PARLIAMENT OF VICTORIA

LEGISLATIVE COUNCIL
LEGISLATION COMMITTEE

Disability Bill

12, 13 and 19 April 2006

Internet: www.parliament.vic.gov.au/downloadhansard/council.htm

Chair

Mr M. Viney

Deputy Chair

Hon. Bill Forwood

Members

Hon. Philip Davis
Hon. D. K. Drum
Hon. Bill Forwood
Hon. C. D. Hirsh
Ms Mikakos
Mr Viney

Substituted members

Hon. G. K. Rich-Phillips (for Hon. Philip Davis)

Also present

Mr Gavin Jennings, Minister for Aged Care;

Mr A. Rogers, executive director, disability services, Department of Human Services; and

Mr I. Parsons, ministerial adviser to Minister for Community Services

Wednesday, 12 April 2006

DISABILITY BILL

Referred from Legislative Council.

The CHAIR — I declare the meeting open. I welcome everyone to the first public hearing of the Legislation Committee established by the Legislative Council. By way of explanation for members who have not been to earlier meetings on the organisation of this, the Legislation Committee was established by the Legislative Council as a means of giving the Council a greater opportunity to consider legislation in detail than currently exists through the committee-of-the-whole process. The committee will operate under the general rules of the Legislative Council and in accordance with the sessional orders establishing the committee. The proceedings will be conducted in a very similar way to the committee-of-the-whole stage of the Council.

At the outset can I say that the Legislation Committee is not an investigatory committee; it is a committee designed to consider legislation in detail. It is not a committee designed to make recommendations or consider policy in detail, but certainly it has the opportunity through considering legislation to look at how policy may be being implemented in particular bills before the Parliament or how they may impact on policy. To that end we are considering the legislation in a fairly formal process but using as much flexibility as we can to give the Council a greater opportunity for scrutiny of legislation before it.

Before commencing any introductions of witnesses I wish to make a statement for the information of all participants and the public in attendance. This public meeting of the Legislation Committee is a proceeding of the Legislative Council and therefore enjoys the same powers and immunities and warrants the same respect as are enjoyed by the house. The sessional orders governing the operation of the committee require the committee to consider a bill in detail in the same order that applies to the consideration of a bill in the committee of the whole Council. In relation to a question on a clause or a proposed amendment to a clause, all questions will be decided by a majority of committee members present. The Chair has a deliberative vote and in the case of an equality of votes will give a casting vote. The proceedings are being recorded by Hansard, and members of the committee, the minister and any witnesses accompanying the minister will have an opportunity to request corrections to the proof to be made by Hansard.

I would like to welcome the minister representing the Minister for Community Services, Mr Jennings, and ask him to introduce his advisers. I will then ask the advisers to state their names, their addresses and the capacity in which they appear today.

Mr GAVIN JENNINGS — Thank you, Chair, for the opportunity to present on this relatively historic occasion — the first time the Legislative Council has seen fit to establish such a committee. I look forward to the success of the process, as I am sure do members of the committee, members of the gallery and members of the Parliament, and I hope we meet the expectations to apply the appropriate degree of scrutiny to the bill. I am joined by Mr Arthur Rogers, who is the relevant officer of the Department of Human Services in relation to disability services, and Mr Ian Parsons, who is an adviser to the Minister for Community Services.

The CHAIR — I ask each of the two advisers to state their names, occupations and address for the *Hansard* record.

Mr ROGERS — My name is Arthur Rogers. I am the executive director of disability services in the Department of Human Services, 8/50 Lonsdale Street, Melbourne.

Mr PARSONS — I am Ian Parsons, ministerial adviser to Minister Garbutt, 22/50 Lonsdale Street.

The CHAIR — Thank you. For the benefit of members and certainly for the benefit of the minister, in an earlier discussion and meeting of the committee members of the committee indicated that there were a number of issues they would like to raise that may require proposed amendments that they wish to subsequently propose to the committee. I am advised that parliamentary counsel have been unable to keep up with the requests for amendments. It has been agreed that under clause 1, the purpose of the bill, I will enable members to raise those issues, which may resolve the question of whether or not the member wishes to continue with parliamentary counsel's proposed

drafting of amendments. This is just to advise the minister and his advisers that on this occasion it may be a little unusual: we may have a slightly more wide-ranging discussion under clause 1 than we might otherwise have had — hopefully to short-circuit the need to go down the path of a number of amendments.

Hon. BILL FORWOOD — Can I make a few comments by leave?

The CHAIR — Leave granted.

Hon. BILL FORWOOD — At the outset, on behalf of the opposition, we are very pleased that this committee has been established and look forward to its work. I had a conversation yesterday with John Butera from the Office of the Chief Parliamentary Counsel about the process we are going through today. As the Chair has made clear, this is the first time it has been done. Given that a raft of changes have been proposed to us by various people and organisations, it was becoming very difficult for the parliamentary draftsperson to stay on top of the order in which these things would be done. We had a conversation about whether it would be possible for us to have some discussions about general principles to see whether there was some room for amendments to be adopted, and if so to then draw the amendments, which is why we had the previous conversation.

We do not intend to make it difficult for the committee, but we hope you will bear with this because we will be juggling a few bits of paper in order to try and get to the most efficient way of dealing with the bill before us.

Mr GAVIN JENNINGS — Could I respond to those issues, Chair?

The CHAIR — Certainly.

Mr GAVIN JENNINGS — That does not surprise me, Mr Forwood, given the submissions that you referred to in your second-reading contribution — —

Hon. BILL FORWOOD — Have you read it?

Mr GAVIN JENNINGS — And from what I understand to be the range of responses to the bill, this is something that has exercised me in terms of my presentation before the committee. In fact I have raised this with officers in terms of us trying to organise our thinking in trying to deal with this — it could be a very unorganised and very difficult thing to do. I just wanted to flag with you that in my instructions and guidance received from the minister, I am not in a position before we start to give the committee any indication that I am in a position to agree to amendments at this point in time. However, in relation to the matters that obviously are going to be discussed before the committee, we are happy to tease out the underlying rationale, policy intent and implementation of the bill, and we can do that from our perspective as much as possible within the provisions of the bill itself, but we understand that there might be some degree of latitude required to kick-start our work through either clause 1 or the objectives clauses, so we are comfortable about that.

Hon. BILL FORWOOD — Can I just follow up, by leave?

The CHAIR — I am sorry. I have an indication from Mr Drum that he would like to make an opening comment. I will do that, and I will come back to you, Bill.

Hon. D. K. DRUM — Thank you, Chair. I thank the minister for outlining how he sees the process working. I must apologise from my perspective that we are not organised, but the submissions have been coming in quite steadily, and we simply have not had enough time to get it done. We will therefore not be able to cover all our issues in the purposes of the bill, but certainly we will be able to make a good start on the bill. This is a new process. I think we will require as much flexibility as we possibly can to try to get as many broad statements and broad discussions in relation to potential amendments as we can possibly have.

The CHAIR — Mr Forwood, do you want say something?

Hon. BILL FORWOOD — By leave again, Minister, just following up your earlier comments, I would not have expected that you would have the capacity to agree to an amendment without discussion with your ministerial colleague. Are you suggesting that, if the committee reaches the stage where it believes an amendment is

warranted, you will take it back to the minister and then report back to the committee about whether it is acceptable or not?

Mr GAVIN JENNINGS — Commonsense would decree that, if the committee at any stage determines on a recommendation in its deliberations, consistent with the brief it has been given by the Legislative Council, it would be appropriate for me to seek the guidance and instruction of the minister. But in terms of a method before we start, I do not come before the committee with necessarily the expectation or the mandate of the minister to make amendments to the bill.

Hon. BILL FORWOOD — But you are not ruling out the possibility that amendments might occur?

Mr GAVIN JENNINGS — No, I am not doing that at all. To be clear about it, if the committee makes some recommendations or so moves that amendments should be considered by the government, then the government will consider them, but I am not volunteering an open season in relation to the bill.

Hon. BILL FORWOOD — You did not bring any amendments to us?

The CHAIR — Mr Forwood, can you ask your questions through the Chair?

Hon. BILL FORWOOD — Sorry. Through you, Chair: you did not bring any amendments for us?

Mr GAVIN JENNINGS — No.

Ms MIKAKOS — Chair, by leave, if I could just make some comments. I understand the procedure of this committee will be that the voting members of the Council who are members of this committee will be able to move and vote on amendments. There will then be a recommendation back to the whole of the Council, and it may well be at that point in time the minister or the government may be able to indicate one way or the other whether the amendments are agreeable to them. I do not believe it is necessary for the minister to indicate in the committee's deliberations what the position of the government may well be one way or the other in relation to any proposed amendments.

Can I also take this opportunity to acknowledge that many individuals and organisations have taken a great deal of trouble to email various thoughts and submissions to members of the committee. I want to acknowledge that work and thank those individuals for the care and attention they have given to the bill. Certainly there has been a great deal of reading for many of us. Some of those submissions have only been received by us this morning — or speaking for myself, I received a number of those this morning.

I want to also just make the point that I think this is a terrific opportunity for us, as members of the Council, to consider this bill in more detail. In the normal course of events the Council would have concluded its debate on this bill in the last sitting week. We are setting aside — and the minister, and I thank him for his time, has set aside — at least three additional half days to consider this bill. That is really a unique opportunity for the Council to consider this bill in greater detail.

The CHAIR — I am anxious to get moving. Mr Forwood, I hope it is important.

Hon. BILL FORWOOD — I just want to pick up on something Ms Mikakos said. While there is a formal structure for this committee to report back to the Parliament, my understanding is that this is a trial — this is the first time this committee has met — and the intention of the committee is to produce the best piece of legislation that is possible. Therefore, rather than being overly formal about it, if we do have some things we would like the minister to take on board, I do not think we should have to wait until a report has been produced and tabled in Parliament in a month's time, if the minister has the capacity to go and have a conversation with his ministerial colleague. I would be looking, in the spirit of cooperation that I know is around this table, for us to approach this in the easiest way possible to achieve the best outcome.

The CHAIR — Mr Forwood, in truth you know it is not possible in the process of a meeting such as this for a minister representing another minister to agree to amendments without further consultation and discussion of the implications. That is very unlikely to occur.

Clause 1

The CHAIR — Minister, do you wish to make any opening remarks to the committee in relation to the legislation?

Mr GAVIN JENNINGS — I think the government and certainly the minister, who actually has undertaken a great degree of consideration of the new bill, are particularly mindful of the rights, expectations and hopes for the highest quality of life for those in our community who have disabilities and those who care for them and are concerned about their wellbeing. They have drafted and prepared a bill for Parliament's consideration that builds on a fine legislative tradition in Victoria in leading the way in terms of recognising the rights of people with disabilities in our community to have an enhanced quality of life and receive the appropriate degree of support to enable them to live independent and enriched lives that are based on their own empowerment.

Certainly it is the view of the government that it has tried to maintain that dignity and principled approach through the objectives and principles of the act, through the various mechanisms to ensure that there are obligations on behalf of the state and providers to provide for the planning and catering to the support needs of those in our community who fall within the scope of the bill and have every right to expect services to be responsive and respectful of their needs. It provides for remedies if in fact those services fall short of those needs. It provides independent scrutiny of the delivery of the obligations under the act.

The way in which the bill has been structured provides for the integration under one statute of what had previously been covered by two acts of the Victorian Parliament. One dealt with the rights and opportunities for people with disabilities and another covered a specific set of service arrangements within a complete framework. It tries to achieve those objectives and adds in the additional scrutiny, independent validation and accountability mechanisms I have alluded to.

We have confidence in the bill. The minister and those who work with the minister have embarked upon an extensive consultation process with the sector. We recognise that in trying to achieve these outcomes in a way that provides a framework for choice and a framework for the appropriate degree of accountability, consistent with other mechanisms on the Victorian statutes such as the Financial Management Act and other reporting requirements, and consistent with other approaches to service delivery, the government has achieved a balance in that approach.

We understand that in achieving the balance of those objectives and modernising the act some people may be concerned about what they may perceive to be alterations that may impact upon the rights and obligations of them as citizens of the state and as providers to provide care. We understand there is a degree of confidence that needs to be maintained in that commitment of the Parliament and of the government to support appropriately the level of service and support that is provided to people with disabilities in our community; and we do so, recognising that some people have some concerns at this present point in time as indicated by the weight of the piece of paper that Mr Forwood has in his hand. But the government believes that on balance the matters have been addressed.

We recognise that there is some perception that there may have been some alterations to people's standings and the rights and opportunities of people. We are very happy to go on the public record and have consideration of those matters, because the government is confident that on balance this piece of modern legislation does achieve certainly what the minister and the government embarked upon. We think it is a modern framework for both the protection of rights and opportunities and the appropriate way of scrutinising services, and the delivery of those services to people in our community. With that degree of confidence and support for the bill, but also with the recognition that there are some issues that we need to tease out through the committee stage, I will allow for others to make their contributions.

The CHAIR — Thank you, Minister. Are there any questions for the minister on his opening comments?

Hon. BILL FORWOOD — I would just like to make a couple of comments.

The CHAIR — Can I interrupt for one moment? I have a note from Hansard, and I should just explain some points to members. These are voice-activated microphones, and I understand that this is the first time there has been a direct digital feed down to Hansard. Hansard is having some trouble hearing, and I ask members to ensure that

they are speaking directly into their microphones, which is why I interrupted you, Mr Forwood, noticing that you were not — not that I ever thought you were incapable of being heard, Mr Forwood!

Hon. BILL FORWOOD — Normally my voice is loud enough.

The CHAIR — Can I also say that, because of those arrangements, we need to be careful that this does not end up as a conversational discussion, because if it does Hansard will not be able to properly notate it. We will need to have some order and have members speaking one at a time.

Hon. BILL FORWOOD — I note, Minister, that you said 'on balance'. I think that much of the conversation that is likely to occur over the next two days will be about the issue of balance. I have, for example, a quick paragraph I would like to read from Wendy and Peter Kiefel which I received yesterday:

> Please find attached some suggested changes to the Disability Bill. It is by no means complete. Failure to comment on the many other fundamental flaws in the bill should not be interpreted as understanding and acceptance of the bill. My ability to suggest changes has been limited by the severely restricted democratic opportunity that the government has given me. As a member of the legislative review committee may I ask, please, that my protest about the processes and spin surrounding this be formally noted by the committee.

While I accept that the government's intention has always been that we produce world-class, ground-breaking legislation, I would just remind the committee that the road to hell is paved with good intentions and that there are people very aware of bits of the sector who do not believe that in fact we have ended up with the best legislation that is possible. I need go no further than CIDA, the peak body which provided information to me and I presume to other members today, which again indicated that they had some concerns about bits of the legislation.

Under clause 1, I would like to quickly deal with some of the issues that were raised with me and others, unless Mr Jennings wishes to comment on what I have said.

Mr GAVIN JENNINGS — I have no idea what the road to hell looks like but I certainly recognise that beyond good intentions, which is what I clearly flag, I believe there is a delivery on those good intentions. The confidence in terms of the bill and the role the minister has embarked upon is not diminished by the notion that good intentions is all that is being delivered here.

Ms MIKAKOS — In relation to the comments that Mr Forwood made, and particularly the comments that were read out from a particular individual, I think it is important to put on the record that this has been, as I understand it, a very long drawn-out process involving I think about three years of public consultation with an exposure draft of the bill having been put out, so I think there have been many opportunities for individuals and organisations to make submissions to the government about this legislation. I find it peculiar that an individual is complaining about lack of time to participate in the process because in the normal course of events most bills are not put out as exposure drafts — it is done occasionally where a major rewriting of legislation has occurred as is the case in this instance — so I think it might be useful perhaps if the minister could briefly outline what the process has been. That might be a useful starting point for this committee's deliberations, and also for the benefit of members of the gallery, to just give some background information as to the consultation process and how we have got to where we are today.

The CHAIR — Minister, would you like to assist?

Mr GAVIN JENNINGS — I think Mr Rogers, who has been involved with this, can deal with this probably very quickly.

Mr ROGERS — Thank you, Minister. The process has been taken through a number of phases. The first phase was actually the release of documentation and what some of the policy issues would be. Then, following the public consultation process across Victoria where there were sessions for the public as well as focus groups for people with a disability, a report was released at the end of 2004 which set out some of the proposals for legislation.

Following that report a number of further submissions were made and a number of meetings were held between the department and different members of the sector, I think comprising some 30 hours of meetings, to work through some of the issues in the report. An exposure draft was then released in November last year with a further time for submissions originally through until just before Christmas and then extended through to January.

At the end of that there were a further 73 submissions received on that exposure draft. The process has taken approximately two and a half years but there were some preliminary discussions before that. In addition, the legislation was stated to implement some of the policies and objectives of the state disability plan. That state disability plan, as members would recall, followed a very extensive community consultation and much of the legislation is about enacting the principles of that state disability plan.

The CHAIR — Thank you, Mr Rogers. I might add that I do know how extensive that consultation process was for the statewide plan, having been the parliamentary secretary at the time. Mr Forwood, do you have a subsequent question?

Hon. BILL FORWOOD — I would like to follow up and perhaps if the minister thought it appropriate, Mr Rogers could comment on this as well. In the second-reading debate I put on the record an exchange between the department and CIDA. CIDA, in its submission on the exposure draft, made a number of suggestions, met with the minister and believed that it would have an opportunity to discuss those matters with the department, but the department unfortunately under pressure of the changes was not able to meet with CIDA, as the peak agency; CIDA was disappointed at that. Also as I mentioned in my second-reading contribution, for example Max Jackson submitted his detailed analysis of the exposure draft but was unable to enter into a dialogue with the department about the particular issues that were raised.

In relation to the point made by Ms Mikakos, you can consult for as long as you like, but length of time does not necessarily mean anything other than that. Sometimes a short consultation between two people about a particular clause is worth a darn sight more than three days or three years of consultation.

The CHAIR — Minister, do you wish to comment?

Mr GAVIN JENNINGS — I am going to let Mr Rogers deal with the specifics of that, but just as a general rule of thumb, going back to our starting point today, in terms of the balance I know full well from my understanding of the submissions that have been received in response to this bill that there continues to be a range of responses and in fact sometimes mutually exclusive positions being put by different stakeholders in this debate.

If people enter into consultation with the expectation that all of their agenda can be accommodated, it is almost impossible to achieve that outcome. At some point in time there gets to be a threshold point of whether to proceed with the bill or not to proceed with the bill. I am particularly mindful that this relates to one bill that I currently have before the Parliament — a similar consultation period, similar range of expectations — —

Hon. BILL FORWOOD — The heritage bill.

Mr GAVIN JENNINGS — The heritage bill, but a decision was made to deliver a bill on balance that represents the best outcome. With that preamble, Mr Rogers will deal with the specifics.

Mr ROGERS — Thank you, Chair. Following the release of the report on recommendations for the legislation, which was in late 2004, the department — that was me and other officers of the department — determined that it would meet with a group of representatives principally from the intellectual disability sector. We met with three or four organisations together to work through the issues in the report. We met 15 times for 30 hours, and substantial changes were made to that report on the recommendations which were in the exposure draft of the bill, including sections specific to intellectual disability, changes to the principles, the establishment of the office of Disability Services Commissioner which was not in the original report, and a number of other major changes to that report. Following the release of the exposure draft we met again with some of those people individually, including when I met, with other officers of the department, with Ms Jackson from CIDA as well as others, and discussed the submission that she had made to the exposure draft. I then followed that with a phone-call discussion with Ms Jackson. The point I would like to emphasise is that subsequent to the report of recommendations there was substantial consultation with that group and other groups which resulted in changes to the exposure draft.

The CHAIR — Thanks, Mr Rogers. I have had an indication from Ms Hirsh that she would like to make a comment.

Hon. C. D. HIRSH — With regard to the bill, I have spent a fair bit of time reading it. I was very involved in 1986 in the development of the then act. It was landmark legislation then, and I think everyone here remembers that it was wonderful. I re-read it: it is 20 years old, it needs change, it was a different time, a different era, with different problems. When I think of how far we have come in the last 20 years I feel very pleased with what we now do, particularly in the area of people with intellectual disability.

On page 17 of the bill clause 6(2) says:

> The repeal of the Intellectually Disabled Persons' Services Act 1986 —

that is the landmark legislation of 20 years ago that I referred to —

> … does not affect the responsibility of the Minister and the Secretary for the provision, management, development and planning of services for persons with an intellectual disability.

To me that makes very clear, when I read the bill, that the landmark decisions of the 1986 bill are still in place in this bill. I am sure if there were anything in the bill to the contrary the minister and the secretary would have it amended to ensure this subclause stays in place.

