Section 45S Preparation and presentation of reports

Omit "or as part of a report of the Commission under Part 5" from section 45S (3).

[15] Section 45U Confidentiality of information

Omit section 45U (1) (c) (iv).

Liberal Party amendments Nos 6 and 7 in essence relate to the Ombudsman's role with regard to reviewable deaths and the Child Death Review Team. I am aware of the lateness of the hour but it is necessary for me to explain why these amendments are so important. We are trying to reflect in this legislation the recommendations of Justice Wood. Justice Wood's recommendations with regard to child death review envisaged a package of legislation providing for no duplication, to ensure that the child death reviews were not split between the office of the Ombudsman and the Child Death Review Team.

Unfortunately the Government, by way of this legislation, has adopted some of Justice Wood's recommendations but not all of them. In his report Justice Wood recommended restricting the Ombudsman's jurisdiction to reviewing the deaths of any child from abuse, neglect or suspicious circumstances. Justice Wood also proposed that the Ombudsman take charge of the Child Death Review Team, which is responsible for looking into all child deaths and is currently oversighted by the Commission for Children and Young People. As I said, Justice Wood's recommendations have not been adopted in this legislation in their entirety. The Government has endorsed the first recommendation but has rejected the second. The Association of Children's Welfare Agencies issued a media release on this issue, and it reads in part:

> The Government runs the risk of creating a hybrid mechanism that defies Justice Wood's intent in relation to this critical aspect of child protection.

It has been said that this issue is contentious and that it has been politicised. It has not been the intention to politicise the issue so much as to attempt to draw attention to these issues so that the Ombudsman has the capacity to have his views heard. Proposals were made to do that by way of a one-day inquiry so we could get public information from the Ombudsman. We have moved on since then. However, I wish to quote from a letter the Ombudsman has written to the shadow Minister for Community Services, Ms Pru Goward, in relation to this matter. The Ombudsman wrote:

> In 2002 the NSW Parliament conferred responsibility to me for reviewing the deaths of certain children, including children and siblings of children who had been the subject of a report to DoCS within the three years prior to their death. Prior to this time, these deaths fell within the ambit of the NSW Child Death Review Team. The transfer of the role to my office was part of a reform program to rationalise complex oversight arrangements in community services. While the Child Death Review Team retained a broader research role …

The Ombudsman notes that Justice Wood found duplication of effort between the Child Death Review Team and the Ombudsman's office. Justice Wood made a number of recommendations about child death reviews in 23.1, 23.2 and 23.3. First, he said that the Ombudsman should become the convenor of the Child Death Review Team, and that the research and secretariat functions of the team should be under the Ombudsman's office. Second, Justice Wood said that the Department of Community Services should take responsibility for reviewing the deaths of children and siblings of children who were the subject of a risk of harm report to the department in the three years prior to their death. Justice Wood's third recommendation was that the Ombudsman's power to review the deaths of children and siblings known to the Department of Community Services should be repealed.

This is about making sure that there is the capacity to have systemic review. A number of members have spoken about the need to ensure that children do not fall through the cracks. This is vital. In my view it is the most important provision in the legislation that we need to fix. It is important that we understand the context in which reviewable deaths occur. By doing so, we empower ourselves to find out what has gone on and what the antecedents are. Ultimately this will make the system more efficient and more effective. It gives us the opportunity to observe how agencies have acted, how they should act in the future, and ultimately to ensure that children's safety is enhanced.

It is vital that the Ombudsman have this role. The amendments ensure that we restore the capacity of the Ombudsman as initially intended. The research role of the Child Death Review Team would be enhanced by the involvement of the Ombudsman's office. The Ombudsman's office has the capacity to carry out research and undertake child death inquiries. It is essential that we address this issue as a whole package. In his letter to the shadow Minister for Community Services, the Ombudsman also wrote:

> It has been my consistent view that Mr Wood's recommendations should be considered as a reform package to be implemented in conjunction with one another. The important links between the three proposals provide for balanced improvement to oversight of child protection services through the avenue of reviewing child deaths. The result of not implementing the proposals as a package will, in my view, result in oversight that is less efficient and less effective.