Hon. D. K. DRUM — While we are talking about page 17, clause 6(2) states:

> … this Act does not affect the responsibility of the Minister and the Secretary for the provision, management, development and planning of services for persons with an intellectual disability.

That is a very broad statement. What we are moving away from in the Intellectually Disabled Persons' Services Act and the Disability Services Act is very clear and precise measures that have been put in place that legislatively tie the minister to the provision of those services. Existing legislation that we are getting rid of has an absolute and cast-iron entitlement that anyone with a disability will receive those services. That is at the core of the legislation. We are taking that away and replacing that precise and direct entitlement and responsibility that 'a minister must do this' and 'the secretary must do that' with the 'minister may' or a 'secretary will provide management and development'. This bill has gone from precise directions to broad generic statements. Along with a range of issues in relation to the acknowledgment of families, the lack of information that will be passed on to families, the entitlement of people to receive services, is the government going to fund services associated with disability or will it make its best endeavours — they are some of the aspects I have concerns with when talking about the purpose clause of this bill.

Mr GAVIN JENNINGS — Firstly, I am concerned at the way we are going beyond the purpose clause.

The CHAIR — I share that concern, but I am allowing some latitude.

Mr GAVIN JENNINGS — I will respond to that latitude, but it will be a challenge for us all to try to deal in a structured way with the issues if members are going from clause to clause.

The CHAIR — I agree with you.

Mr GAVIN JENNINGS — One of the variations in terms of the way statutes have been prepared over the last 20 years has been to incorporate facility frameworks within legislation in a way that was not the norm 20 years ago or prior to that. For instance, many statutes were based on a set of principles and objectives and some statements that might be more closely categorised as good intentions without necessarily any backup. There were no sanctions, no provisions and no accountability structures to back up quite often what was expressed in the objectives and principles.

While this bill may fall short of some of the statements in terms of linear clarity that Mr Drum is seeking, I think it is important to recognise there is not a disingenuous structure that underpins the bill. The bill is designed to restate principles and objectives, to be honest and very specific in the way it goes beyond delineating roles and responsibilities — for example, in the bill the roles and the obligations of the secretary are extremely well specified. Indeed, part 3, administration, delineates very clear roles and responsibilities of the secretary. Also in part 3 are mechanisms that are currently not available in terms of scrutiny, enforcement, shaming mechanisms, facilitating mechanisms and accountability mechanisms — they are the advisory council and the disability services

commissioner, positions that do not currently exist, and recourses that do not currently exist within the existing framework.

Taken as a whole this bill is designed to bridge the gap between principles, objectives and obviously obligations in terms of providing support and then mechanisms for accountability, whether they have been followed through on. It is more complete in its structure and I would argue more honest in the way in which there are guarantees implicit in statute. There are structures in place to demonstrate how they can be delivered.

Hon. G. K. RICH-PHILLIPS — Mr Rogers in his earlier comments spoke about the consultation process leading up to the development of the bill before the committee. For those of us who have not been as closely involved with this legislation as others, perhaps you could expand upon the groups Mr Rogers referred to when he said there were 15 or so groups that met with the department for some 30 hours in total to arrive at some of these recommendations. I want to know of those groups who represented the interests of the families or parents of people with disabilities in those discussions?

Mr GAVIN JENNINGS — Mr Rich-Phillips asks for advice that may be more appropriately provided by those who were intimately involved with that consultation rather than me.

Hon. G. K. RICH-PHILLIPS — I am told that everything has to go through you, Minister.

Mr GAVIN JENNINGS — I thank you for that courtesy, but I will delegate my opportunity to answer to Mr Rogers.

Mr ROGERS — As a point of clarification, I should say there were 15 meetings of 30 hours with some groups. I was not meaning to indicate there were 15 groups. The groups we met with were principally groups from the intellectual disabilities sector — Ms Jackson from the Council of Intellectual Disability Agencies, which I understand represents intellectual disability service providers; the Victorian Advocacy League for Individuals with Disability (VALID) which represents people with a intellectual disability and their families; and the president of the Intellectual Disability Review Panel — —

Hon. C. D. HIRSH — I am having trouble hearing.

The CHAIR — We cannot hear anything.

Mr ROGERS — Should I keep going or start again?

The CHAIR — Keep going.

Mr ROGERS — Also, the secretary of the Health Services Union of Australia and on some occasions, the Public Advocate who represents some people with a disability. Those are the primary groups I met with. The first four I mentioned were the ones who participated in the 15 meetings — so it was the same group that we spoke to on 15 different occasions. There were four groups.

Hon. D. K. DRUM — On the same issue, Minister, it was put to me — and I would like some clarification in relation to the consultation process — that the transcripts from those meetings were never made public. Was there any truth to that, that a lot of that consultation process was in fact kept away from the public's view, which was in stark contrast to other consultative processes that have in fact taken place when other legislation in this field has been formed?

Mr GAVIN JENNINGS — I think Mr Rogers is better able to answer this question.

Mr ROGERS — It is my understanding that transcripts were not made available and that the reported recommendations in 2004 in fact summarised the issues and the response of government, so those transcripts were not made available. I also understand that the submissions made in the last round of consultation on the exposure draft, where people indicated that it was acceptable for them to be made available, were actually posted on the web site, but there were no transcripts of the actual meetings made publicly available.

The CHAIR — I am anxious to move into some of the other detail of the legislation rather than the process of getting there. So can we try and draw the discussion on the process of getting to the legislation to a conclusion now?

Hon. BILL FORWOOD — I think the purposes clause might be a good spot, Minister, to deal with the issues which were raised by the Transport Accident Commission. I did touch on this during my contribution in the second-reading debate. I have a copy with me of its submission on the exposure draft. It has a number of recommendations, but one of the key clauses, and I shall quote from page 3 of the document I have, is:

> The TAC has been advised by officers of the disability division of the department … that the bill is intended to provide coverage only to those people and the service providers funded by the disability division.

It goes on requesting clarification, noting that:

> Protections for people accessing services who are not funded by the disability division (for example … TAC, VWA, public liability and medical malpractice …

I guess the fundamental question is: does the bill cover every person with a disability or does it in fact only apply to people who are funded through the Department of Human Services?

Mr ROGERS — Those parts of the bill that refer to the regulation of service providers only refer to those service providers funded through disability services.

Hon. BILL FORWOOD — If you then read— and you are probably aware of the example — what the TAC says:

> A shared supported accommodation facility where clients are funded by TAC … must register as a supported residential service under the Health Services Act … If a TAC client left such a facility and the place was taken by a client with DHS funding, the facility would then fall outside the Health Services Act … and come under the bill. If the DHS client subsequently moved out or died, there would be no further obligation by the residential service provider to comply with the bill. The TAC residents would lose their residency protections and have no recourse …

In those circumstances would it not be better if we had one set of rules that applied to all the people? You cannot have a situation where rules apply to one person differently to others just on the source of the funding.

Mr ROGERS — The issues raised by the Transport Accident Commission refer to, I guess, a policy decision which was made earlier — that this bill would in fact only refer to those services which were to be funded by disability services. The basis for that discussion was that there are a number of other providers who provide both accommodation support for people with a disability, but they are in fact regulated by other measures — such as people with a disability who live in nursing homes, hostels or high-key and low-key residential facilities and people who live in supported residential services who are covered by other parts of acts and regulations, and people with a disability who live in services that are covered by the Health Services Act. We believe the distinction should be made that we would not cover those areas which are in fact already covered by other acts. In most instances that is fine, because these facilities are mutually exclusive. Something such as a hospital or a nursing home is not something we fund.

Hon. BILL FORWOOD — Let me just pick up on this, because as Mr Rogers knows, there are facilities where there is joint occupancy. The TAC these days has its people spread around through community residential units (CRUs) where other people are as well.

The point I was getting to, Mr Rogers, is: where in the bill before the house does it say that it applies to people with a disability funded through DHS and not through any other source?

The CHAIR — Mr Forwood, I appreciate that we are struggling in terms of the minister deferring the answering of questions to Mr Rogers — this is a new process — but can I just say that the reason why I am requiring the formality of putting questions to the minister is that this is not a forum in which members of the Council can question, and in future circumstances interrogate, a person who comes to the table with a minister.

Hon. BILL FORWOOD — Let me back off entirely and say that I have no wish to interrogate Mr Rogers. Minister, could I readdress my question to Mr Rogers to you?

Mr GAVIN JENNINGS — You can, and Mr Rogers and I will workshop the answer and be back to you in a second.

Hon. BILL FORWOOD — Thank you.

Mr GAVIN JENNINGS — This goes back to some of my introductory remarks about the differences between rights and opportunities for individuals who would be given overall protection and certainty right across our community as distinct from the application of the bill as it relates to service provision. This aspect that Mr Forwood is highlighting is in fact that the connection between the obligations to provide a support plan that is provided by a registered provider is provided for within the scope of the bill — and in the definitions this issue is covered on page 5.

Going back to the building blocks of this story, there are obligations in relation to plans that under the scheme of the bill will be established under the authority of the secretary. Service providers are funded by the secretary or funded by the government as registered service providers under the legislation in accordance with that definition on page 5 of 'disability service provider' — and that is the hook that comes back in terms of the specific application of those service plans.

Other provisions of the bill that relate to more general entitlements — to more general rights and the nature of people with disabilities being covered by action plans and in terms of issues that may be seen as equal opportunity provisions — apply to everybody. In terms of those general provisions, they apply to everybody, so there are not two categories of people. Where the differentiation comes into it is that where the obligatory service plans are provided within the scope of the bill, they come through a registered provider that is registered and funded by the department.

Hon. BILL FORWOOD — I note that we are dealing with the purpose clause, clause 1, which says:

> … to enact a new legislative scheme for persons with a disability …

It does not say the source of their disability or the source of their funding. If you further read what the TAC says in its submission, it goes on to point out that the residential tenancy rights are different for different people. It goes on later in its submission to point out that the use of restraints is different. Its recommendation 4 is:

> That provisions relating to the use of restraints and seclusion be mandatory for the entire …sector …

The purpose clause, in my view, deals with the entire sector:

> … to enact a new legislative scheme for persons with a disability …

So I would recommend that this committee consider an amendment that picks up what the TAC says, which is that if you are disabled you will be treated the same, no matter whether you are funded by DHS, TAC or anyone else. That would be my preference. But if we cannot have that, then I would be recommending to this committee that we specifically put into the bill before the house a clause that says, 'This bill only applies to people funded by DHS and does not apply to everybody else'. Only by doing either of those things will we get the clarity, which I know is the purpose or the reason behind the course of action that the government has taken, to put these things together and make it clearer. Unfortunately, with the best will in the world, I would submit that you have not quite achieved the aim. So, Chair, I do not know how to handle it. I do not want to keep going on this particular point, but I do think there is room for some thought about improving the legislation in either of those two ways.

The CHAIR — Minister, do you wish to comment?

Mr GAVIN JENNINGS — I note the potential for that confusion. In fact it is because of the way in which the bill has been structured that that potential exists. So I note that, and we will reflect on that.

Hon. BILL FORWOOD — Thank you very much. I really appreciate that.

The CHAIR — Do you have any other matters of a general nature in clause 1, Mr Forwood? Mr Drum has indicated that he does not.

Hon. D. K. DRUM — I have just one. No, sorry; it is not on clause 1.

The CHAIR — Okay. Mr Forwood has proposed an amendment — —

Hon. BILL FORWOOD — Yes, I have an amendment to clause 1.

The CHAIR — However, I advise the committee that the clerks have indicated to me that they have found a significant number of errors in the amendments that are already before us. Mr Forwood, your proposed amendment to clause 1 states:

> Clause 1, line 4 omit "responsibilities and".

In fact the amendment is to line 6 — as a starting point. I propose a short, 5-minute adjournment so I can consult with the clerks, Mr Forwood, Mr Drum and my colleagues here to see whether we can find a way through what people have raised about the amendments they wish to propose.

Hon. BILL FORWOOD — Sure, whatever.

The CHAIR — The clerks have already indicated to me that they have found a significant number of errors with the amendments before us.

Hon. BILL FORWOOD — My copy has 'first draft' on it, Chair.

The CHAIR — With the forbearance of the committee, I suggest a short, 5-minute adjournment, and we will have a quick discussion.

Hon. BILL FORWOOD — Sure.

Mr GAVIN JENNINGS — If we must.

Sitting suspended 3.38 p.m. until 3.44 p.m.

The CHAIR — We will reconvene the committee proceedings. Thank you to everyone for your indulgence.

Mr Forwood, you have proposed an amendment to clause 1. I am advised by the clerks that there may be an error, and I need you to propose an amendment to your amendment. Your amendment to clause 1 states:

> Clause 1, line 4 omit "responsibilities and".

My understanding is that it is in fact line 6. Is it your intention that it is the words from line 6 that should be omitted — 'responsibilities and'?

Hon. BILL FORWOOD — Yes. I think we counted from the first rather than — —

The CHAIR — I appreciate that.

Hon. BILL FORWOOD — I apologise for the error.

The CHAIR — So you are proposing that — —

Hon. BILL FORWOOD — Yes.

The CHAIR — Can you move your amendment as per line 6 rather than line 4?

Hon. BILL FORWOOD — Let me move the deletion of the words 'responsibilities and' from the purpose clause. Therefore I move:

> Clause 1, line 6, omit "responsibilities and".

As I said earlier, the purpose of the bill is to produce a new legislative scheme which reaffirms and strengthens rights and responsibilities. There are lots of references in the bill to 'rights', and I presume they are rights as

outlined through the bill, because there is no bill of rights, so how else are we defining the word 'rights'? I presume that 'rights' therefore means the rights in the legislation before the house.

As I read it I could not find lots of responsibilities in here, and it seemed to me it would be far clearer if we took out the word 'responsibilities' wherever it appears, particularly here in clause 1. I therefore have so moved.

Mr GAVIN JENNINGS — Can I repeat the threshold issue, that the government recognises there are provisions within the bill and the structure of the bill as has been provided to outline rights and responsibilities that are general in their application, some of them are specific in their application. Then they go beyond that to talk about certain service obligations that will be accountable through mechanisms that apply to providers who come within the scope of the bill, so it straddles two aspects. I say to the committee that in the government's view and on reflection we believe that the purpose clause is sufficiently a general descriptor of what is contained within the bill. I am sure I could very quickly outline a number responsibilities that relate to the residential tenancy obligations that I am advised exist, so some responsibilities are outlined in the bill. In terms of detail, the government would not agree to 'responsibilities and' being removed. In conclusion on the general point, if there are specific differential applications of various divisions of the bill, in terms of the substantive issue that Mr Forwood raises there will be opportunities for us to consider those within those specific divisions.

Hon. D. K. DRUM — The minister may have answered in his last line where I was coming from, but this sequence of rights and responsibilities is repeated quite often throughout the bill. The fact that it exists here in the purpose of the bill gives it the connotation that these rights are given to people with disabilities provided — and only provided — that they then uphold their responsibilities; so they are contingent upon responsibilities being upheld. We would all understand that many of the recipients of these benefits who need these services we are talking about are simply incapable of upholding any responsibilities, and therefore it seems to be ill founded that they would be sitting here in the purpose of the bill when the vast majority, I would even go to say, of the recipients are not capable of upholding any of their responsibilities or many of their responsibilities or all of their responsibilities. Therefore, I think it is out of place to be talking under the purpose of the bill about the rights and responsibilities of people with disabilities.

Hon. C. D. HIRSH — Chair, I would also like to comment on the concept of 'responsibilities'. To remove the concept of 'responsibilities' from anyone with a disability, no matter how severe the disability, is in my view to actually denigrate them as a human being. It is to go back to the old argument that people with disabilities are not educable. I know the degree of disability that some parents have had to deal with, and you cannot look at it; but to remove the concept of responsibility overall from a disability bill is in my view — and that is a personal view — not appropriate.

Ms MIKAKOS — Can I also speak in opposition to Mr Forwood's proposed amendment. Similarly to Ms Hirsh, who I think has put it very succinctly, on reading the second-reading speech and trying to understand the philosophy behind some of the language that has been used, the inclusion of the word 'responsibilities' is about self-determination and respect for people with disabilities, as far as I can understand. I know the minister referred to the four tenancy issues. As I recall, there are issues in the bill that relate to responsibilities of people with disabilities in particular accommodation, issues of respect, say, to their fellow tenants and so on. I understand that there are specific instances within the bill where people with disabilities have got mutual obligations to their fellow tenants and also perhaps to their service providers.

I acknowledge that Mr Drum has a valid point, that the degree of disability and a person's understanding and capacity to understand their obligations and responsibilities may well vary in each particular circumstance, but I think that in speaking against this proposed amendment it comes down to exactly what Ms Hirsh said — that is, taking out those word 'responsibilities' would be one by which we would be viewing as a Parliament all people with disabilities as people who are incapable of making decisions for themselves or having any ability to be involved in disability plans and any other kind of treatment or care that might relate to them as individuals. I think it is important that right in the purposes clause of this bill we are using language which is really about treating people with respect and dignity.

Hon. D. K. DRUM — I accept what the members are saying. I need further guarantees from the government and from the department — and maybe this can be done later on, piece by piece — but I thought that if we got rid of it here, we would save an awful lot of talk in each of the clauses where they are talking about the provision of

service in any way being reliant upon a person with a disability being able to uphold their 'responsibilities'. That needs to be clarified right through the bill or it could be clarified here.

Mr GAVIN JENNINGS — I will do my best to satisfy that expectation and any concern that might be out there in the community. I will try and be clear. The government's intention is to ensure that people's rights are protected, that they are applied, and that there is no sanction that relates to the question of , 'If you fail your responsibilities, your rights will be removed'. That is definitely not the intention of the government. The government is in fact, by design, committed to ensuring the rights of people are protected, enhanced and cherished and not undermined by any sense of mutual obligation in that sense.

Interestingly enough, the concept of responsibilities relates to a couple of things. Both Ms Hirsh and Ms Mikakos referred to the underlying assumption that all members of our community should be empowered to exercise their self-determination within the community. It is on the assumption of their capacity as much as possible to determine the quality of their own lives — and the aspect of responsibility reflects upon the rights of others that they may live with and share an environment with — that their rights are not impinged on by a lack of respect and regard that may be within the capacity of people who come within the scope of the bill. That is the sense of the responsibility — the mutual obligation that operates at the level of respect and regard within the community and within living arrangements. The concept of responsibility is not to undermine the commitment of the government and the commitment of the Parliament through the passing of this bill, to afford the rights of people within our community who live with a form of disability.

Hon. D. K. DRUM — I was just considering whether or not that wording was part of either of the two bills that we are doing away with. Do you know if 'responsibilities' was mentioned in the purposes of the existing bills?

The CHAIR — Whilst the minister and advisers are checking on that, Mr Drum, I will perhaps make my own comment to the committee. I think it is reasonable to suggest that anyone receiving any level of service, whether it be from the government or from other agencies, generally has some degree of responsibilities that are associated with the receipt of that service, so I am not troubled by the use of that word in that context.

Hon. BILL FORWOOD — Do you, Chair, believe that responsibilities apply to people who are under 18 in these circumstances? You said 'anyone.' The bill deals with people up to the age of 18 as well and talks about responsibilities. Are we saying that an 8-year-old or a 10-year old has got responsibilities?

The CHAIR — Mr Forwood, the point of the purpose clause is to outline the purpose of the bill. I am saying that in the context of the bill it is about the description of the receipt of services, and usually the receipt of services goes with some area of responsibility.

Hon. BILL FORWOOD — Even for kids.

The CHAIR — Therefore I am not troubled. I do not think in the purposes clause you need to be separating out to that level of detail.

Ms MIKAKOS — I suggest to Mr Forwood that he read his own party's anti-graffiti policy in relation to what you are proposing for minors.

Hon. BILL FORWOOD — On a point of order, Chair, that is gratuitous, unnecessary and not part of the committee's brief.

The CHAIR — There is no point of order. I was making my comment whilst we were waiting for the minister's response.

Minister, would you like to respond?

Mr GAVIN JENNINGS — That was all a preamble to my response? I should not allow you your own time, by the sound of things! Within the purposes clause of the existing bill they are very, very narrow. One of the purposes clauses actually just says it is going to lay out a new act, effectively. In the other one, in the other bill, the purposes are related to setting out principles in relation to the obligations of providers. So in terms of the existing purposes clause, probably there is not a lot for us to hang our hats on one way or the other.

Hon. G. K. RICH-PHILLIPS — The purpose clause states that the act will reaffirm and strengthen rights and responsibilities, which would suggest beefing up or possibly imposing new responsibilities. Could you outline to the committee what responsibilities are strengthened, to use the purpose clause's language?

Mr GAVIN JENNINGS — As I indicated to the committee a few minutes ago, they are primarily around the tenancy provisions within the specific divisions, and I think that might be the appropriate place to dig a bit deeper.

Hon. G. K. RICH-PHILLIPS — Just to clarify that, that is a strengthening of existing responsibilities?

Mr GAVIN JENNINGS — I am advised that that is a strengthening of existing provisions. In terms of my emerging knowledge of the pre-existing pieces of legislation, Mr Rogers advises me that the current legislative framework does not include those relevant tenancy provisions, so, yes indeed, given that they are there for the first time, the answer is going to be yes when we get to it.

The CHAIR — There being no further comment, looking quickly around the committee, the question is:

That the words proposed to be omitted stand part of the clause.

Hon. C. D. HIRSH — We are not going to divide, are we? We do not want to do the committee like that. Aren't we trying to get away from some of that adversarial stuff?

The CHAIR — Mr Forwood, do you wish to raise a point of order?

Hon. BILL FORWOOD — A point of clarification. I think that the minutes should note that the question was put and resolved in the affirmative — in other words, I do not think we need to divide on every clause, because what that will do is indicate — —

Ms MIKAKOS — Unless members want it recorded; I think that is a way of giving some flexibility in future.

The CHAIR — I am not seeking a division. I have declared for the ayes.

Hon. BILL FORWOOD — Can I seek some clarification from the Clerk at the table. How are you going to record this? Are you going to record that the amendment was put and lost?

The CHAIR — It is the same as in the committee of the whole, Mr Forwood. The question is that the words proposed to be omitted stand part of the bill.

Committee divided on omission (members in favour vote no):

Ayes, 3

Hirsh, Ms	Viney, Mr
Mikakos, Ms	

Noes, 3

Drum, Mr	Rich-Phillips, Mr
Forwood, Mr	

The CHAIR — The result of the division is three ayes, three noes. There being an equality of votes, I declare my casting vote for the ayes.

Amendment negatived.

Clause agreed to.

Clause 2

Hon. BILL FORWOOD — It may help the committee if I indicate that I have some desire to discuss the definitions in clause 3, and I might propose to include some new definitions.

The CHAIR — Mr Forwood, you are a step ahead of me, and I am conscious that I am not surprised by that.

Hon. BILL FORWOOD — I am.

The CHAIR — I will first put clause 2.

Clause agreed to.

Clause 3

Hon. BILL FORWOOD — It might assist the committee if we have a quick general chat about this. It has been put to me by a number of people that the bill would be greatly enhanced by the inclusion of 'autism', by the inclusion of a definition for 'early childhood intervention services' and by the inclusion of a definition of 'inclusion' as well. Some of these are picked up in my amendments. What were not picked up in my amendments were: a general discussion about the definition of 'disability'; the definition of 'intellectual disability'; and the definition of 'developmental delay', particularly in relation to the World Health Organisation definition. It was also put to me that it would be useful if 'least restrictive environment' were also defined. I am sure the government has a view about why it chose the definitions that it did choose. I am happy to just move the ones I have referred to, but I thought it might assist the committee to have a general discussion about, in particular, the definition of the word 'disability'.

The CHAIR — Whilst the minister is preparing his response to that, Mr Forwood, I can advise the committee that there are amendments from both Mr Forwood and Mr Drum proposed here. I will call on Mr Drum first when we get to those because they are ahead of Mr Forwood's amendments in the legislation.

Mr Drum, do you want to make any comment on the matters raised by Mr Forwood or do you want to hold off until your amendments?

Hon. D. K. DRUM — Okay.

Ms MIKAKOS — A point of clarification: ordinarily when we are going through amendments in the committee of the whole, members usually provide an explanation to other members as to what they are intending in putting forward that amendment. I think it would be useful, given that there are a lot of possibly consequential amendments being proposed by both Mr Forwood and Mr Drum, to give — —

Hon. BILL FORWOOD — I am happy to do it that way if you want to.

Ms MIKAKOS — To give some explanation as we are going through them, because — —

The CHAIR — Mr Forwood has opened discussion on this clause with a general comment, seeking some general clarification, which we agreed at the beginning of the process we would allow, so I will allow that, but when we come to the formal moving of amendments to clauses, I will be calling on the member to explain the amendment.

Minister, do you want to make any comment on Mr Forwood's opening remarks on clause 3?

Mr GAVIN JENNINGS — I am a bit loath to read anything to the committee, but I might just to make sure that we do not have any misapprehension or lack of clarity in relation to this. The definitions included within the bill are, as has been outlined in the second-reading speech — but I am happy to augment that — to make sure we have operating definitions that are consistent with the state disability plan, with one exception: and that is to say that we have deleted the reference to dual disability, which is the convergence of another form of disability with a psychiatric impairment.

The decision was that there had been some degree of confusion in relation to that coverage in relation to the Mental Health Act. We made a conscious decision to try to disaggregate that convergence by providing for rights and responsibilities but also care plans within both the prism of the disability act, on one hand, and the Mental Health Act on the other. That was a conscious decision.

The definitions that apply here not only build on those in the state disability plan but also are consistent with our obligations under the commonwealth-state territory disability agreement. So there is now a consistency established

between those important frameworks and those important agreements, and they are going to be underpinned by the bill.

The question of autism is one that the government acknowledges is an area requiring further consideration and work. In fact I am sure my colleague the minister, Ms Garbutt, has indicated to the community that she recognises the additional body of work that is required to appropriately assess, cover and respond to the needs of those in our community with autism. I repeat that commitment. The decision was not to have a roping-in provision in this current bill because the assessment was that that requires further work.

In relation to the question of age, specifically in relation to children, there is no lower age specification than the definition of disability for people with a sensory, physical or neurological impairment or acquired brain injury. The assessment criteria for intellectual disability from the Intellectually Disabled Persons' Services Act 1986 was included in the Disability Bill due to requests from some organisations in the intellectual disability sector. As this criteria relates to people who are over the age of five, a definition of 'development delay' has also been included to cover children under five years of age. That is pretty much the only aspect that I ended up reading.

Hon. BILL FORWOOD — I accept the second-reading speech, particularly where it relates to the targets of the requirement of CSTDA, but my understanding is that the CSTDA does include psychiatric. If we are going to meet the criteria of the CSTDA, then why would we be taking out dual disability?

Hon. C. D. HIRSH — Psychiatric disabilities come under the Mental Health Act, that is why.

Hon. BILL FORWOOD — But you have to be accurate.

The CHAIR — We are not going to have a private conversation. We will wait for the minister to receive advice.

Mr GAVIN JENNINGS — Instead of me parroting somebody else's words, Mr Rogers may answer this question.

Mr ROGERS — The Disability Services Act does include psychiatric disability but in fact, unless the person has a co-disability in terms of intellectual disability, they are not being covered by disability services. So the decision was made to take out the term 'psychiatric disability' because it is actually covered through the Mental Health Act. The definition of disability includes intellectual disability and so on. If they have any other condition, such as a psychiatric disability, then as long as they have an intellectual disability within the meaning of the act, they are covered by the act. They could have an intellectual disability or a psychiatric disability, or they could have another type of disability, but as long as they meet the conditions of intellectual disability, then they are covered.

Hon. C. D. HIRSH — I want to make a comment on Mr Forwood's amendment regarding the inclusion of autism.

The CHAIR — I will stop you there because Mr Forwood's amendment has not yet been moved. Mr Drum's amendment and opening remarks are going to come first. I will call on you when Mr Forwood moves that amendment.

I call on Mr Drum to move his amendment.

Hon. D. K. DRUM — I move:

1. Clause 3, page 2, after line 12 insert—

'"**advocate**" means any individual who acts to intercede or mediates on behalf of a person with a disability and includes a family member, a friend or the Public Advocate;'.

The reason for that to be put in is that this bill itself has references to the word 'advocate' and/or 'advocacy support' and yet there is no definition. In my opinion, the bill is referring to some mythical person who is supposed to be an advocate or is supposed to offer advocacy support, and yet there is no definition in the definitions clause.

Mr GAVIN JENNINGS — I am pleased to tell the committee that the advice that I have just received was almost in stereo and was not caucused. The only reason the word 'advocate' is not there is because it is, by and large, the simple and common understanding of the word. I do not think it is an area of contest between us about the notion of the role and opportunities for advocacy. There is not a lack of recognition by the government of the appropriate role of advocacy within the lives of those with disabilities. I just make that comment. We do not think that the definition would add much to the statute.

Hon. D. K. DRUM — Whilst I take the minister on his word — obviously there is no sinister reason as to why a definition of 'advocate' has not been put in — given the definition of 'advocate' is absent and references to 'the family' are also absent in this bill, it becomes suspicious. In a practical sense, when we have issues relating to who is going to best have the interests of a disabled person at heart and who is best able to advocate for that disabled person, we will not have a definition of 'advocate', and given we do not have any reference to 'the families' in this bill, there are some issues that need to be clarified.

Mr GAVIN JENNINGS — As a starting point, there are a number of provisions within the bill that cover the roles and importance of families and other persons who are significant in the lives of people with a disability. Within the principles section of the bill on page 15 clause 5(3)(h) specifically recognises that as an overarching principle of the bill.

Hon. D. K. DRUM — Do you have any others?

Mr GAVIN JENNINGS — In terms of the role of families, clause 5(3) recognises — —

Hon. BILL FORWOOD — Clause 5(3)(h) is the one you just did.

Mr GAVIN JENNINGS — That is what I have just told you. Similarly, clause 5(3)(i) states:

> have regard for the needs of children with a disability and preserve and promote relationships between the child, their family and other persons who are significant in the life of the child with a disability …

Clause 7(4) states:

> For the purposes of sub-section (3), the disability service provider may give a copy of the advice, notice or information —
>
> (a) to a family member, guardian, advocate —

there you are, 'advocate' is in —

> or other person chosen by the person with a disability …

Clause 52(2)(c) states:

> where relevant, consider and respect the role of family and other persons who are significant in the life of the person with a disability …

And there is one more — it is 'a significant other person in terms of the government may be a person's partner, advocate, friend or other person chosen by the person with a disability'. The bill also acknowledges that many people with a disability are able to decide whom they would like to be involved in planning and decision making as a matter of principle.

Hon. D. K. DRUM — In relation to the minister's answer, that is a very laudable principle. Certainly if a disabled person is able to play an important role in their own decision making, obviously we need to encourage that and facilitate that decision making. But there is some language that has been put into this bill around the role of family, the significance of family and the relaying of information to the family that would lead any open-minded person to have genuine suspiciousness, which needs to be relayed to the government — that is, over the words immediately before and immediately after 'families'. Obviously you have had prepared for you a list of every reference to families in this bill. If that is not sheer proof that the department is feeling somewhat guilty about the way you have taken the word 'families' out of this bill — I think it is quite disturbing. I seriously believe if you have to have — —

The CHAIR — Thank you, Mr Drum.

Mr GAVIN JENNINGS — It is an interesting thing. The beauty of this is in the eye of the beholder — and we were wanting to be biblical today! I could counter Mr Drum by saying we do recognise and respect the roles of families and significant others in the lives of people with a disability. If we did not have that respect and regard, we would not have a number of clauses within the bill, and I would not have been provided with advice to demonstrate that within the structure of the bill. Rather than being shamed into it or embarrassed by it, I actually think those who were part of the preparation of this bill and who provide support and services to people with disabilities are respectful of those families and significant others.

Hon. D. K. DRUM — Minister, the trouble is I believe you believe that, because you are a decent person.

The CHAIR — I do not think there is any response required, Minister.

Hon. G. K. RICH-PHILLIPS — Minister, Mr Drum's proposed amendment clearly reinforces the role of a family member as an advocate for a person with a disability, and I commend him for bringing forward that amendment. Given the importance that family members play in supporting people with disabilities, does the government have any objection to the roles of family members as advocates being acknowledged in the way that Mr Drum is proposing?

Mr GAVIN JENNINGS — I do not think that is the most vexing part conceptually. When it describes the role of the public advocate I think it is a bit of overstating. Given that the public advocate has some clear roles and responsibilities that are laid out through other legislative means, you might inadvertently be roping in with this provision. I think that would be an unintended consequence in the spirit of acknowledging goodwill towards one another, but nonetheless that is an immediate problem. Beyond that, I will take advice about whether there are any other problems with that definition.

Hon. G. K. RICH-PHILLIPS — If the amendment did not refer to the public advocate but achieved Mr Drum's purpose of emphasising the role of families in supporting people with disabilities, would that then be acceptable to the government?

Mr GAVIN JENNINGS — The issue is not to prevent a family member by statute from acting as an advocate; that is not our intention. In terms of the rights and the independence of people with disabilities and in terms of providing a blanket definition that may be read down by somebody so that they then have a right to intervene on a person's behalf, that may again be an unintended consequence that may not have been envisaged by Mr Drum's definition. I think we have to do some thinking about this in terms of providing the opportunity for advocacy, which is the issue I think we all agree on — I do not think we have any difficulty about that. The areas that we have concerns about are making sure that we assert the rights — the independent rights, firstly — of the person with the disability in terms of choosing who their advocate is, if they are capable of choosing their advocate; and, secondly, the statutory responsibilities of the public advocate and whether we are bundling something we did not intend to bundle into this definition.

Hon. G. K. RICH-PHILLIPS — Putting aside the public advocate, because with Mr Drum's agreement we can amend the amendment to deal with your concern, the point you make about an advocate imposing themselves is well made. Are there any provisions within the legislation that would allow an advocate to act contrary to the wishes of a person with a disability? Does the act provide an advocate with any rights without the agreement of a person with a disability such that the circumstances you are suggesting could arise?

Mr GAVIN JENNINGS — You have got to the nub of the issue, and that is whether in fact by adding it in as a definition you may be seen to have draw-down rights within a number of provisions within the act. That is the issue that I want to prevent from occurring.

Hon. G. K. RICH-PHILLIPS — That is the question.

Mr GAVIN JENNINGS — Yes.

Hon. G. K. RICH-PHILLIPS — The question to you is, 'Will that occur?'.

Mr GAVIN JENNINGS — That is my concern that I have actually flagged with a definition, so we are in a bit of a circular motion at the minute.

Hon. G. K. RICH-PHILLIPS — I guess it would help the committee if you could point out which clauses could conceivably operate in that manner so that we can address that when we come to them.

Mr GAVIN JENNINGS — Let us both flag, if we can, as we go through the bill where that may impinge upon it. I suggest that maybe that is something we could reflect on, rather than act on at this minute.

Hon. C. D. HIRSH — I would be very concerned about trying to define 'advocacy' in a statute. So many people can behave as advocates for a person with a disability that to define them might lock out a whole range of advocates. For instance, as a local parliamentary representative I have advocated and acted as an advocate on behalf of people with disabilities. If you go and define it and limit it to people like family and friends, you would have to have an absolutely inclusive list of everyone in the community, otherwise you might lock people out; so I think sometimes statutes can be very problematic.

Hon. BILL FORWOOD — I briefly want to pick up Ms Hirsh's intervention just to point out that 'advocate' is of course defined in the federal Disability Services Act, so it is not like we are dealing with something that has not been done before, and it is not all that hard to do if the feds have done it.

Mr GAVIN JENNINGS — It must be easy.

Ms MIKAKOS — I think the example that Mr Forwood has given us, where he says that because it is in one act it should be in another, is a long bow to draw. The point here is that the proposer of an amendment should really be able to explain why a new definition should go into the bill and what that will actually add to the operations of the bill, rather than asking the minister to come up with examples of how that amendment may well have unintended consequences.

There are references in the second-reading speech to the principles behind the bill, and there is a specific reference to respect for the role of families and other people who have a significant role in the life of a person with a disability. There is also a reference to having regard to the needs of children with a disability and preserving relationships between the child, their family and persons significant to the child that underlines the basic philosophy of this bill, which is to protect and enhance the relationships between people with a disability and their advocates, including family members.

On a personal level, I know many families that have family members who have a disability, and I do not think anyone here would try to belittle the heroic role that family members in those situations play in supporting their family member. Obviously in many cases those family members act as advocates, and I would be concerned if, by putting in this definition, we would in any way be narrowing the opportunity for those people to act as advocates that is currently provided for in the act. I think we need to be very careful when we propose these kinds of amendments that we do not inadvertently end up providing other individuals with rights which would ordinarily be given to the person with the disability in the first instance. It is important that we think through the consequences of putting this definition into the bill. It would be useful if Mr Drum could give an illustration of where his definition could actually strengthen the bill, if that is possible.

The CHAIR — Mr Drum, will you take the call? If you wish to respond to Ms Mikakos, please do so now.

Hon. D. K. DRUM — Ms Mikakos, in my opinion this was done in relation to the very first introduction to this amendment — that is, that the bill itself refers to advocacy support and advocates. Yet this bill has left 'advocate' out of its definitions. Now we have other bills referring to exactly the same sector, being a federal act, which has a clear definition of what an 'advocate' is. That is why it needs to be put in.

Then on a practical note, an example note, we simply have a lot of caring families out there who are acting as advocates, but unofficial advocates. They do not have official status because the individual has some capacity to make some decisions on their own. So we have this situation where there is a vast majority, or a vast number — I will not say a vast majority — of carers out there doing advocacy work without the acknowledgment that they are in fact advocates.

I am of the opinion that this would help their standing, I suppose, within the sector. I think it is a way that we can in fact place greater respect and greater acknowledgment on the roles that advocates are playing, and specifically

family advocates, by simply clearly identifying who we are talking about. When we in this bill talk about advocates, let us put a definition in there. I am quite happy to take 'public advocate' out, but if it has references to family members, I think that would strengthen the bill.

The CHAIR — Minister, do you wish to add any further comment after this discussion?

Mr GAVIN JENNINGS — I just reiterate that the intention of Mr Drum is to make sure that advocates are acknowledged and have opportunities to represent the interests of people with disabilities throughout the application of the bill. And there are a number of instances where we believe there is scope for that to take place, so we are not coming from a different philosophical position. My concerns were, first of all, the inadvertent restriction or the altering of the statutory obligations of the Office of the Public Advocate — no. 1; and then no. 2, if this definition was adopted as is, what the consequences would be in terms of provisions to protect the independent and decision-making processes of people with disabilities within the bill, and whether there would be any inadvertent impingement on their right to choose who their advocate is. That is the issue that we will have to think about. I am not in a position to be able to automatically respond to it because I have to take advice and consider whether it impacts inadvertently on other provisions of the bill.

Hon. D. K. DRUM — Thank you, Minister. I suppose what I would like some clarification on is: if we have got roughly 165 000 people in the state who cannot speak for themselves, who looks after their interests, as a rule of thumb?

Mr GAVIN JENNINGS — I do not start from the inbuilt assumption of who is speaking on anybody's behalf; I start from the premise that as much as possible we make sure that all people can speak for themselves if they can — communicate for themselves in an effective manner. Let us start from that principle. Beyond that, we recognise that thousands of families and — —

Hon. D. K. DRUM — One hundred and sixty five thousand individuals.

Mr GAVIN JENNINGS — Yes, thousands of people, many thousands of people provide those caring roles and those advocacy roles every day. We recognise that. Again, we are not in philosophical dispute about it. What we are just saying is: does this definition help or hinder? That is what we want to have some time to reflect on and consider.

Hon. D. K. DRUM — Okay. I am happy that the minister would reflect on the meaning.

The CHAIR — Can I get a clarification from the minister? Minister, are you suggesting that you do not want me to propose this amendment formally, and that you will come back to the committee? Or are you saying that this is something that would be considered in due time by the government?

Mr GAVIN JENNINGS — Again I just think there needs to be a crossover between the formality of a normal committee stage with what we are trying to achieve so that we can satisfy — —

Hon. C. D. HIRSH — I agree.

The CHAIR — I am happy to not put the amendment, if that is your wish.

Mr GAVIN JENNINGS — Yes. Let us come back — and on any amendment that has not been put by the end of our consideration that I have asked us to reflect on, let us come back and do those at the end.

The CHAIR — I will propose to the committee that that amendment be held over until a subsequent meeting.

Hon. C. D. HIRSH — I think that is a really good idea.

The CHAIR — That is agreed.

Hon. G. K. RICH-PHILLIPS — Can we just clarify with Mr Drum on that amendment whether he is willing to amend to exclude public advocate?

Hon. D. K. DRUM — Or the public advocate.

Hon. BILL FORWOOD — Yes, he is.

Hon. C. D. HIRSH — Yes, he said that already. But there may have to be other things included.