~break/Jarka
<65>
If we are to make a genuine and determined attempt to fix some of the failures in the system, we need to adopt all of Wood's recommendations. We are not, as the Hon. Penny Sharpe said, trying to have it both ways. Indeed, we are trying to ensure that Wood's recommendations on this most important aspect are reflected in the legislation. It is about systemic review, systemic improvement and ensuring that we all understand what is going wrong, what is going well and how we can ensure that we do this well in the future. I urge honourable members to support these amendments and carefully consider their intent.

The Hon. ROBERT BROWN [12.30 a.m.]: As I foreshadowed in my contribution to the second reading debate, the Shooters Party supports Wood's recommendations as encompassed in Opposition amendments Nos 6 and 7. We support the amendments.

Mr IAN COHEN [12.31 a.m.]: Before I speak to the amendments I indicate that I do not believe the Ombudsman has been inconsistent on this issue. What I sought to do in my contribution to the second reading debate was to highlight the connection between removing the known-to-Department of Community Services category as linked with Wood's recommendation for transferral of the Child Death Review Team. My staff and I have spent many hours in my office agonising over this issue, and there may have been too much focus on this part of the reform package. I make it crystal clear that my agreement to these amendments is certainly not evidence that the Government has intentionally not followed Wood's recommendation on the Child Death Review Team, and I reject any suggestion that the Government, by not following Wood, is in any way covering up. I do not think that is the case at all.

Clearly, it is a difficult decision, perhaps epitomised by the discussions I have had with the Shooters Party. In many cases throughout this process we have amicably agreed to differ, and in this case we agree to agree. It has been an interesting and difficult discussion, but all the crossbench members have approached it with the utmost sensitivity. We have evaluated the facts dispassionately and with an objective mind. We have listened to the facts, lobbied with great concentration and sought to rummage through the hysteria that has arisen at times to find a single nugget of truth that would indicate how one would vote on this issue. I am not convinced that we have it 100 per cent; but all we can do is work with what we are presented with. The Government's policy reason for keeping the Commission for Children and Young People as convenor of the Child Death Review Team is that the research functions and style of research of the Child Death Review Team is more suited to the Commission for Children and Young People.

Specifically, the Government argued that currently the Child Death Review Team, in reviewing all child deaths in New South Wales, takes a broader picture of statistical trends in child deaths. Deaths arising from such issues as sudden infant death syndrome, fatal driveway accidents and swimming pool accidents, to name a few, have been reviewed by the Child Death Review Team and a number of recommendations made. There are arguments that the research style and focus of the Child Death Review Team should not be integrated with child deaths where there is Department of Community Services or departmental intervention. Further, the argument for maintaining the Child Death Review Team under the Commission for Children and Young People is that there is more scope for non-government organisation engagement and better integration of recommendations via the Commission for Children and Young People.

On the other side of the ledger, the Ombudsman and Wood would be concerned that the deaths of children with a child protection history are undertaken by two separate agencies, both with the capacity to comment and make recommendations. This concern is derived from the fact that if the known-to-Department of Community Services categories are removed from reviewable deaths under section 35 of the relevant Act, technically there would be nothing stopping the Child Death

Review Team from researching and investigating those deaths, hence the duplication. The question of whether we would see any real duplication if the Child Death Review Team is retained under the Commission for Children and Young People is not clear. The point is that we should rule out the possibility of any such duplication of efforts in relation to system overview of child deaths. The Greens support these two Opposition amendments.

Reverend the Hon. FRED NILE [12.34 a.m.]: As I said during my contribution to the second reading debate, I support the position of the Child Death Review Team. Importantly, the view of the Child Death Review Team and the Commission for Children and Young People is that the system should remain as it is. Prior to 2002 the Child Death Review Team reviewed all deaths, including deaths from child abuse and neglect. The Child Death Review Team supported transferring the reviewable death function to the Ombudsman as it fitted with his mandate of oversighting government systems. This arrangement has worked well for more than five years. Both Acts of Parliament have been independently reviewed in the past five years, and neither review recommended that the Child Death Review Team move to the Ombudsman's agency. It seems that making this change, although Wood recommended it, is going against the view of those involved in the role, except for the Ombudsman himself. That seems to place a big question mark over these amendments, and I cannot support them.

The Hon. CATHERINE CUSACK [12.36 a.m.]: I thank honourable members for their informed contributions to this debate. I am a member of the Committee on Children and Young People. Reverend the Hon. Fred Nile correctly said that the children's commissioner is of a different view to that of the Opposition on this matter. However, when referring to the children's commission, I do not think that is a separate entity; it is the children's commissioner, who is one person.