Hon. BILL FORWOOD — They are going to consider it.

Hon. C. D. HIRSH — Let us consider it. I think that is a really good idea.

The CHAIR — I need to have a quick consultation with the Clerk for 30 seconds, if the committee can bear with me.

Mr Drum's amendment 1 postponed.

The CHAIR — Mr Drum, you have further amendments on clause 3.

Hon. D. K. DRUM — Yes.

The CHAIR — Your amendment 2 in fact tests your amendments 3, 5, 7, 8, 10 to 17, 21 and 26 to 99.

Hon. D. K. DRUM — Yes.

The CHAIR — Do you wish to move that now or do you wish to defer that amendment?

Hon. D. K. DRUM — If it accords with the wishes of the Chair, I think it would be best if we were to pursue amendment 6 and amendment 9 prior to doing amendment 2, as they tend to follow the line of the conversation surrounding clause 1.

The CHAIR — Mr Forwood, can I have your — —

Hon. BILL FORWOOD — Undivided attention?

The CHAIR — We will need to just agree on some procedure here. Mr Drum wants to consider some matters that are further down the page.

Hon. BILL FORWOOD — I am agreeing with him.

The CHAIR — Normally you would not be able to revisit it. I would like to think we could get a resolution of the committee that allows us to suspend those standing orders that will allow us to move through the bill in a flexible way.

Hon. BILL FORWOOD — Yes. I am happy to move. I am happy to give you, Chair, the capacity to order the proceedings of the committee in a way that best facilitates its ease. Do them in the order you want to, by discussion with the minister or whatever.

Ms MIKAKOS — Chair, can I just clarify something?

Hon. BILL FORWOOD — Without being too smart about it, I just want to point out that that is where I started.

Ms MIKAKOS — I do not know what clauses 2 to 5 do; I take it that they are consequential on other more substantive amendments that will be put later on.

The CHAIR — No, the point is that what Mr Drum wants to deal with are amendments 6 and 9, which both relate to clause 3, but are similar in the sense of the previous discussion. In other words, the previous discussion was about inserting a definition for 'advocate', and he is proposing amendments that insert definitions for 'family carer' and 'primary carer', as I understand it.

Hon. D. K. DRUM — That is correct.

The CHAIR — I think for the logic of the discussion, that actually makes sense, and in the context of Mr Forwood's previous proposition to the committee, I assume there are no objections to that.

Ms MIKAKOS — There is no objection so long as we are being flexible within one clause because otherwise we will be here forever.

The CHAIR — We will try to be as logical as we can.

Hon. G. K. RICH-PHILLIPS — Chair, are you satisfied, on the advice you have received, that this committee has the power to suspend standing orders as moved by Mr Forwood?

The CHAIR — Well, I am not entirely satisfied, but I am doing my best here to allow us to get through this in an orderly way. So I will proceed. We will have to jump, and will have to be very careful about amendments that we are jumping over. So can I refer the committee to Mr Drum's amendment 6 and ask him to move that amendment?

Hon. D. K. DRUM — Thank you, Chair. I appreciate the committee's flexibility on this issue. I move:

6. Clause 3, page 5, after line 31 insert —

"'**family carer**" means a person of any age, who without being paid, cares for another person who needs ongoing support because of a disability but does not include a volunteer for an organisation;'.

That would be a family carer, and then also do you want to do 9 now as well?

The CHAIR — No, we will do one at a time.

Hon. D. K. DRUM — Yes, sure. So effectively it is a new definition; it is an addition into the definitions clause. Simply, again on the previous conversation, it is actually adding a little bit of bones, putting some bones around the many hundreds of thousands of families that are in fact doing this work as carers and simply adding a category that we were able to identify as a respective group of carers. So we are talking about an amazingly large group of Victorians. We are not talking about a small group here; we are talking about many hundreds of thousands of individuals that would fall into this category. What I would like to do is simply have them identified either in this amendment or in the next amendment we are going to discuss, being that of 'primary carer'. I do not want to have a lengthy discussion about this. I do not see a down side to this. This is simply putting some strength around the role that the families are committing to and the roles that people are in fact committing to as carers.

Mr GAVIN JENNINGS — Although Mr Drum did not quite nail it, I think the reason he wants the definition here inserted in this definitions clause is that he effectively wants to add a new principle to the act, which is in fact in his amendment 18. That is the one.

Hon. C. D. HIRSH — Yes.

Mr GAVIN JENNINGS — So in terms of what Mr Drum wants to achieve, it is really his 18th amendment, I think, rather than the definition, because the definition probably does not actually help much. The substantive argument we are going to actually have is whether the principle gets included, because the definition itself does not actually clarify — and again I do not mean this to be — —

Hon. D. K. DRUM — No, you are right.

Mr GAVIN JENNINGS — I do not mean to have a good chew at his shot, but in fact it does not even define whether it is a member of the family, so the notion of a 'family carer' does not even rope in whether they are a member of the immediate family.

Hon. D. K. DRUM — That is right.

Mr GAVIN JENNINGS — So we have a fair bit of work before us. I think the substantive argument should be had on amendment 18.

The CHAIR — The only thing I would say, Minister, is that I do not really want to be going and amending earlier clauses after we have had other discussions.

Mr GAVIN JENNINGS — I know, so that is the reason that the second part of my sentence was that I do not think the definition of 'family carer' is as rigorous as Mr Drum might hope in terms of being specific that it relates to somebody who is a member of the family.

Hon. G. K. RICH-PHILLIPS — To clarify, Mr Chairman, is the term 'family carer' used at all in the existing bill?

Mr GAVIN JENNINGS — No, that is why I understood that in fact what their real effect — —

Hon. G. K. RICH-PHILLIPS — So purely it is only Mr Drum's?

Mr GAVIN JENNINGS — Yes, exactly.

The CHAIR — Is there any further discussion on this?

Ms MIKAKOS — Chair, could I just suggest that perhaps we treat amendments 6 and 9 in same way as we did before with amendment 1, because essentially the substantive debate will be about Mr Drum's amendment 18?

Hon. D. K. DRUM — Yes, I would appreciate that.

The CHAIR — Can I ask, Mr Drum, is your amendment 9 in relation to the definition of 'primary carer' relevant to your amendment 18?

Hon. D. K. DRUM — Yes, it will be, Chair.

Hon. C. D. HIRSH — How?

Hon. D. K. DRUM — I have not had a chance to — —

Hon. C. D. HIRSH — It talks a lot about family carers but not about primary carers.

Mr GAVIN JENNINGS — In fact, it is Mr Drum's amendment 20.

The CHAIR — Mr Drum, can we regard consideration of your amendment 6 as a test of your amendment 18? Then I would enable a debate on your amendment 18 right now.

Hon. BILL FORWOOD — And his amendment 9?

The CHAIR — It would enable the issue of Mr Drum's amendment 18 to be considered in a discussion on his amendment — —

Hon. BILL FORWOOD — That is what we should do.

The CHAIR — Otherwise this is going to be impossible to do.

Hon. BILL FORWOOD — I have just been talking to the Clerk about this, and that is the way to do it.

Hon. D. K. DRUM — I have another option. When I originally asked that my amendments 6 and 9 be discussed now, I was hoping we might be able to expedite them and get them out of the road. However, if they pertain to further and more expansive arguments, I think they should be left.

The CHAIR — I honestly do not think I can do it that way. Otherwise I am going to have to wait and then go back to prior amendments. I would prefer to deal with your amendment 6 now and then deal with your amendment 9, and when we deal with your amendment 6 to regard that as a test of your amendment 18, and when we deal with your amendment 9 to regard that as a test of your amendment 20. I think that is the most logical way to deal with this issue. I am prepared to invite you to make further comment on your amendment 6 as a test of your amendment 18 to clause 5.

Hon. D. K. DRUM — As I say, I would much prefer to put my amendments 6 and 9 to bed while we go back and do clause 2 and start working back in sequential order again. That way we can — —

The CHAIR — I did this at your request, Mr Drum. I jumped over at your request.

Hon. D. K. DRUM — That was before I realised that we were going to be further tied up with my amendments 18 and 20.

The CHAIR — I think the minister is correct in identifying that without your amendment 18 your amendment 6 does not make any sense.

Hon. D. K. DRUM — Exactly.

The CHAIR — Let us deal with your amendment 6 and include in the discussion the principles you are trying to get to with your amendment 18. That is the ruling I am making, and you can dissent from it if you wish. The ruling is that we deal with Mr Drum's amendment 6 as a test of his amendment 18.

Hon. D. K. DRUM — I want to defer for some advice.

The CHAIR — Does anyone else wish to make a comment on this while Mr Drum is deferring?

Hon. BILL FORWOOD — I support, as you would expect, our including family carer and primary carer, and I support Mr Drum's amendments 18 and 20, which go to the guts of what those two things are about.

The CHAIR — Can we deal just with Mr Drum's amendment 6 relating to family carer first, and then we will deal with his amendment 9 in relation to primary carer.

Hon. BILL FORWOOD — I will not speak on Mr Drum's amendments 9 and 20. I just wanted to make it clear that I think we need to make these things clear. In my own set of amendments I have proposed the insertion of section 5(o) from the Intellectually Disabled Persons' Services Act, which states:

> the families of intellectually disabled persons have an important role to play in supporting, and encouraging the development of, a family member with an intellectual disability.

I foreshadow that, should the government accept Mr Drum's suggestions, I will obviously withdraw mine.

The CHAIR — Minister, do you wish to comment at this stage or do you want to wait for Mr Drum?

Mr GAVIN JENNINGS — If I am making any response, I am responding to his issues, and if he is not listening, it is almost self-defeating.

The CHAIR — Mr Drum, we will need you to come back to the committee as soon as possible.

Hon. D. K. DRUM — Rules for the minister and rules for everyone else.

The CHAIR — That is because I am the Chair, and I decide it my way. Thank you, Mr Drum; over to you.

Hon. D. K. DRUM — I am glad I put that on the record.

In relation to my amendment 6 concerning 'family carer', it was pointed out by the minister that we have not put down or clarified whether this family carer should or should not be a member of the family. Being called a family carer does not necessarily mean that they need to be a member of the family, although in most cases they are. I have been informed that this definition exists in the federal legislation. The groups which have pushed for this definition to be included have not made this up; they have simply lifted it from other legislation within Australia. They believe it needs to be inserted into this legislation to further enhance it. I am prepared to leave it as it is. Effectively it is creating for the state of Victoria a new category of carer — family carer — and it means what it says there. As I say, it has been lifted out of federal legislation. It is simply a name for a carer; it does not mean it has to be a family member.

Chair, do you want me to continue on with my summation through to my amendment 18?

The CHAIR — I am suggesting you talk to your amendment 6 in the context of your amendment 18. Your amendment 6 is, I have ruled, a test of your amendment 18.

Hon. D. K. DRUM — In doing so, it will certainly add further import to the caring role that families play — a supportive role, a role of looking after dependent people. We simply believe that they need to be further recognised, and we need some acknowledgment that whilst we have hundreds of thousands of people in this state who are being supported in one way or another, less than 10 per cent are actually being supported by the state, so well over 90 per cent of these people are effectively being supported and cared for at home. The number we are talking about is 900 000-odd people with disabilities, with less than 10 per cent looked after by the state, so we are talking about in the vicinity of 700 000 to 800 000 people. This amendment would give further weight to those hundreds of thousands of people who are effectively playing the role described in this definition.

Mr GAVIN JENNINGS — In my response I do not want for a second to have it appear that we underestimate or do not appreciate the role played by family members, loved ones and carers in a whole variety of ways each and every day. In fact if it was not for that labour of love, the quality of life for thousands of people — 165 000 you want to tell me, but probably a number even greater than that — would diminish significantly every day. The government looks forward to many opportunities to convey its profound thanks and regard for that work and its appreciation of and support for it.

We are having some difficulty following through in conversation a cogent set of ideas while at the same time dealing with the way in which bills are constructed, how parliaments deal with them and the logic that underpins a conversation. We are jumping around a bit, and that will be demonstrated to anybody listening to, watching or reading the transcript of this. It is in the context of the logic of the bill as distinct from the logic of the conversation that I respond to Mr Drum's amendment. The logic of this amendment is to insert within the principles clause of the bill a standing for carers of those with disabilities prior to the rights and opportunities for people with disabilities that are laid out within the structure of the bill.

The logic of the principles within the bill is that we outline the objectives and we outline the principles to ensure that people with disabilities have the same rights and responsibilities as other members of the community, and then we list that persons with disabilities have the same rights as other people within our community, and we clearly enunciate those. Mr Drum's amendment wants to interrupt the flow of that logic. In a technical sense, in terms of the order of those issues, we think it is the wrong order. In terms of where it is placed within the logic of the principles it is in the wrong place, because it interrupts the flow of outlining what the primary purpose of the bill is, which is the quality of life and the rights of people with disabilities.

Their carers are very important — extremely important — and we should recognise the caring relationship and recognise it appropriately within the scope of the bill. We have done so by subsequently going through the logic within the principles, as I outlined to the committee before. Under clause 5(3)(h) on page 15 of the bill, we have to:

> consider and respect the role of families and other persons who are significant in the life of the person with a disability;

We are recognising they are important and are respecting their role. We recognise them in the context of their caring relationship with the person with a disability rather than its being a primary right in itself. Again I remind people of the starting point of my contribution: it is not to demean or devalue the role the carers play, but in terms of the logic that underpins the construction of the bill, they are respected and regarded in the context of their caring relationship and not as a primary objective or primary principle of the bill. In fact we are trying to get the primary purpose, the primary objective and the primary rights identified and enunciated in relation to people with disabilities.

Hon. D. K. DRUM — Again, this comes back to a minister who I must acknowledge has an outstanding social conscience, by all accounts — I am talking about Gavin Jennings.

Mr GAVIN JENNINGS — I do not think you should limit that at all. I have great confidence in my colleague.

Hon. D. K. DRUM — What he said is exactly right, except that in a practical sense — in a hardened, practical sense — it is not illogical to give carers pride of place in this Disability Bill. It is not illogical, and it does not upset the flow of the bill. As for giving carers a slightly increased status, especially the ones we are talking about here,

who would fit these two definitions in a practical sense — I am not talking about in a philosophical sense, because in a philosophical sense what you are saying is possibly correct — the people who have been given the life sentence of raising someone with a disability, Mr Jennings, need that increased standing, increased recognition and increased gratitude. We say we appreciate them. I do not understand how, in a practical sense, it affects the flow or the logic of the bill to have them in a pre-eminent position in the definitions clause.

Mr GAVIN JENNINGS — What it boils down to is that I would respond to the notion that you want a practical demonstration of that recognition and regard. I think that becomes a challenge for all of us who are responsible for programs that provide some support or encouragement to those who provide care. Certainly in my personal responsibilities in my portfolio I have to be particularly respectful and grateful for the contribution carers play within those portfolio responsibilities. I look for practical ways I can support that through program delivery and support to stakeholders and representative bodies — organisations such as Carers Victoria. They are very practical demonstrations of our reinforcement and recognition of that good work.

I think it is a matter of the logical, principled flow of the bill — the argument between us is on emphasis in terms of the logic of the issue, not that the bill is currently silent on that question. The government's view is that we have recounted within the bill and set of principles a recognition of the important role of and respect that should be demonstrated to family members and those who provide care. The question is really whether any amendment adds to the structure of the bill or does not. At the moment I am not convinced that it adds to the structure of the bill.

Hon. BILL FORWOOD — Thank you for that, Minister, but you accept, I suspect, that parents of children under 18 have a legal role. That would not be covered under the logic of the bill, would it?

Mr GAVIN JENNINGS — Mr Parsons, do you want to make a contribution?

Mr PARSONS — Thank you. My understanding is that children under the age of 18 are already covered by existing laws relating to children. Their parents are their legal guardians, so we do not need to restate that in this bill.

The CHAIR — I just want to make a very brief comment from the Chair. Because of the small number of members of the committee, as I chair it I do not anticipate much debate, but I want to comment because I should explain the position I will take if a vote occurs. In listening to this discussion I feel satisfied with the explanation of the minister in relation to clause 5(3)(h), the principles, which is to 'consider and respect the role of families'. I therefore would not support the proposed amendment.

If I may explain to the committee, I propose to put the amendment in a slightly different way to the way in which it was done earlier, because the clerks have pointed out that the sessional orders have been amended in terms of the way these things should be put. I am explaining this to members of the committee so they understand the need to be careful whether they vote aye or no. Under the heading 'Amendments' sessional order 53(2) says:

> When an amendment has been proposed to the bill the question must be put 'That the amendment be agreed to'.

This is to remove the need for the double question, if you like, which was the way we had previously done it. In that case you ask the question that the words proposed to be omitted stand part and so on. I am advised that the only case where that will apply is where a member has proposed an omission of a complete clause.

Hon. BILL FORWOOD — Do you want to go back and do the first one?

The CHAIR — I think we will accept the way it was done first and proceed according to the sessional orders.

Hon. BILL FORWOOD — You can fix it, can't you? You can do anything by leave.

The CHAIR — If you want to make a point of order, Mr Forwood, you can do so.

Hon. BILL FORWOOD — I am just getting advice from the Clerk.

Hon. C. D. HIRSH — Before this is put I just want to say something. I have the most enormous regard, respect and most of all admiration for those people who care for people with disabilities. As a former special education

teacher I had very close contact for many years with the parents of children and adults who suffered from a whole range of disabilities. I think there is acknowledgment in the bill when it talks about considering and respecting 'the role of families and other persons who are significant in the life of the person with a disability'. The consideration and respect is absolutely crucial. I think to have that placed in legislation shows the government's understanding of their role. I can understand also the minister's very clear statement of logic. Statutes are very funny things. I would hope that in the regulations and rules around the implementation of the bill these issues will be considered further — the issues of respect and regard for families of people who have disabilities.

The CHAIR — Mr Drum, I am about to put the question.

Hon. D. K. DRUM — The whole issue in relation to the role families play in this new bill will continue to come up time and again as we continue to work our way through the bill.

It was pointed out to me yesterday that there is a whole range of instructions laid out throughout the bill where directions are given to people with disabilities, and advice and information is given to people with disabilities, and it is my intention that in every one of those instances we add the words 'be given to individuals and their families'. Obviously that is going to take some time for us to go through about 30 pages of the bill dealing with simply the residential services parts of the bill, but I will be looking for advice from the Chair in relation to how we can best go about another whole range of amendments that deal with whenever information, advice and directions be given to people with disability, because again in a practical sense this is creating a range of issues. How do we go about putting those amendments before the committee?

Hon. BILL FORWOOD — We deal with them when we get to them.

The CHAIR — Mr Forwood, by interjection, has actually answered it. We can deal with those matters when we get to them. This is no different from the committee-of-the-whole process; in fact, it is starting to be very different from the committee-of-the-whole process but I am doing my best to try and run it as close to that process as we can.

Had we dealt with this bill in the last sitting week members would have been required to have their amendments ready for the committee of the whole to be dealt with that week. Members have had additional time, and I am being as flexible as I can in terms of the difficulties members have raised about community members having raised propositions with them and their seeking extra time for the drafting of those amendments from parliamentary counsel. We are happy to do that but there is a limit to the capacity of this committee in terms of time for us to report back to the house in the next sitting week. I intend to take us through the process and get us to meet that deadline.

If you have further proposed amendments that are in this legislative process, Mr Drum, bring them forward in the sitting days that we have — that is, tomorrow morning and next Wednesday, I think — and if you do not, then it requires, as you well know, further amendments to the legislation in the future.

I now wish to put the amendment proposed by Mr Drum. The question is that Mr Drum's amendment 6 in relation to a family carer definition being inserted into the bill be agreed to. I advise that that is a test of proposed amendment 18 from Mr Drum.

Committee divided on amendment:

Ayes, 3

Drum, Mr	Rich-Phillips, Mr
Forwood, Mr	

Noes, 3

Hirsh, Ms	Viney, Mr
Mikakos, Ms	

The CHAIR — There being an equal number of votes, I give my casting vote to the noes.

Amendment negatived.

The CHAIR — I propose to the committee that even though our suggested finish time was 5.00 p.m. I would like to get to a logical concluding point, if we possibly can. I am seeking the committee's view as to whether it can deal with Mr Drum's proposed amendment 9 in 10 or 15 minutes? The minister has some obligations elsewhere, which I am sure other members do, but if Mr Drum feels we can deal with that in about 10 minutes or so, then I invite him to put that amendment.

Hon. D. K. DRUM — Throw it away.

Hon. BILL FORWOOD — Do you want to do any of mine in the next quarter of an hour? For example, pretty quickly we could do my amendment 2 which inserts 'educational and vocational' after the words 'social' on page 2, 'benefit to the person' meaning maximising a person's quality of life and increasing their opportunity, and so on. The bill says 'social participation' and I am proposing we say ' social, educational and vocational' which I think is a very sensible amendment and I could speak to that for 2 minutes.

The CHAIR — Thanks, Mr Forwood. I am happy if you wish to do that. Could I propose to you that to do that you would need to alter your amendment to read 'line 26' instead of 'line 27'.

Hon. BILL FORWOOD — Seriously, it is obvious what I am trying to do.

The CHAIR — Mr Forwood, I cannot accept the amendment if it is not logical to the committee in terms of its relationship to the bill. I appreciate the difficulties everyone is having, and I am not attempting to lay responsibility or find fault here, but for us to be clear about what we are voting on as a committee, I point out that the Clerk has advised me that the correct amendment would be 'line 26', not 'line 27'.

Hon. BILL FORWOOD — Chair, I accept your ruling as ever, but obviously I did not train you well enough to disregard the nonsensical advice you sometimes get from the clerks.

The CHAIR — Mr Forwood, if you want to move the proposed amendment as containing the phrase 'line 27', I will rule it out of order, so it is your call.

Hon. BILL FORWOOD — 'Line 26' suits me fine.

The CHAIR — 'Line 26' it is — and you have 2 minutes.

Hon. BILL FORWOOD — I move:

2. Clause 3, page 2, line 26, after "social" insert ", educational and vocational".

'Social participation' is, I believe, too restrictive. I think the bill is designed to benefit all people with disability and not just those who can benefit from social participation. It is crucial, I think, to more fully articulate benefits rather than assume that opportunity for social participation subsumes all other benefits.

Without taking this too far I think it would be of benefit to the legislation and of benefit to the people who would be using the legislation if we included the definition 'of benefit to a person' as not just social but also educational and vocational. I hope the government is able to take this small but sensible amendment back to the minister for further consideration.

Mr GAVIN JENNINGS — Could I just respond to Mr Forwood's outlining to us where the phrase 'benefit to the person' occurs within the context of the bill, because I am advised that that phrase only occurs relatively rarely throughout the bill and not in the context you might see if you read the definition in itself. You might think that 'benefit to the person' might relate to the quality of life, but in fact it has relatively restricted application, as I understand it, within the bill. But I am happy for you to outline to me the broader context in which it might be used on a number of occasions.

Hon. BILL FORWOOD — I would be delighted to do that, but it would take me longer than the time available under the ruling of the Chair to trawl the 212 pages of this piece of legislation and produce every time the words 'benefit to the person' are used.

Mr GAVIN JENNINGS — I am not trying to be tricky. What I am trying to say to you is, is there any application that you are particularly concerned about because my response to you will be on the basis of advice? It relates to restrictive interventions, and restrictive interventions actually are a specific provision within the bill. That is the only time, as I am advised at the moment, that that phrase exists.

Hon. BILL FORWOOD — I will check overnight.

The CHAIR — Do you want to hold that proposal over?

Hon. BILL FORWOOD — Yes, I will hold it over.

Hon. D. K. DRUM — Minister, it seems somewhat strange that you have restrictive interventions as the only time you talk about benefit to the person when you are also talking about the fact that it would mean maximising the person's quality of life and increasing their opportunity for social occupation?

Mr GAVIN JENNINGS — I will give you an example. Let us go specifically — just to show I am not being mischievous — to clause 141 on page 143 under 'Use of restraint and seclusion must be included in behaviour management plan'. That is the context in which the phrase is used in that clause. On the bottom line — —

Hon. BILL FORWOOD — Explain how it will be of benefit to the person?

Mr GAVIN JENNINGS — Yes. We are talking about a restraint or seclusion. What we are saying is that there is a broad definition to actually say there is an obligation on the provider to explain how that intervention is for the benefit of the person. What we are now talking about are the broad concepts of their social benefit; Mr Forwood wants to lay in the added elements of education and vocation.

Hon. BILL FORWOOD — I do.

Mr GAVIN JENNINGS — Does that make sense to you, if that is the application of that phrase?

Hon. BILL FORWOOD — Yes, absolutely. Don't you think so?

Increasing their opportunity for social participation is also, surely, increasing their opportunities for educational and vocational participation as well. If you are using restraints to the extent that , for example, someone could have a social time but not an educational time or a vocational time because you will not let them leave their particular CRU or you have got them under chemical restraint of some sort, if you limit the use of it just to social — —

Hon. C. D. HIRSH — I had not realised that because I also thought that it seemed a limiting definition, but under the circumstances the purpose of restrictive interventions is simply to improve a person's social participation so that they are then able to participate in educational and vocational activities. You would remove the restrictive intervention well before they were ready to engage in educational or vocational activities. They would not be under those sorts of interventions once they had achieved proper social participation.

The CHAIR — Can I get a point of clarification from the minister, perhaps through his advisers? I would assume that the term 'social participation' in this context is meant in a broader context, in the broad definition of social participation. It is not restricted to the person's participation with others; it is their social participation in life.

Mr GAVIN JENNINGS — Yes.

Ms MIKAKOS — But that is society as opposed to recreational participation, to make that distinction.

The CHAIR — Mr Forwood, do you wish to put the amendment?

Hon. BILL FORWOOD — Yes, absolutely.

Amendment negatived.

The CHAIR — I think this would be a logical point at which to close our proceedings for the day. We will reconvene at 9.00 a.m. tomorrow. I advise members of the committee and interested persons here today that the

committee has resolved not to meet tomorrow afternoon, so we will be meeting until 1.00 p.m. tomorrow. The meeting is closed, and I thank you all for coming. I also take the opportunity of thanking the members of the public who have come to the first meeting of the Legislation Committee. I know this is an issue of passion and great interest to everyone. I hope that you can see that the Legislative Council is taking this legislation very seriously given the process we are taking it through.

Committee adjourned 5.20 p.m.

Thursday, 13 April 2006

DISABILITY BILL

Resumption of debate on clause 3.

The CHAIR — I declare the meeting open and welcome the minister and the witnesses. I also welcome the public who are in attendance and will make some opening remarks. This public meeting of the Legislation Committee is a proceeding of the Legislative Council and therefore enjoys the same powers and immunities and warrants the same respect that is enjoyed by the house.

The sessional orders governing the operation of the committee require the committee to consider a bill in detail in the same order that applies to the consideration of a bill in the committee of the whole Council. In relation to a question on a clause or a proposed amendment to a clause, all questions will be decided by a majority of committee members present. The Chair has a deliberative vote and in the case of an equality of votes will give a casting vote.

The proceedings are being recorded by Hansard, and members of the committee, the minister and any witnesses accompanying the minister will have an opportunity to request corrections to the proof to be made by Hansard.

I advise the committee that Mr Drum has indicated he has further amendments that pertain to his proposed amendment 9, which relates to clause 3, and a proposal to insert a definition of 'primary carer'. As I indicated yesterday, that would have tested his proposed amendment 20.

Mr Drum has indicated he has submitted for preparation, further amendments to parliamentary counsel that also relate to clause 7 which would be consequential amendments to his proposed amendment to clause 3. Mr Drum has requested that we therefore postpone the consideration of his proposed amendment to clause 3 until our meeting next Wednesday. If we were to do that, I suggest it would be sensible to perhaps postpone Mr Forwood's proposed amendments to clause 3 as well, but I open it up for the committee to indicate what it would like to do.

Hon. D. K. DRUM — Amendment 9 pertains to a definition I would like to have installed which relates to a definition of 'primary carer'. I am happy to debate that on its own, but not have it test amendment 20 which pertains to clause 7, because as you say, Chair, I have listed a range of amendments that pertain to clause 7. I am happy to talk about the definitions clause, which is clause 3, and the reasons why I believe the definition of 'primary carer' or 'carer' needs to be inserted in the definitions clause.

I have just been through the definitions, and there is no reference anywhere in them to a 'carer', which is quite astounding. I am happy to debate clause 3 and move amendment 9 but not to have it test amendment 20.

The CHAIR — Mr Drum, you indicated to me that the other amendments you submitted to parliamentary counsel this morning relate to the definition of 'primary carer', but are you saying that your further amendments relate to amendments to clause 7; or did they relate to the question of 'primary carer'?

Hon. D. K. DRUM — The other amendments will in fact relate to family members and primary carers.

The CHAIR — Using those words?

Hon. D. K. DRUM — Yes.

Hon. BILL FORWOOD — Let me at the outset say that I thought yesterday was a very interesting day, and I am grateful to the minister and to the chair for their efforts.

We are here to try to get the best legislation we possibly can, and I think there can be no harm at all in delaying consideration of the definitions clause until next week. I think we might be able to get the definitions clause by that time into a state that everyone feels comfortable with, so I am quite relaxed about not dealing in detail with my recommendations on clause 3, of which I have a couple.

Following on from a comment the minister made yesterday about the hierarchy of the structure of the bill, in particular in relation to the desire to be able to give the disabled the capacity to make their own decisions as much

as is possible, it seems to me that the hierarchy would be enhanced if we also had it in the definitions that after the disabled person has been considered the family and the carers and the department then come in the hierarchy. I am not sure that in the bill we have yet quite got to that position. Having Easter to think about how the definitions feed into the hierarchy — which I do not think anyone disputes, and which the minister outlined yesterday — would be very useful.

The CHAIR — Minister, do you wish to comment on this proposal to postpone?

Mr GAVIN JENNINGS — I appreciate Mr Forwood's contribution, and I appreciate where we are trying to get to — that we have a process that is not tortuous and continuing to trip over itself. I think that that would be useful. The most salient point of Mr Forwood's contribution is that we have to consider any understanding and any potential restructuring, and any consideration of any amendment has to be seen in the context of how it affects other provisions in the bill.

In fact that is a recurring theme in some of the issues we are discussing. Whether they be the interpretation of certain phrases or whatever, they have to be considered in their application in the bill. They have to be seen in that way. Now that, to external stakeholders and interested parties, may seem a tortuous process, but if we can get our thinking right in relation to that, then at the end of the day we will have a cogent story to associate with what we contend is a cogent bill.

Hon. BILL FORWOOD — Again, I agree with the minister in what he said. I was intending to propose that we did not deal with Mr Drum's amendments on carer and primary carer definitions partly because of some information that came to me yesterday from Carers Victoria. My understanding is that Carers Victoria was not one of the groups that was widely consulted at the time of the exposure draft. Carers Victoria has contacted me, and I am happy to make this information available to anybody — —

The CHAIR — Mr Forwood, you are digressing from whether or not we are going to deal with clause 3 now. I want to deal with — —

Hon. BILL FORWOOD — I am trying to deal with it as expeditiously as I can. The point is: are we either going to go ahead with clause 3, which is the definitions, or are we going to take some time off to do it? I was going to propose that we did not go ahead with it anyway; that was my point.

The CHAIR — That is fine, but if you — —

Hon. BILL FORWOOD — You do not want me to lead evidence as to why I think that?

The CHAIR — You were keen to raise the question of some correspondence. I am happy to give you room to do that in the deliberations of the committee, but I am asking you if you want to refer to that correspondence now to make sure that it is relevant to the question of whether or not we consider clause 3 now. It is your call.

Hon. BILL FORWOOD — I am arguing that we should not consider clause 3 now, that we should consider clause 3 next week, that in our consideration of the carer part of clause 3 some information that I have be considered. Now, I do not want to read it into *Hansard*; I do not want to do anything other than give it to the minister and say perhaps in considering the hierarchy between now and next Wednesday, we could consider these points which I think are relevant to Mr Drum's amendment.

If we decide to proceed now — which I do not think we should — with clause 3 and the debate on Mr Drum's amendments, then I will take the opportunity of canvassing in more detail issues to do with carers, but I think the best way of proceeding is for the minister and Mr Rogers, Mr Parsons and the department to consider some of the issues here, to come back and say, 'They are covered here' or, 'They are not covered here' or, 'We propose this' or, 'We propose that' rather than us dealing with them now.

Hon. D. K. DRUM — In the same context, I think it would also be worthy for us to continue with certain aspects of clause 3 within the debate because we will be able to use this time wisely to work our way through some other aspects of clause 3, providing we do not close clause 3.

Ms MIKAKOS — On procedure, I think we are making it extremely difficult for this committee. I think we started that process yesterday. It is really the minister's call as to whether he is happy for us to revisit this issue. He has yesterday indicated flexibility in coming back to us on some other issues, I think on the first amendment moved by Mr Forwood. But in terms of the practices of this committee and trying to come up with a procedure that is going to work well in the future, to be jumping around, back and forth on the bill is going to make it extremely difficult for members of the committee — and also for other members of the Council who are not here but who might want to come and participate in some parts of the committee's deliberations — to know exactly where they are up to.

Mr GAVIN JENNINGS — I suggest, Chair, in terms of trying to get our minds set around this, it is a wise proposal to move on beyond the definitions and start dealing with the objectives, principles and the various divisions of the bill which cover substantive issues. Once we have considered and concluded those, if there is any residual concern about how things might be defined in the context of the bill, let us come back and use that as a mopping-up exercise at the end.

Hon. BILL FORWOOD — I am happy to accept that.

The CHAIR — There seems to be general agreement on that. I invite a motion from Mr Drum.

Clause postponed.

Clause 4

Hon. BILL FORWOOD — I move:

6. Clause 4, after line 5 insert —

"( ) advance the social, communication, emotional, intellectual and physical development and wellbeing of persons with a disability;".

Clause 4(a) deals with the objectives of the bill, which are to:

advance the inclusion and participation in the community of persons with a disability …

I am proposing that we expand that by including the words 'advance the social, communication, emotional, intellectual and physical development and wellbeing of persons with a disability', which I think is completely in keeping with the objectives that the government has outlined but in fact expands on them in a way that is more specific. In keeping our legislation groundbreaking my amendment indicates the depth and breadth of the issues that we think are important in relation to people with a disability.

Mr GAVIN JENNINGS — In terms of our understanding the nature of the way in which the bill is constructed, and the underlying logic that underpins the approach, that to go back to a phrase that Mr Forwood used yesterday, sometimes despite our best intentions when we actually try to describe an opportunity we may actually limit opportunity in relation to specific phrases or concepts that are included to the detriment of those that perhaps are not included.

We might be in a situation where the comprehensive nature of the list may be a limiting rather than a liberating factor. That is the advice I have received. That is the concern about accepting such an amendment. I have absolutely no doubt about the intention of Mr Forwood in this — that it is meant to be an empowering and liberating objective. It may be a limiting one, and that is the concern that the government would have about the additional objective being inserted.

Hon. D. K. DRUM — Mr Forwood, should there be the word 'to' in front of 'advance'?

Hon. BILL FORWOOD — The word is there. The clause now reads, in part:

The objectives of this Act are to —

(a) advance the inclusion and participation in the community of persons with a disability;

I accept the minister' s comment in the spirit that he made it. In particular I do not think that any of us want to impose limits, but I think there are people with a disability who find socialising difficult and distressing; and the bill must benefit people with a disability not just through a benefit purely from inclusion and community participation but also from the other words that I seek to have included, that go beyond inclusion and participation.

Anyway, I have moved the amendment and I hope the government would either take it on board and consider it, and we can therefore let this one go through to the keeper, or we can deal with it expeditiously.

Hon. D. K. DRUM — Just picking up on that point, again there seems to be a criticism within the sector at the moment that, if the departments and the government are going to continue to use the words 'inclusion' and 'participation within the community' and this type of terminology, then all will be well. I believe the objective of the legislation at subclause (a) certainly stops there. It is such a very minuscule part of what we actually need to do. I think, to further strengthen the benefits we are going to get out of social participation and inclusion into the community, we need to go the extra step and put in place some tangible goals that we are going to effectively structure our whole objectives around. We cannot just think that, once we get inclusion and once we get community participation, our people with disabilities are going to be okay. I think that is the aspect that I would like the minister to consider.

Mr GAVIN JENNINGS — If the other members of the committee have any suggestions or any comments that they want to make in terms of their view of the matter, I would be interested.

Ms MIKAKOS — I think you covered it in what you said before. The basic principle of statutory interpretation is that, once you provide a list, it can be interpreted as an exhaustive list. The question could be raised: why not include economic wellbeing or other issues in the particular amendment that is being proposed? I assume the intention is for clause 4(a) to be very broad, in that participation would be interpreted in a non-exhaustive way to include all of the kinds of things that Mr Forwood has covered in his proposed amendment. My concern is actually the one that the minister has outlined — that is, by having an exhaustive list, we are effectively curtailing it to those issues that Mr Forwood has proposed.

Hon. G. K. RICH-PHILLIPS — Minister, is it the government's view that the matters Mr Forwood has proposed in his amendment— that is, communication, social, emotional, intellectual and physical development — are already covered in the definition of clause 4(a) of the bill?

Mr GAVIN JENNINGS — If you are trying to help me Mr Rich-Phillips, it is very kind of you.

Hon. G. K. RICH-PHILLIPS — I am trying to help the committee, Minister.

Mr GAVIN JENNINGS — The answer is yes. The interesting issue that Ms Mikakos raised was that, by giving one example of the economic, there could be a proliferation of other examples. That is actually something for us to consider.

Hon. G. K. RICH-PHILLIPS — Could you just clarify that?

Mr GAVIN JENNINGS — The answer to your question is definitely yes. It was our intention to actually cover those things comprehensively, without exhausting anything by that broad definition.

Hon. G. K. RICH-PHILLIPS — Thank you.

Hon. C. D. HIRSH — When I read this initially it seemed like a good idea at the time. I am no lawyer; I am a psychologist. I find that clause 4 makes a great deal of sense. But when you look at the legal definition — and legislation of course is legal; it is not, unfortunately perhaps, psychological — I can see the need for leaving it out. The words 'inclusion' and 'participation' are broad-ranging words that mean people with disabilities having access to everything that anyone in society has.

Hon. D. K. DRUM — There is an enormous assumption in this wording that to make people inclusive and participating in the community is actually going to be to their benefit. There is a whole range of people out there with profound and serious disabilities where it is certainly not to their benefit that they be included in the community. It is certainly not to their benefit that they have social participation.

Ms Mikakos says that to put this in would be too descriptive, and we are then going to be worried about what we are going to be leaving out. If you want to take that argument, this is already too descriptive, because it effectively assumes that everybody is going to be better off with social inclusion and community participation, and that is clearly wrong.

Hon. C. D. HIRSH — Mr Drum, there are other means by which anyone can gain access to social inclusion and participation. There are a whole range of ways that anyone in the community can do that. A person with a disability who is unable to do this should have access to assistance in gaining that access. Access is available through political processes, through work, through economic processes, through educational processes — there are a whole range of ways, other than in this particular legislation about disability, through which anyone will gain inclusion and participation in the community.

Hon. D. K. DRUM — I do not know what that means.

Hon. BILL FORWOOD — Can I propose that we defer consideration of this clause until next Wednesday?

Hon. C. D. HIRSH — Next Wednesday is going to be a ripper.

The CHAIR — I think we have had clear advice from the minister that there is nothing further the government wishes to consider in relation to the proposed amendment. If you want to move that as a motion, I happy for you to do that.

Hon. BILL FORWOOD — I will not do it if you guys are going to vote it down. I would prefer to have my amendment voted down than the suggestion that we look at it.

The CHAIR — I am going to put the amendment.

Hon. D. K. DRUM — The minister has not responded. The minister wanted to get all the comments from the table before he made a comment on why this particular aspect of clause 4(a) — the first two lines in the objectives of the bill — is, if we take Mr Forwood's amendment, too descriptive. He has not said why it is not already too descriptive and how making it something else would be better.

The CHAIR — Mr Drum, I think when you read the *Hansard* record next week it will show that the minister did respond and that there have been two responses from the minister. If the minister wishes to make a further comment, I am sure he will get my attention — and it appears that he does.

Mr GAVIN JENNINGS — Thank you for the opportunity.

Mr Drum, you and I are going to have to have a conversation later about the philosophical centre of one of your last contributions, because I think outside here we probably need to have a bit of an understanding about what we mean by 'social inclusion' and the commitment we have to social inclusion as a commitment to all members of our community. Indeed, we enter into this debate from the philosophical position that we recognise our social obligation and commitment to include everybody to the maximum of their potential and their capacity. That is our starting point in relation to this.

On the issue of an accommodation of this amendment, can I say to the committee that our difficulty is about whether it is a limiting provision rather than a liberating one. We are happy to actually consider whether in fact this could be tidied up in some shape or form to be seen as an inclusive rather than an exclusive list and to see whether it adds value to the consideration. We are happy to come back and discuss this at a subsequent meeting.