The Hon. Penny Sharpe: No, it's not.

The Hon. CATHERINE CUSACK: I am sorry, the Hon. Penny Sharpe indicates that there is a different children's commission.

The Hon. Penny Sharpe: The commissioner is the CEO of the children's commission. More than one person works with the children's commission.

The Hon. CATHERINE CUSACK: Does the Hon. Penny Sharpe agree that there is only one commissioner?

The CHAIR (The Hon. Amanda Fazio): Order! It is not appropriate for members to engage in discussions across the table. The Hon. Catherine Cusack should speak to the amendments before the Committee.

The Hon. CATHERINE CUSACK: They were being referred to as separate entities. It is in fact the children's commissioner. We are particularly interested in the views of the members of the Child Death Review Team because they are independent and have expertise. I have made inquiries of members of the independent team—I assure honourable members that the team has the highest regard for the Ombudsman—and they indicated that they did not disagree with Wood's recommendation. That is not to say that they wanted to become embroiled in this debate—I want to make that clear.

Reverend the Hon. Fred Nile: They don't wish to go to the Ombudsman, though.

The Hon. CATHERINE CUSACK: It is incorrect to say that members of the Child Death Review Team are opposed to being transferred to the Ombudsman's Office. I have made my independent inquiries directly to members of the team and that is not the case.

Reverend the Hon. Fred Nile: To the whole committee?

The Hon. CATHERINE CUSACK: No, not to the whole committee but to the deputy chair of the committee. There are two different committees, and the Ombudsman has his own committee. I have not consulted them, but I doubt that they would share those concerns. I simply place on record that it is not correct to say that all the key people are opposed to the functions of the Child Death Review Team being transferred to the Ombudsman's Office.

The Hon. PENNY SHARPE (Parliamentary Secretary) [12.38 a.m.]: This matter has been the subject of considerable debate over the course of the day. Of the entire package that will be passed tonight, and passed with a degree of bipartisanship, this is the pointy end of the debate.

The Government opposes these amendments, which seek to transfer the Child Death Review Team from the commission to the Ombudsman's Office. The Government carefully reviewed this recommendation and concluded that the broad research functions of the Child Death Review Team should remain with the Commission for Children and Young People, rather than be transferred to the Ombudsman.
~break/Chant
<66>
The purpose of the Child Death Review Team is to provide information about child deaths and to prevent or reduce the number of child deaths in New South Wales. Its research functions include maintaining a register of child deaths and classifying deaths according to cause, demographic criteria and other relevant factors. The Child Death Review Team has a broad role, which is not focused specifically on abuse or neglect or the performance of public sector agencies. The Government values the Ombudsman's research and recommendations on the child protection system and the work his office does to identify matters that, if addressed, may prevent future child deaths. The Government carefully reviewed Justice Wood's recommendation and concluded that the broad research functions of the Child Death Review Team should remain with the Commission for Children and Young People, rather than being transferred to the Ombudsman.

The report of the special commission quotes Professor Dorothy Scott, who notes that child death reviews are too heavily focused on the last link in the chain of events, rather than the role of the child protection system as a whole and how all agencies involved with the child and the broader community might have better responded to the child protection concerns. The Government's view is that the Ombudsman's role should continue to focus on the oversight of the child protection system and reviewable deaths, including the review of deaths of children that are or may be caused by abuse and neglect or in suspicious circumstances, rather than taking on the broader research functions of the Child Death Review Team.

In relation to Opposition amendment No. 6, the proposed amendment would be consequential on the transfer of the support and secretariat functions relating to the Child Death Review Team from the Commission for children and Young People to the Ombudsman's office. The Government does not support that transfer. The Government thus opposes Oppositions amendment Nos 6 and 7.

Question—That Opposition amendments Nos 6 and 7 be agreed to—put and resolved in the affirmative.

Opposition amendments Nos 6 and 7 agreed to.

The Hon. ROBYN PARKER [12.41 a.m.]: I advise the Committee that I will not move Opposition amendment No. 8 on sheet C2009-007D.

Schedule 3 as amended agreed to.

Title agreed to.

Bill reported from Committee with amendments.

Adoption of Report

Motion by the Hon. Penny Sharpe agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. Penny Sharpe agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly with a message requesting its concurrence in amendments.