Hon. BILL FORWOOD — Thank you. On that basis I will move that my amendment be deferred until the next day of meeting.

The CHAIR — There is no debate on that. The ayes have it.

Hon. BILL FORWOOD — On a point of order, Chair, yesterday we dealt with the issue of responsibilities. We had a division, and that matter was resolved. Is it the intention that we now revisit every one?

The CHAIR — What was your question?

Hon. BILL FORWOOD — Have you finished the last clause?

The CHAIR — I apologise. No, we are about to defer your amendment. We actually need to defer the clause.

Clause postponed.

Clause 5

The CHAIR — Bill, you had a question.

Hon. BILL FORWOOD — I appear to be having an across-the-table disagreement with my colleague Mr Drum. In the interests of expediting the work of the committee, yesterday we tested an amendment of mine proposing that we delete the word 'responsibilities'. It was put to the vote — —

The CHAIR — On clause 1.

Hon. BILL FORWOOD — And we lost it. We now have the capacity, every time the word 'responsibilities' appears in a 212-page bill, to revisit the proposal and regurgitate yesterday's debate, or we can say that yesterday's dealing with the word 'responsibilities' has satisfied the argument that the government has decided it wants the word 'responsibilities' in. And rather than the committee revisiting every single clause, we might as well take that as testing all other uses of the word 'responsibilities' in the bill and move on to something more substantial. I understand, on the point of order, that my colleague Mr Drum, has a different view, but my proposal would be that we accept that yesterday's division on the inclusion of the word 'responsibilities' tests all other uses of the word.

The CHAIR — Does that then refer to your amendments 7 and 8?

Hon. D. K. DRUM — That is right**.**

The CHAIR — Are there any others?

Hon. BILL FORWOOD — I do not know. I think there are some further on that I have not yet got.

The CHAIR — Mr Forwood, if you regard that previous motion as a test of those, then you can withdraw amendments 7 and 8. They are your amendments.

Hon. BILL FORWOOD — I withdraw my amendments 7 and 8.

The CHAIR — Mr Forwood, you have proposed amendment 9 relating to clause 5.

Hon. BILL FORWOOD — In respect of clause 5 on page 13 of the bill, the two provisions I seek to include by way of amendment 9 are direct lifts from the current Intellectually Disabled Persons' Services Act (IDPS). I move:

9. Clause 5, page 13, after line 26 insert —

"( ) It is the responsibility of the State of Victoria to plan, fund, ensure the provision of and evaluate services to persons with a disability according to the principles stated herein.

( ) The families of persons with a disability have an important role to play in supporting, and encouraging the development of, a family member with a disability.".

I seek to make it very clear that two of the principles that exist in the IDPS act should be continued in the current bill. They are direct lifts.

Hon. D. K. DRUM — Excuse me, Mr Forwood, could you show me the reference in the IDPS?

Hon. BILL FORWOOD — Page 11, sections 5 (j) and (o) of part 2 of the IDPS. In the statement of principles of the IDPS, paragraph (j) reads:

(j) It is the responsibility of the State of Victoria to plan, fund, ensure the provision of and evaluate services to intellectually disabled persons according to the principles states herein:

As I understand it, that provision has not been replicated in the current bill. If we are moving away from a statement of such strong principle, I think we should put it back in. I would be looking for that to go back in. I cannot that see that as a statement of principle we can move away from the responsibility of the state of Victoria to 'plan, fund, ensure the provision of and evaluate services'. For that reason I seek to put that back into this bill.

The second part of my amendment relates to section 5(o) of part 2 on page 11 of the IDPS, which reads:

(o) the families of intellectually disabled persons have an important role to play in supporting, and encouraging the development of, a family member with an intellectual disability.

Again I say to members of the committee that in the hierarchy that Mr Jennings mentioned yesterday I see that there is absolutely nothing to lose by maintaining a principle that was established in 1986 with this groundbreaking piece of legislation and continuing it into the future. So I would be seeking that this committee agree that these are two statements of principle that do nothing to undermine the integrity of the new legislation before us. All they do is to enhance the bill by maintaining what already exists. Therefore, I seek to have my amendment 9 reinsert those two clauses from the IDPS act into the Disability Bill.

Hon. D. K. DRUM — I concur with Mr Forwood in his moving the amendment. It is also in section 5(b) of the IDPS act, at page 9; it states in part:

(b) every intellectually disabled person has a capacity for physical, social, emotional and intellectual development and a right to individualized educational and developmental opportunities …

In effect, that aspect has also been eliminated from this bill. People at this table have called this landmark legislation, and some of the key principles of the landmark legislation have been eliminated with this bill going forward.

Mr GAVIN JENNINGS — Again I do not want to be overly legalistic about this, because I want to make sure that we are not wriggling out of responsibilities and relationships in regard to those responsibilities and relationships. I just want to deal with this as a technical matter in relation to the bill.

One of the differences between the original legislation and now is that it is very rare for the state of Victoria to be referred to in a bill — in any bill that comes before the Parliament — on the basis of outlining responsibilities of the state. The very nature of statutes as they all sit on the tables in both chambers relates to pieces of legislation that are the responsibilities of ministers who are accountable to the Parliament and the people of Victoria for their portfolio suite of legislation.

In a formal sense the state of Victoria is represented in the Parliament by the minister who has responsibility for the legislation, and then within the legislation are embedded principles, objectives, responsibilities and accountability measures — as is done with this bill. In terms of the way in which this statute sits in the hierarchy of bills and responsibilities, the notion of the obligations of the state of Victoria are outlined generally through the bill, generally through ministerial responsibility and specifically in relation to the question of funding services.

Funding arrangements of services are actually almost cut in the financial management arrangements in the state of Victoria, and the difference between the 1980s and now is that ministers are almost, in a technical sense, cut out of that financial management arrangement, and the responsibility for funding programs and implementing programs falls with the secretary under the Financial Management Act, as I understand it.

In fact, and in accordance with that principle about the building blocks of that statute, the secretary is responsible, in this bill, for providing and funding programs and initiatives that facilitate persons with a disability exercising their rights and meeting their responsibilities in the community.

Hon. BILL FORWOOD — Which clause is that?

Mr GAVIN JENNINGS — That is in clause 8. The clauses deal with administration. Clause 8, at page 21, states:

(1) For the purposes of this Act, the role of the Secretary is to —

…

(b) provide and fund programs and initiatives that facilitate persons with a disability exercising their rights and meeting their responsibilities in the community …

The government contests that that is consistent with how this bill dovetails in with other key instruments of responsibility to the Parliament for financial management and the way in which programs are delivered, and is the modern way of representing the same concept that was encapsulated in the original proposition as a statement to say that it is the responsibility of the state of Victoria.

It is in keeping with the structure of the Financial Management Act and the reporting arrangements and funding arrangements within Victoria that this is the way to deal with this matter. So I put that on the table in relation to the first threshold question and then come back to the question of the second one, after discussion.

Hon. D. K. DRUM — I am just reading through that now. Again, Minister, it is using a whole range of words which effectively are watered-down words and which say that the secretary will provide and fund programs and initiatives that facilitate — I emphasise 'that facilitate' — people with a disability, providing those people are exercising their rights and meeting their responsibilities.

They are putting a sting on the end of the tail. If, as you say, the state government is not responsible for funding, and if the minister is not responsible for funding, why would you not simply replace 'the State of Victoria' with 'the secretary of the department', but leave the hardened and absolutely crystal clear definition that is put there in section 5(j) of the IDPS act?

Mr GAVIN JENNINGS — Whilst I earlier highlighted clause 8(1)(b), I want people to take on board the whole suite of those obligations. I could have read paragraph (a) of that clause or the whole range of others that follow for the next page and a half to deal with the obligations of the secretary. They all impinge upon this issue.

Hon. BILL FORWOOD — Sure, they do. I must say that I am very sympathetic to the case that the minister has put about the way the Financial Management Act works. So what I would propose is that in line 1 of clause 8, instead of saying:

(1) For the purposes of this Act, the role of the Secretary is —

we could take the word 'responsibility' from the existing IDPS act, where it says 'it is the responsibility of the state of Victoria', and say in this clause, 'For the purposes of this act, the responsibility of the secretary is to plan, develop and fund'.

If the minister's argument is that now, under the new way we operate, the responsibility is with the secretary, not with the state of Victoria, then the word that I would have some discussion about is one that currently exists where it says there is a 'responsibility'. To pick up Mr Drum's point, I think the word 'role' is a lot weaker than the word 'responsibility'. Therefore I would be very happy to accept the argument that the minister puts, but to make it not a role of the secretary but the responsibility of the secretary.

Mr GAVIN JENNINGS — I think at the end of the day if the secretary does not perform his or her role then he or she will be made responsible.

Hon. BILL FORWOOD — Again I accept the comment of the minister. However, what we did in 1986 was we established a piece of legislation which it is widely accepted, as the Minister for Community Services herself said in the second-reading speech for this bill, was groundbreaking at the time. One of the reasons it was groundbreaking was that, in terms of that dreadful phrase 'mutual obligation', the state took on some responsibilities and was quite explicit about it. Without labouring this point, one of the things the state did in 1986 was to create responsibilities for itself and put them in an act, which it then found very difficult to meet.

I can give you a raft of examples of bits of the existing Intellectually Disabled Persons' Services Act which the state found hard to meet. What we should not do, without being really conscious about it, is water down 1986 without being really explicit that that is our intention. It is not good enough for us to say that the life of the

government and the life of the department will be easier if we lift the responsibilities off them and call them roles or something like that. If we are serious about this continuing to be the best piece of legislation it can be, then we should only do those things with very careful consideration. I would be saying quite simply, 'I accept your argument about the new structure but let us not talk about roles, let us put the responsibility back where it currently exists'.

Mr GAVIN JENNINGS — At one level it is very attractive to accept that argument, because it may seem to be a completely semantic argument. It might seem to be vexatious not to accept that argument. The difficulty is in terms of how it dovetails with the Financial Management Act and the budget process, which I am acutely aware of, and the end result. It is obvious ministers take the political responsibility, but in a technical sense the secretary takes responsibility, and they are not controllers of their own destinies in relation to budget allocations. That is the suite of issues we have to consider.

I volunteered yesterday that I do not want to be part of a government which introduces a bill that is disingenuous by not delivering what it purports to deliver. That is what we have been mindful of in maintaining a degree of commitment. We are extolling rights and responsibilities and clearly articulating them, but we are also mindful of giving people false expectations about a quality of life we may not be able to deliver. That is an aspect we are mindful of. In the case of the secretary, while I believe the word 'role' would incorporate responsibilities, some people may overreach and at certain points in time it may not assist in the secretary delivering the best outcome or indeed in the best outcome being achieved.

I am not quite sure whether we use the word 'responsibility' rather than 'role' in many other pieces of statute. I think probably by now 'role' is the standard word. It is not to deny responsibility; it is not to overstate responsibility in the potential construction people could put on it.

Hon. BILL FORWOOD — I am disappointed that we will not be able to go as far as we should. I just draw the minister's attention to the difference between taking responsibility for something and saying it is your responsibility. I am happy to take responsibility for all sorts of things, but I think that is very different to being responsible for something. It would seem to me to be a sad day in Victoria if a responsibility which we voluntarily undertook in 1986 we now decide is no longer that, it is just something someone will take responsibility for. I guess I am very sad about it.

Hon. D. K. DRUM — The concern is increased when we look further through the bill. It pertains to this aspect which is listed in the Intellectually Disabled Persons' Services Act: if a person has a disability, they have a right to service. In this bill the fact that a person has been acknowledged by a service provider as having a disability does not in itself give that individual a right to service. Mr Forwood is talking about this aspect, and we are going to talk about that aspect in itself later. However, when you start coupling the trends in this bill together, you start to see a significant trend where the government is saying, 'You might have a disability; we do not have to give you a service. We used to fund you; now we do not have to fund you'. It is a whole range of small — —

Hon. BILL FORWOOD — Incremental.

Hon. D. K. DRUM — Incremental steps. If each is taken in an individual context, it can easily be argued that they do not mean anything. However, put together they show a significant trend where the government is trying to extricate itself from responsibilities which, as Mr Forwood says, the government willingly took on back in the mid-1980s.

Mr GAVIN JENNINGS — It would be extremely disappointing if we were to have death by a thousand cuts in relation to the perception of words, because it is not the intention to have death by a thousand cuts by financial retraction or retreating from the field.

We are particularly mindful of the practical implication of a piece of legislation, the clarity of a piece of legislation, which is augmented by statements made by the minister, augmented by me in this committee stage and certainly, hopefully, augmented by our actions over time to demonstrate that those perceptions are not real. That is our challenge. We recognise that is currently a challenge, and we are prepared to consider what might be the appropriate way of dealing with it. Currently I am taking some technical advice about whether 'roles' and

'responsibilities' are transferable words and whether we are going forward or backwards in the use of 'roles' and 'responsibilities' as discrete words.

Hon. D. K. DRUM — Whilst the minister is checking on terminology in relation to 'roles' and 'responsibilities' it would also be worth having the legal people check out the extent of what is meant by taking away words such as 'the state of Victoria must', as contained in subsection (l) on page 11 of the Intellectually Disabled Persons' Services Act. Right through this bill we have 'the department may, if it wishes'. There is a plethora of instances, which will be raised at another stage of this committee, but it seems to me that the responsibilities of the state, whether through the minister or through the department, have been watered down.

In this bill the word 'must' has been replaced by the word 'may', yet when we look at the roles and responsibilities of persons with an intellectual disability, their roles and responsibilities — that is, their 'rights' and 'responsibilities' — are preceded by the word 'must'. It is quite difficult to believe that that appeared in the legislation through coincidence. I do not expect an answer on that, Minister, but while you are getting the legal people to check terminology, maybe that is another one.

The CHAIR — If you do not expect an answer, it looks like the minister is not going to respond.

Hon. BILL FORWOOD — Let me turn to the second part of my amendment. It again falls into the category of taking something that is very good from the 1986 act and putting it into the bill. I was a lot younger in 1986, and I can just imagine families and carers then, during the development of that piece of legislation in 1986, arguing very strongly that in that bill there should have been a clause that said, 'Let's remember that there is a role for families, and it is an important role, in supporting and encouraging'. I can imagine the debate that went on in those days being very similar, I am sure, to many of the debates that are going on today.

I reiterate the point that I made yesterday — that is, this bill is not about ease of life for the department. I am not critical of the department; I know it does the best it can, but sometimes I suspect that the department, in looking at particular things, has bias towards ease in its own life as opposed to accepting some of the things that come from outside. I do not mean that critically of any person. I just think it is a natural way that departments operate, having been in and around them for many years. In 1986 we decided to put into the principles that families have an important supporting role, and I am sure that we still believe that. I do not see why we cannot just put back in one of the really important phrases from last time. I am sorry, Minister, you — —

Mr GAVIN JENNINGS — The reason I am laughing is because I am made aware that that phrase, or that clause, within the Intellectually Disabled Persons' — —

Hon. BILL FORWOOD — It was put in in 1994 by us.

Mr GAVIN JENNINGS — Exactly — eight years later. So it took eight years to catch up with this concept in the first bill.

Hon. BILL FORWOOD — Extraordinary. I probably spoke on the clause in 1994. Let me applaud what we did in 1994 when we recognised the role of families, and I encourage the committee. I am pleased that in the eight years between 1986 and 1994 we realised the importance of families and put the words in, and I think we should keep them in. It is a simple as that. I cannot see any way that having these words in the bill diminishes anything, weakens anything or interferes with the hierarchy of what the government wishes to do. It is simply a statement of principles that says families have an important role.

Mr GAVIN JENNINGS — We recognise the important role — and I do not want to shortcut it, but I said this yesterday. Hopefully those who have an interest in this matter know that the role of families and carers was well and truly put on the public record yesterday. In terms of going straight to the issue of substance, the current bill may not recognise it to the total satisfaction of people, but it does recognise in clause 5(3)(h) that there is an obligation to:

> consider and respect the role of families and other persons who are significant in the life of the person with a disability …

And in 5(3)(i) there is an obligation to:

have regard for the needs of children with a disability and preserve and promote the relationships between the child, their family and other persons who are significant in the life of the child with a disability …

There is not a blind spot in our thinking as to the importance of families and carers and being mindful and respectful of their needs. There is not a broad chasm between us.

We do have an argument in terms of the principles about whether that satisfies expectations and that people have every right to feel supported and regarded. I have to say that my personal response to the issue about whether that principle should be inserted in that location prior to the second principle in clause 5(2) — to delineate the rights of people with disabilities — I would contest whether that is the appropriate place to put it, even if the government were to accept it. If there were going to be any acceptance of such a phrase beyond what was our intention, I would suggest that would not be the best place.

Hon. BILL FORWOOD — I would not argue with that.

Mr GAVIN JENNINGS — But I foreshadow today, Mr Forwood, it may sit better before disability services; that point might be reasonable. We are happy to consider that issue.

Ms MIKAKOS — Can I also add that the language used in clause 5(3)(h), specifically the word 'consider', I think has greater scope and weight in terms of giving due consideration to the role families play than is the case in the proposed amendment by Mr Forwood. I would actually argue that 5(3)(h) goes further than what Mr Forwood suggests in his amendment, because that is confined to talking about 'supporting and encouraging' family members with a disability whereas clause 5(3)(h) talks about considering the role of families. It would suggest a philosophy there of consulting with family members and taking into consideration their wishes in making decisions — we talked about this yesterday — where the person lacks capacity to make that decision for themselves.

The CHAIR — Can I just add to Ms Mikakos's comment, it seems to me in reading the clause that was inserted in 1994, Mr Forwood, it is little more than a statement of fact.

Hon. BILL FORWOOD — It is a principle.

The CHAIR — Indeed, but it is stated as a statement of fact, whereas clause 5(3)(h) in my view actually requires disability services; under 5, Principles — we are still in principles:

(3) Disability services should —

and I will add to Ms Mikakos's comment —

(h) consider and respect the role of families …

I am much more confident of those words in this bill than a mere statement of fact that persons with a disability actually have a family.

Hon. BILL FORWOOD — I do not want to keep this debate going longer and I thank the minister for his indication that the government will consider what I have suggested.

I just want to make the point, though, that the people who come to me and say they would like to have this clause in are people who have had some experience in dealing with the department. Sometimes people's experiences in dealing with the department lead them to believe their views are not considered to the extent they might have been and/or not respected to the extent they might have been. Sometimes some of these people have suggested to me that they think perhaps they are getting in the way of what the department wants and that they do not have lots of rights. I understand how bureaucracies work but I can also understand how people feel in that matter. Sometimes a statement of principle — as simple as that — that these people do have a supporting role and are recognised just goes a bit of a way to help ease the way through what is a difficult circumstance for all people, including the department, in solving these things. I do not want to labour the point any more.

Mr GAVIN JENNINGS — Can I respond to that. It actually relates to the philosophical and principled centre of support that is adopted by departmental officers which may lead to that perception or degree of difficulty. If officers are erring on the side of fiercely defending the independence of a person with a disability, whom they are

primarily obliged to support, and focusing on maximising that independence — and their interaction is continually focused on maximising that independence — they may err from time to time on the side of not conveying the same regard and respect to advocates or carers that they may feel they have every right to receive. It is not because there is a wishy-washy centre of gravity in terms of the mindset of departmental officers, nor that they are negligent in recognising that. It may be in the day-to-day transactions perhaps that that no. 1 principled focus and other pressures may lead to less than satisfactory interactions.

Hon. D. K. DRUM — Minister, I think this conversation is effectively getting to the very nub of the whole bill and the situation that exists within the disability sector. We have this situation now of the families versus the service providers or the departments. Whilst we have words in the bill that effectively say the department can in fact do nothing because it may do this and it may do that, this is the situation we are going to continually have. People come into our offices and say, 'We, the family of someone with a disability, cannot access services on behalf of our siblings or children'. That is the issue we need to address. I disagree with the government members. The fact that we are going to 'consider and respect the role of families' and immediately after 'families' put in the words 'and other persons who are significant' to me immediately diminishes the role of families by grouping them with other significants. I am not saying there are not other significants who play an enormous role in this sector. But to throw other significants in with families immediately diminishes the role of family. I am sure it was never the minister's intention, but we have created a mentality of family versus service provider. This only fuels those issues.

Ms MIKAKOS — Chair, can I just remind Mr Drum of his own proposed definition of a 'family carer', in his amendment 6 yesterday, where he actually proposed 'family carer' not be limited to family members.

Hon. D. K. DRUM — As a separate carer.

Ms MIKAKOS — I am confused by the inconsistency in the argument that is being put.

Hon. D. K. DRUM — Ms Mikakos, there is no mention of 'carer' in the definitions, so this bill leaves out 'carers' altogether. We have attempted to put in a category of carers and we have called a 'family carer' someone who does not have to be a family carer. We may want to replace the word 'family' in that instance with 'an unpaid carer' or 'a voluntary carer'. A primary carer is a member of the family. So we are simply trying to put definitions of carers in the bill so that we give them due recognition.

Hon. BILL FORWOOD — I thought we had dealt with that issue.

Hon. D. K. DRUM — Exactly, but Ms Mikakos raised it.

Mr GAVIN JENNINGS — You invited it, Mr Drum, because I was going to do it. Ms Mikakos and I did not caucus, but I was about to go to exactly the same point, because you were actually saying that we were bundling issues of family and other forms of carer and significant others together, and that is exactly what you have done in your definition of 'family carer'. That is exactly the point.

Hon. D. K. DRUM — No, I have not, Minister, I have two different definitions. I have 'primary carer' and 'family carer'. They are totally different.

The CHAIR — We will structure the remaining conversations in the proper way, thank you. Is there anyone else who wishes to comment on the proposed amendment?

Hon. BILL FORWOOD — The minister is going to think about my amendment.

The CHAIR — I did not pick that up from the minister's comments. Would the minister like to clarify it?

Mr GAVIN JENNINGS — What I have clearly flagged to the committee is that if the government believes that the concept should be incorporated, it will definitely not be incorporated where it is suggested, but we will consider whether there is any phrase that could satisfy an appropriate insertion. That is what we will commit to do, but I do not want the point that was raised by Ms Mikakos to be lost, that in fact the government believes that there are some clear obligations here that are more specific than the general principles provisions that were in the existing

bill, so we do not accept that we are going backwards. As a starting point, we do not accept that we are going backwards but if there is any progress we can make, we will think about it.

The CHAIR — I have to say that I am not particularly any clearer as to how we progress this proposed amendment, whether we decide on this proposed amendment now. The minister is indicating that the government would not accept it in this form.

Mr GAVIN JENNINGS — We would not accept this amendment.

The CHAIR — Perhaps the minister might be able to — I am taking it that you may be prepared to consider the issue about while there are responsibilities in that section and these issues in that section of the bill, is that the area where you are proposing that if the government did consider any changes, it would be in that area?

Mr GAVIN JENNINGS — Again, I do not want us to get too far ahead of raising expectations that may be subsequently dashed. I do not want to do that.

Hon. BILL FORWOOD — Yes, I accept that.

Mr GAVIN JENNINGS — So in terms of where this may sit, if and when we agree to incorporate the concept, it would be dealt with later. But the logic to me is that if it is going to be accepted it will be accepted in the principles clause, but in a different position to the one recommended by Mr Forwood.

Hon. BILL FORWOOD — I am comfortable about that. I just want to make the point that in the legislation, families should not be forced to relinquish their family role because the government or DHS requires them to be a carer or a case manager or a therapist or a financier of private services. These people are families; they are not service providers, so what we are seeking is — in the appropriate spot — for the role of the family to be recognised as it currently is. Minister, I do not mind where we put it. I would just like it in and I am grateful for your suggestion that you will have a think about where it might go. I do not much mind how we proceed from here.

The CHAIR — I think, Mr Forwood, we should deal with the amendment, otherwise we are going to keep postponing everything; if the amendment is lost, the minister has indicated that he will report back to the committee at our next meeting in terms of any further advice he may wish to offer the committee about how these issues may or may not be addressed.

Hon. BILL FORWOOD — Okay, so I have moved my amendment and I look forward, after I lose it, to the minister coming back to us with a better proposition.

The CHAIR — The question is:

That Mr Forwood's amendment 9 be agreed to.

I think the noes have it.

Hon. D. K. DRUM — The ayes have it.

The CHAIR — Do you want to divide?

Hon. D. K. DRUM — No, we just put our hands up.

Hon. BILL FORWOOD — We do not have to divide every time; I moved the amendment.

The CHAIR — It is Mr Drum's call. He can call for it.

Hon. BILL FORWOOD — He can call it if he wants to.

Hon. D. K. DRUM — Will our votes be recorded?

The CHAIR — On this amendment? No, not at this stage. Unless you are happy for that to happen?

The CLERK — If the Chair is challenged, then it becomes a formal division.

Hon. D. K. DRUM — It is up to you, Bill, but I thought if it is only going to take us 10 seconds to — —

The CHAIR — I think the noes have it. The amendment is lost.

Amendment negatived.

The CHAIR — We will move to Mr Forwood's amendment 10.

Hon. BILL FORWOOD — But we also have the right to discuss the clause?

The CLERK — We have to deal with the amendments first.

Hon. BILL FORWOOD — Is that my amendment 10?

Ms MIKAKOS — Yes.

The CHAIR — No. 10 is yours, Mr Forwood — it seeks to amend clause 5.

The CLERK — Your amendment has, in effect, been tested and negatived.

Hon. BILL FORWOOD — Which one? My amendment number what?

The CHAIR — It is no. 10.

Hon. BILL FORWOOD — Yes, this is important.

Hon. G. K. RICH-PHILLIPS — As distinct from?

Hon. BILL FORWOOD — As distinct from others that are equally important! Sorry, I was away with the pixies. What is important is that in doing this we do not diminish in any way the effectiveness of services that are currently being provided. I am sure it is not the intention of the wording of the clause, but it could be interpreted to say that in looking for local services, what we are going to do is to take away some of the services that already exist for people who are not local. What the words seek to do, of course, is to ensure that spreading services across local communities does not alter the effectiveness of a service or result in loss of specialisation. Some services are specialised and are not local and we do not want to see the words in this particular clause lead to the diminution of services provided to people already.

In those circumstances I move:

10. Clause 5, page 15, line 4, after "services" insert "provided that spreading services across local communities does not alter the effectiveness of the service or result in the loss of service specialisation".

Ms MIKAKOS — Can I make some preliminary comments. The way I read clause 5(3)(e) is that it is in the context of talking about the rights or expectations of a level of service that people with a disability would have, rather than talking about the nature of the service itself. As I understand it, the intention is that people with a disability, as much as is possible, should be able to access disability services within their local community — and I think that is a commendable intention, that people do not have to travel a great distance. Mr Drum, I think, was raising that as a cause for complaint yesterday, that there are some issues perhaps in some communities. I would be concerned that the amendment that is being proposed by Mr Forwood actually diminishes the intention to actually provide these services in a person's local community, as much as is possible. I would be concerned about that amendment going forward if that would be the end result.

Hon. BILL FORWOOD — I hope that is not the end result. Let me just make — —

The CHAIR — I have not called you.

As a point of clarification, because I think we are going down a path of discussion which may not be accurate, my reading of the clause, and I ask this of the minister, is that this is really referring to the capacity for a person with a disability to access services in the community — that is, general services within the community; is that the intention? Or is that clause intended to refer specifically to services for a person with a disability? In other words, is

it intended to refer to enabling a person with a disability to access services, that is general or generic services, or is it intended to be referring specifically to disability services? If it is generic then I would have thought Mr Forwood's amendment does in fact become a constriction on it rather than opening it up for enhancement.

Hon. BILL FORWOOD — Perhaps I could comment. This is the issue about trying to put together two acts that do not sit easily together, the Disability Services Act and the Intellectually Disabled Persons' Services Act. The case that was put to me in relation to this particular clause is that for particular people, particularly the autism spectrum disorders people, generic services are often ineffective, with the experience that decentralisation of service results in losses of specialisation.

That may not be the intent, picking up Ms Mikakos' comment, but in legislation we need to be accurate that the intent is reflected in the words, so a problem here of course is — and you can look at what happened with Irabina Childhood Autism Services where there was a diminution of service over time — that we need to be careful in wrapping things up around nice principles that we do not in fact diminish something that already exists.

Mr GAVIN JENNINGS — This is a little bit cheap, but I reckon we should read paragraph (e) in the context of what has come before it, and if we actually read it in the context of (a), (b), (c) and (d), the issues have been addressed, because in fact (a), and particularly (b), (c) and (d), relate to flexible, responsive services that actually maximise their effectiveness in a way that the concern about that being diluted by the application of a localised service does not necessarily — or it is certainly not the intention of the government — jeopardise (b), (c) and (d). They are on the books.

Hon. BILL FORWOOD — I understand that. One of the problems is that I do not have enough detailed information. I have just received a note from an unknown person in the gallery who says to me, 'Service specialisation is already — —

Mr GAVIN JENNINGS — It sounds like 3AW's method.

Hon. BILL FORWOOD — Okay, it is the Rumour File. This has been handed to me and it says, 'Service specialisation is already being lost through localising services. This should not be mandated into law'. The person who wrote me this note probably has some specific example that I do not know about of how with the best intention in the world the localising of services has lead to some loss of specialisation, and so what they are seeking to have mandated into law is that this will not happen, that the intention is not that as part of being local and giving local access, particularly to people into generic services, we do not in fact lose some of the good stuff we have already got. I do not think this is something to be scared of; it seems to me to be something to be embraced.

Hon. C. D. HIRSH — I think this comes about through the use of functional, rather than diagnostic provision of services, that you are looking at needs-based services, rather than having people with disabilities fitting into services that are already there. It is also about ensuring that people who do not have access to centralised services, geographically isolated people, also have access to the services that they need, depending on their requirements.

Hon. G. K. RICH-PHILLIPS — Minister, the language used at subclause (3)(e) is fairly direct. In the context of Mr Forwood's amendment perhaps you could elaborate for the committee if there is any reason (3)(e) as it stands now does not use the phrase 'as far as possible', which is used in a number of the other subclauses, to provide some flexibility? Subclause (3)(e) as it is written does not appear to provide any real degree of flexibility, whereas (f), for example, does. Is there any particular reason that the bill has been written that way? Can you give an assurance that there is an intention of flexibility that Mr Forwood's amendment would promote?

Mr GAVIN JENNINGS — It is a damn good question for a variety of reasons. To be perfectly honest, if I had been responsible for drafting this set of clauses, I would have drafted them in a slightly different way, because I think the particular subclause we are talking about crosses over between the principle of what a provider is obliged to do and what should be available to the recipient of the service. It is a crossover point in terms of the logic of the construction of this position, so I read it to mean that in terms of the organisational and operational aspect of how a provider provides that service, they should be respectful and mindful that people who receive their service should not have to move out of their neighbourhood or their locality as standard procedure to receive that service as an a priori nature of it. They should be trying to gear up their services to accommodate the geography of where their client is.

That is what the principle is designed to do. It is supposed to be a guiding light to providers — a warning light — to say, 'You should always be vigilant about trying to provide this service as locally as you possibly can'. That is its intent, as I understand it. I am not aware of any history — and I might take advice on it — about where this may be a contentious issue within the sector. I would not go so far as any construction that says there is any other intention that underpins the way in which it has been drafted to try and look at the effectiveness, the flexibility of service delivery, and then say, 'And if you can, do it locally, so that people do not have to up stumps and move too far to receive that service'. That is what we are trying to achieve through the implementation of the bill.

Hon. G. K. RICH-PHILLIPS — Or the government would not therefore read it as meaning a person with a disability would be required or obliged to access local services as opposed to preferred services?

Mr GAVIN JENNINGS — No.

The CHAIR — If there is no further comment on Mr Forwood's amendment 10, I will put the question.

Amendment negatived.

The CHAIR — We now move to Mr Drum's amendment 19, which amends clause 5(3)(m) on page 16, line 3.

Hon. D. K. DRUM — I move:

19. Clause 5, page 16, line 3 after "advocacy" insert "and family".

While those around the table find the relevant clause, this effectively reads, as we state in the objectives and principles, that a disability service should**:**

(m) be designed and administered in a manner so as to ensure that persons with a disability have access to advocacy support —

I am proposing to amend this by putting in the words 'and family' after 'advocacy', so it would then read that a disability service should:

(m) be designed and administered in a manner so as to ensure that persons with a disability have access to advocacy and family support where necessary to enable adequate decision making about the services they receive …

I think it is a very straightforward amendment. Effectively the insertion of two words would have a tremendously positive outcome in the way that service provision is delivered to people with disabilities. Yesterday we spoke about 165 000 people not being in a position to make their own decisions or to enunciate how they best receive services. Simply putting in the words 'and family' would enable adequate decision making about service provision.

The CHAIR — Mr Drum, I have to say that I would have thought one of the key roles of the family is advocacy.

Hon. D. K. DRUM — But it is not legal. There are families out there, Chair — many hundreds of thousands of them — who are confused about when they can advocate on behalf of their spouses, children or siblings and when they cannot.

Mr GAVIN JENNINGS — It is a matter of where you start the process of advocacy from in relation to how this argument is rolled out. I think that in relation to this the continuum of thought should be that the person with the disability has access to advocacy, and on the way through, if those who are in a caring relationship with them have access to advocacy, then that is good and well. That is the mind-set that underpins this principle. We think it is interrupting the flow of the logic of our approach to advocacy and the insertion of 'and family' in that concept would interrupt the continuum of approach that we adopt to the issue of advocacy.

Hon. D. K. DRUM — The minister has made numerous attempts to talk about the continuum, the flow and the logic of the bill. I think what the minister is effectively saying is that we are putting the person with the disability up front and we are giving them every opportunity to make their own decisions. But we also have to understand that there are so many people with disabilities out there who cannot make their own decisions. They cannot make important life decisions on an ongoing basis.

We simply want to put in the words 'and family' after 'advocacy' to effectively help the families, who are doing 93 per cent of this work, and give them an understanding about what types of services are being provided. I cannot recall them all because there are so many various situations out there, but there are situations where people can be evicted from a community residential unit simply because they do not understand what they are being told. They might nod their heads as if they understand but they do not understand, and so they go off and do something totally contrary to what they are supposed to be doing. Because the instructions, directions or advice have not been relayed through the families, those people have actually had benefits taken away from them. This is a practical insertion, a stopgap measure. It will further strengthen the rights of people who are not in a position to always understand what is being said to them. We will have a backup, with advocacy and family support.

Mr GAVIN JENNINGS — The example Mr Drum has just given is one where the provision would not be satisfied. The very example described to us today would be a circumstance where the service provider had not allowed the person with a disability access to advocacy support, whether it be their family or other support mechanisms, so it is covered by this provision. This is not to deny — again this is seen as a continuum of advocacy — Mr Drum's point. I take the point that quite often the advocate could be the family, as the conduit between the person with a disability and a professional-based or volunteer-based advocacy support service. This principle relates to a service provider having to allow for that advocacy support to be given. That is the obligation in the principle. We accept that that could come through the family or it could be — again in the continuum of this issue — between the person with a disability, the family, and professional advocacy groups, and they are covered by this clause.

Hon. D. K. DRUM — I understand what the minister says, but again what I am proposing will constitute effectively another stopgap assurance so that we will not have the continual misunderstandings, with people with disabilities falling through the cracks in situations where a person with a disability is looking at the service provider and saying, 'Yes, I understand. No, I don't need advocacy', and then having a range of services withdrawn and all the time the family knowing nothing about it. It is about failing to inform the family on an ongoing basis about what is going on with the individual with a disability. The inclusion of the words 'and family' would help those situations where people do in fact fall through the cracks.

Mr GAVIN JENNINGS — It has been recommended to me that I make an additional point, and I think it is useful. In terms of our understanding of advocacy in the circumstances that Mr Drum may be most mindful of, in which people perhaps do not have the capacity to make decisions for themselves or where there are some formal arrangements about the decision-making process that are made on their behalf, we do not want to confuse advocacy with separate decision making. Separate decision-making provisions are covered by the Guardianship and Administration Act. With the combination of the mindset in the thinking behind this bill that I have outlined and the application of the Guardianship and Administration Act we think we have covered the issues that Mr Drum has raised.

Hon. D. K. DRUM — In an instance where a direction or decision is made about a person who needs an advocate, what safeguards are there to ensure that that direction or decision is passed on to families, or are there any?

The CHAIR — Mr Drum, we have just debated the whole question of clause 5(3)(h), which provides that disability services should consider and respect the role of families.

Hon. D. K. DRUM — But advocacy is not funded by the government, Chair.

The CHAIR — But this clause relates to the requirement that disability services meet certain principles, one of which is that they consider and respect families. Clause 5(3)(m) provides that they be designed and administered in a manner so as to ensure that persons with a disability have access to advocacy support. So I think both issues are dealt with in the principles and I suggest that we have gone considerably around this issue.

Hon. BILL FORWOOD — In terms of the hierarchy that the minister spoke about yesterday, which comes first in the department's mind, an outside advocacy agency or the family? I think what we are skirting around is what happens when an advocate — whether it be a formal advocate or not — goes to the department and says, 'This is what I think should happen', and the family says, 'Hang on; our view is different'.

One of the things Mr Drum is concerned about is whether or not in the hierarchy the concerns of families are taken account of at the level at which they should be. I think he is seeking parity between external advocates and families in the way people are treated.

Mr GAVIN JENNINGS — Let me say that we do not see a hierarchy. In terms of our mindset, if we were to draw a diagram to assist us — —

Hon. BILL FORWOOD — We would have a big circle.

Mr GAVIN JENNINGS — We would have a big circle of advocacy — Hansard is going to love this — and families can be inside and outside that circle. So there is not necessarily a hierarchy, but they are definitely a part of the advocacy recognition that is covered in this provision and they are absolutely a part of the mechanism that can be involved in seeking external advocacy support.

The CHAIR — I am going to put the proposed amendment. Do you want me to wait for Mr Rich-Phillips?

Amendment negatived.

Hon. BILL FORWOOD — Perhaps I should take amendments 11 and 12 together because what we are seeking to do is take out the words 'as is possible in the circumstances' and insert thereafter a raft of words about when a restriction to rights or opportunities should be appropriately used.

The CHAIR — Thank you Mr Forwood. We will deal with your amendments 11 and 12.

Hon. BILL FORWOOD — I move:

11. Clause 5, page 16, lines 14 and 15 omit "as is possible in the circumstances".

12. Clause 5, page 16, after line 15 insert —

"( ) A restriction to rights or opportunities may only be applied when exercising the right or opportunity poses a direct threat to the health, safety or wellbeing of the person with a disability or any other person.

( ) In determining whether a person with a disability poses a direct threat to the health, safety or wellbeing of the person with a disability or any other person, a disability service provider must make an individualised assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain —

(a) the nature, duration and severity of the risk; and

(b) the probability that the potential injury will actually occur; and

(c) whether reasonable modifications of policies, practices or procedures will mitigate the risk.

( ) A disability service provider must make reasonable modifications to policies, practices or procedures if the modifications are necessary to afford services, facilities, privileges, advantages or accommodations to persons with disabilities unless the disability service provider can demonstrate that making the modifications would fundamentally alter the nature of the goods, services, facilities, privileges, advantages or accommodations.".

So we are saying that when a restriction on the rights and opportunities is necessary the option chosen should be the option which is the least restrictive of the person. We seek to delete the words 'as is possible in the circumstances' and insert the words in the amendment. I think most people accept that a regime of restraints needs to be available, but people are very concerned about the way it can be used, or potentially misused. I make no criticism of any person who works in the sector; I know how hard life can be. But in considering this amendment I thought long and hard about it. I believe that many restrictions to rights can be routinely applied rather than individually and specifically applied. They can be applied unnecessarily; they can be applied without rights of appeal or particularly accountability measures. In some cases I think they can be applied purely to maintain a policy or a practice or a procedure or to avoid a cost or to avoid an inconvenience. 'Not possible in the circumstances' could mean at the whim of others, that no-one wants to compromise their own wishes to accommodate the needs of the person or that people who do not understand the nature of the disability and the required support measures just proceed.

I am aware of particular cases where services providers have been taught by martial arts experts how to stop, drop and restrain students. I am aware of cases where there has been — arguably — an inappropriate use of chemical restraints. Just to have the words 'as is possible in the circumstances' without some ring fencing is, I think, a matter of grave concern, and the words I seek to insert in my amendment really go to the issue of saying that we are dealing with individual people and we will not use chemical or other restraints unless we really have to, and the reasons why we have to are quite specific. We cannot just use restraints because it is convenient to do so in the circumstances.

Hon. C. D. HIRSH — I would like to speak very strongly on this amendment. Legislators are not qualified to decide at any time if a person may need some form of restriction. If a service provider or a person with a disability were to use such a restraint inappropriately it would be up to the advocate, the family and the people involved with the person with a disability to ensure that proper complaints were made and that the person was either removed or given adequate training. If disability service providers are not able to make these judgments then their training is inadequate and should be improved, because we all know that occasionally it is necessary to restrain a person.

It should not be done unless necessary — and that is a clinical specialist's decision. I believe that the amendment, as it is, which would read 'least restrictive of the person as is possible in the circumstances' enables such decisions to be made. I think Mr Forwood's very strong professionally orientated amendments are limiting in nature. It is not the place of a legislator to make these decisions.

Hon. BILL FORWOOD — Aagh!

The CHAIR — Was that a contribution, Mr Forwood?

Hon. BILL FORWOOD — I do not know how Hansard will record it.

Hon. C. D. HIRSH — Can the Hansard reporter write that down? I think he said 'Karak'.

Hon. BILL FORWOOD — I think it was a cry of despair.

The CHAIR — Do you want to make a comment, Mr Forwood, or will I pass to the minister?

Hon. BILL FORWOOD — I will let it go through to the keeper.

Mr GAVIN JENNINGS — Can I actually say that the real effect and the qualifications, the limiting, the procedures — all of the issues that Mr Forwood is wanting to seek in a principle — are actually covered by parts 7 and 8 of the bill at great length. In terms of the bill before us, they run from page 139 to page 199. So in fact many of the qualifications and limits that Mr Forwood is seeking are actually well and truly detailed, both in terms of the decision-making process that would lead to such action in the first place — whether they be restrictive interventions or whether they be compulsory treatments — and in fact what remedies actually may be available if in fact there has not been compliance with those provisions. They are extremely detailed.

For instance, clause 140 relates specifically to the use of restraint and seclusion — all the limitations and all those threshold tests are outlined there. Indeed beyond clause 140, clause 141 deals with how that must be included in a behaviour management plan; clause 142 deals with how the review of the behaviour management plan is undertaken by a disability provider; the role of an independent person in assessing that is dealt with in clause 143; the power of the public advocate to intervene and provide protections is in clause 144; and clause 146 deals with a review by the Victorian Civil and Administrative Tribunal.

So in fact there is a pretty determined rigour within the bill to actually have the net effect of what might be here to be included as a principle. It is dealt with in a very comprehensive fashion, in a technical sense. Beyond the technical limitations of what Mr Forwood has put forward to us as a principle, we believe in fact it may be self-defeating to actually alter what is a relatively simple instruction to a provider in terms of a principle — to get their head around a principle — because in the day-to-day reality of it, it will be accountable for applying the principle in the specific terms that are outlined in parts 7 and 8 of the bill, which are extremely detailed.

Ms MIKAKOS — Can I also add to what the minister has said? The words 'as is possible in the circumstances' are repeated in an identical form on a number of occasions in parts 7 and 8. From just having a cursory look, clause 140(b) uses the words 'as is possible in the circumstances'. It is talking about physical restraints — —

Hon. BILL FORWOOD — The whole part — —

The CHAIR — Excuse me, Mr Forwood, you will get your chance in a moment.

Ms MIKAKOS — The words are again repeated in a number of situations in relation to seclusion and other forms of restraint. I think to take it out of clause 5 is not really going to add a great deal, because the provisions in parts 7 and 8 make very clear the circumstances in which restrictions on rights can occur.

Hon. BILL FORWOOD — Part 7 talks about restrictive interventions, and it talks about restrictive interventions in some detail. Clause 5(4) says:

> If a restriction on the rights or opportunities of a person with a disability is necessary …

It does not talk about restrictive interventions. So if you are talking about restrictive interventions and your argument is that restrictive interventions are being looked after in a different part of the act, stick restrictive interventions in clause 5(4). Do not just talk about a restriction on the rights and opportunities of a person with disabilities as necessary, talk about restrictive interventions, and then I will be happy. You are going to have a blanket principle that says it should only be used in the nearest possible circumstances, but not everything is a restrictive intervention. People do not go and get a 135 approval if they have some kid out of his brain in anger in a particular circumstance. They deal with it on the spot. Now what I am saying is that when that happens, it needs to be done according to a set of rules. That is not a specific restrictive intervention under part 7 of the bill.

I am happy to accept that the government has gone out of its way to deal with particular bits and particular uses, but it does not get covered in the principles section. So I maintain again, Minister, that what we ought to be doing is protecting the rights of disabled people as much as we possibly can in the principles section of the legislation.

Mr GAVIN JENNINGS — Because of the way the argument was delivered with so much passion and vigour, it was fairly compelling. But after deconstructing the words, I am not quite satisfied that in substance it changes my position.

So I am not convinced of it, even despite that Mr Forwood may be mindful of one or two examples that he may actually think then fall foul of what the principle approach is. I cannot actually think in practice how the combination of the principles clause and the specific provisions that are within the act would actually fail to deliver a secure result and maximise the opportunities for freedoms and liberties of people with disabilities through the application of the bill. I have also been encouraged to indicate to the committee that in fact this is an occasion where the concept in the principles clause is pretty much exactly the same as what was in the Intellectually Disabled Persons' Services Act 1986.

Hon. BILL FORWOOD — I am aware of that.

Hon. D. K. DRUM — That has got no bearing on what we are putting in this bill.

Hon. BILL FORWOOD — I am not sure about that!

Mr GAVIN JENNINGS — Some people may feel a little bit more protective of the bill than me, and that suggests to me that I should point out direct parallels on some occasions.

Hon. BILL FORWOOD — Yes, I think that is a good idea. Could I just make the point that I do not think there is any doubt that many, if not most, of the daily restrictions that are used on some people who are subject to behaviours that lead to these interventions are not covered by the bill at all and that they would not go through the processes in the bill. In those circumstances, where you have that happening at a service provider level as a matter of course, what we need is at the minimum some sort of guideline — some sort of protection. I am not arguing about the use of restrictive interventions — we need them. But sometimes you do not go through that process. We

have all been in circumstances where we have needed to react relatively quickly. And you do not go off and follow the distinct processes in part 7 of the bill. Part 8 of the bill, as you know, is about residential treatment facilities.

The CHAIR — Unless the minister wants to respond, can I just point out to the committee that under the definitions is the definition of 'restrictive intervention' which is described as:

> … any intervention that is used to restrict the rights or freedom of movement of a person with a disability including —
>
> (a) chemical restraint;
>
> (b) mechanical restraint —

and

> (c) seclusion …

I suggest to the committee that in my view the restriction on the rights and opportunities as in clause 5(4) falls within those definitions and then goes directly to part 7. So as to Mr Forwood's view that clause 5(4) needs further coverage, I do not accept that, given that there is a whole part of the legislation, as the minister has pointed out, that deals in detail with restrictive interventions. I would see the crossover between the definition of that clause and part 7.

Hon. BILL FORWOOD — Let me pick up your point and refer you to clause 134 in part 7, which says you:

> … must not use a restrictive intervention unless there is in force an approval under section 135 …

Clause 135 is how you get approval for a restrictive intervention. I am putting to you that the majority of cases of restraint do not fall under clause 135 approvals; they happen in the ordinary course of the management of people, day after day after day. In those circumstances you have to have some principles — unless you want to come back and add into part 7, around clause 135, that in fact we accept that people do not always have time to go to the secretary and get a restrictive intervention, right? Now, if you want to be specific about this stuff, be specific! If you are not going to be specific, then go back to the principles, and when you get to the principles let us put into the principles that we will ensure that we do not misuse this, that as far as possible we cannot misuse it.

Mr GAVIN JENNINGS — In this instance I am going to take a bit of technical advice. There are some problems in relation to competing provisions. You have certain very specific provisions that Mr Forwood is wanting to insert within the principles which do not sit well with specific provisions that do have sanctions within the bill. So when he referred to clause 134, clause 134 has penalty clauses. Now in fact if we start varying the relative test and procedures so that they are not consistent, then we do have some difficulty.

Hon. BILL FORWOOD — Absolutely.

Mr GAVIN JENNINGS — That is a starting point.

Hon. BILL FORWOOD — I accept that.

Mr GAVIN JENNINGS — In relation to the emergency provisions, Mr Rogers is going to augment my response.

Mr ROGERS — Proposed section 147 at page 149 of the bill actually talks about the use of restraint or seclusion in an emergency and does actually, under certain conditions, allow providers to use an emergency restraint. It does require them to report on that — I think at part 3, clause 147(3) — in the form of the report at clause 143(4). Just generally, clause 140 is actually about strengthening the provisions around restraint and seclusion, because the current provisions actually do not provide all the protections that clause 140 provides. So we are actually trying to ensure that there is greater reporting of restraint and seclusion and greater conditions around that, but also allowing providers to use restraint and seclusion in emergencies, which of course do happen.

Hon. BILL FORWOOD — Can I respond, Chair?

The CHAIR — Yes, Mr Forwood.

Hon. BILL FORWOOD — Clause 147 is about use of restraint or seclusion in an emergency. I put it to the committee that I am not talking about emergencies. I am talking about the daily management of people and saying that this is not an emergency; this is an established practice. We cannot therefore use clause 147, the emergency clause, in a daily way. What we have is a practice that has grown up around the management of difficult clients over a long period of time, and sometimes you find that none of the clauses — 134, 135 or 147 — is adequate. What we need to do, in my view, is to put back into the principles that we are not talking about impossible circumstances; we are talking about individuals.

The CHAIR — I think I can almost hear the minister or perhaps through him, Mr Rogers's answer, in relation to that proposition — that is, this is standard practice; but I will hand it to the minister.

Mr GAVIN JENNINGS — Chair, whilst you thought it might have been an instinctive answer, I wanted to make sure that I had counsel on it. In the regime of the way in which we believe the practice sits with the law, if people's behaviour needs to be restricted on a regular basis, that would be covered by clause 135, and if it is on an emergency basis, by clause 147 — and we do not envisage a gap between the application of the two. We do not envisage a blind spot between 135 and 147.

Hon. BILL FORWOOD — Can I therefore ask: is it your expectation that the majority of pupils at the Bulleen special school will therefore all have clause 135 plans?

Mr GAVIN JENNINGS — Mr Forwood, this is going to invite another question.

Hon. BILL FORWOOD — I know exactly where this is going. Don't think I did not start, knowing where this was going.

Mr GAVIN JENNINGS — The immediate response is in terms of the group of children who attend that school — as a group, their behaviour, their attendance at that school and what happens in the school are not covered by the scope of the legislation. Their individual circumstances and their individual quality of life may be impacted upon it, but as a cohort in attending the school, it is not covered by the bill.

The CHAIR — Mr Forwood, do you want to ask your next question or not?

Hon. BILL FORWOOD — I think we should probably now break for two days while Mr Jennings and I go and sit in a park to work out what that means. He and I know that we have a bill here dealing with the behaviour, rights and responsibilities of individuals, and they operate in the workplace, in a family, they go out during the day; some of them go to school; they turn 18; they lead lives like everybody else.

We are trying to put here into legislation a bill that deals with their rights and responsibilities and covers for every eventuality that may occur. I am seeking to demonstrate to the committee that with the best will in the world we are always going to find that there are difficulties in the implementation of specific bits of legislation particularly when you are dealing with matters of fundamental importance to people's human rights. And rather than dealing with these issues by way of parts in legislation, we should stick with the principles as much as we can.

That principle will always be that if a restriction is necessary, it has got to be the least restrictive possible, and it has got to be the least restrictive in structure rather than in the general possible circumstances as supported by — to use your words, Minister — 'We do not believe there is a gap between 135 and 137', when in practice there is a gap you could drive a truck through in the daily behaviour of people in all sorts of settings.

Mr GAVIN JENNINGS — In terms of going back to where we are starting from and how you seek to amend the bill, the principle that you actually espoused just then is included in the bill in the current clause. The application of it, the government has attested, is actually through a combination of clauses and provisions of parts 7 and 8 of the bill which are quite detailed. Your contested argument is about its application in daily life. In terms of the substantive issue about minimising the restrictions placed on anybody — that is there.

The CHAIR — Mr Forwood, I propose to put the amendments 11 and 12 to the vote. Occasionally as Chair I have indicated why I am taking a particular position in relation to amendments. I cannot see anything in amendment 12 that is not more comprehensively covered in parts 7 and 9 of the bill, so I think that there is a clear

process which service providers are expected to follow in relation to restrictive interventions. One involves establishing a behaviour management plan and then various — —

Hon. BILL FORWOOD — Do you think every kid in preschool has got a behaviour management plan?

The CHAIR — Where that does not occur and an emergency occurs, there is a clear process for the conduct of that. I think that is clear in the bill, so I will be voting against Mr Forwood's amendment. I said I was going to conclude debate, Mr Drum, on the — —

Hon. D. K. DRUM — And then you rolled on!

The CHAIR — I have given everyone a chance to talk, Mr Drum, and have decided at the conclusion of that to explain why I am voting in a particular way.

Hon. D. K. DRUM — I have not had a chance to talk on this amendment.

The CHAIR — I did ask. For the flexibility of the committee, I will give you an opportunity to speak, Mr Drum, but I did say to the committee that I was going to put the amendment to the vote.

Hon. D. K. DRUM — Thank you, Chair; I appreciate your flexibility. I want to have it recorded that the argument put forward by Mr Forwood that there are numerous instances in the community, in the day-to-day management of a wide range of people with disabilities, clearly proves that there is a large gulf between the provisions catered for in clause 135 and the provisions catered for in clause 147. That has been clearly identified by this debate over the last 45 minutes. I just wanted to have that aspect recorded in *Hansard*.

Committee divided on amendments:

Ayes, 3

Drum, Mr	Rich-Phillips, Mr
Forwood, Mr	

Noes, 3

Hirsh, Ms	Viney, Mr
Mikakos, Ms	

The CHAIR — Given that there is an equality of votes, I give my casting vote to the noes.

Amendments negatived.

Sitting suspended 11.16 a.m. until 11.28 a.m.

Clause agreed to.

Clause 6

Hon. BILL FORWOOD — I have all sorts of things I want to raise about clause 6, I just do not have any amendments. I wonder, Minister, if you could explain to me what clause 6(2) actually means. Clause 6(2) says that the repeal of the act does not affect the responsibility of the minister and secretary. Do we not spell out in this bill the responsibilities of the secretary and the minister? How can we have a catch-all clause in a bill that refers to a piece of legislation that has been repealed and is no longer on the statute books?

Hon. G. K. RICH-PHILLIPS — The minister is wondering that as well.

Mr GAVIN JENNINGS — The nature of this clause falls into the category of many amendments that have been put before the committee. It is there to provide comfort, may I suggest. As we all know, general clauses and general provisions within a bill such as this one — in fact this is an argument that perhaps I should have made already on about 10 occasions, but I will make it in response to this — are subsumed under law in effect by specific clauses. So specific clauses will have a higher standing than a generic clause. As a general principle, as I indicated, it is not the government's intention to water down the responsibilities and obligations that may have been

previously attributed to the minister and the secretary under the previous legislation. There may have been some concerns that it was the intention of the government to seriously erode those responsibilities, so this in effect is a political statement.

Hon. BILL FORWOOD — I thank the minister for his answer. I refer to section 5(i) of the Intellectually Disabled Persons' Services Act, which reads:

> it is in the best interests of intellectually disabled persons and their families that no single organization providing services to intellectually disabled persons exercise control over all or most aspects of an individual's life.

Is that now replicated or attempted to be covered by clause 6(1)(f) of the Disability Bill?

Mr GAVIN JENNINGS — The simple answer is yes.

Hon. BILL FORWOOD — If that is the case, why have we moved away from the original wording in the act, which says 'it is in the best interests' that this happens, to saying they should be 'designed and provided in a manner …'?

Mr GAVIN JENNINGS — It really relates to the way in which the clauses have been drafted and how they are introduced. The thing about it is that this is a subordinate clause, and in fact it has been written in the style of a subordinate clause to a different introductory sentence. That is the simple answer.

Hon. BILL FORWOOD — On page 18 of the bill the last word is the word 'institution'. I stand to be corrected on this, but I do not think the word 'institution' appears in any federal disability or aged care legislation. I am not sure that the word 'institution' is acceptable in this day and age. I think we normally talk about accommodation or congregate care or whatever. If we are talking about people who require admission to a residential institution, what is an institution? How do we define what an institution is?

Hon. C. D. HIRSH — It is defined on page 3.

Hon. BILL FORWOOD — Is it? On page 3?

Hon. D. K. DRUM — It is not here. The minister can suit himself.

Ms MIKAKOS — At page 8 there is a definition of 'residential institution', not 'institution'.

Hon. D. K. DRUM — There is no definition.

Hon. BILL FORWOOD — It says 'under section 86'. You turn to clause 86, Ms Hirsh, and tell me what 86 says.

Hon. D. K. DRUM — Sorry, Chair, this issue in relation to the word 'institution' is covered extensively in amendments 23, 24 and 25. Whilst we have decided to defer discussion on clause 3, it will also be covered in amendment 2, so quite an extensive discussion will follow this. If we go down this particular path, we will replicate this discussion later on when we move those other amendments. I suppose what I am asking Mr Forwood is that we continue — —

Hon. BILL FORWOOD — I just want to deal with the word. I do not care how we deal with it.

Hon. D. K. DRUM — I would like to continue with your other aspects of this particular amendment and just leave that.

Hon. BILL FORWOOD — I do not have any amendments, Mr Drum; I am just dealing with some bits of the clause that I thought were incongruous.

The CHAIR — It is fantastic that you two are sorting out your differences across the table, but you will do it through the Chair in future.

Hon. BILL FORWOOD — Through the Chair, I am sorting out my differences.

The CHAIR — Minister, do you wish to comment on the question raised by Mr Forwood? It is not an amendment, it is a question.

Mr GAVIN JENNINGS — Yes I know, but in fact — —

Hon. BILL FORWOOD — Or do you want to wait until we get to clause 86?

Mr GAVIN JENNINGS — In fact the proposition does beg the question: where is the amendment? If in fact it was actually deemed to be — —

Hon. BILL FORWOOD — Do not invite me to get more amendments.

Hon. C. D. HIRSH — No, do not invite him.

Hon. BILL FORWOOD — Please do not invite me!

Mr GAVIN JENNINGS — I have an extremely provocative style, and obviously we have got to the threshold on day two. The word has actually been used in clause 86 as a catch-all expression to describe a field of three facilities and then a set of regimes that relate to admission and practices and procedures within those three facilities. It has been used just as a catch-all phrase. Otherwise I am taking that on the chin.

Hon. BILL FORWOOD — Fine, thank you.

The CHAIR — Can I propose that the substantive debate on this matter be dealt with under clause 3, which has been postponed?

Hon. BILL FORWOOD — I would prefer to deal with it under clause 86, when I foreshadow that I will move for the deletion of subclause (1).

Hon. D. K. DRUM — Chair, those amendments are already in place.

The CHAIR — Okay, Mr Drum.

Hon. BILL FORWOOD — If he has done it already, then I will be supporting him.

Ms MIKAKOS — It is his amendment 23.

The CHAIR — We will deal with that when we deal with clause 3, which presumably will be on Wednesday afternoon.

Hon. D. K. DRUM — There is the opportunity to have the discussion in relation to the word 'institution'. Because we have left clause 3 alone, which is the definitions clause, and while the argument starts with the definition of the phrase 'residential institution', we can overlook that aspect of the argument and simply go to the inclusion of the word 'institution' in this bill. We could have that argument and that would allow us to look at my amendments 22 to 25. We could still have a debate, maybe or maybe not.

The CHAIR — The test for the amendments Mr Drum has mentioned is his amendment 2.

Hon. D. K. DRUM — That is right.

The CHAIR — I think it would be better to have the substantive debate once when we deal with that clause. That would be my preference.

Hon. D. K. DRUM — However, I believe you could reverse your finding, Chair, and say that if we were to debate amendments 22 to 25 they would test my amendment 2.

The CHAIR — They have to be dealt with in the order in which they appear in the bill. We will deal with those when we deal with Mr Drum's amendment 2. Is there anything further on clause 6?

Clause agreed to.

Clause 7 postponed.

Clause 8

Hon. BILL FORWOOD — I move:

13. Clause 8, page 21, line 8, after "disability" insert "including services for children aged 6 years or less including but not restricted to early childhood intervention services".

This seeks to extend the role and functions of the secretary under paragraph (a), which states it is the role of the secretary to:

plan, develop, provide and fund … services, programs and initiatives for persons with a disability …

I am proposing to insert into that paragraph:

including services for children aged 6 years or less including but not restricted to early childhood intervention services.

I think it is important that we put into the bill specific mention of early intervention services. I had a look, and I am pretty sure the bill is intended to cover early childhood intervention, but I cannot recollect finding it anywhere in the bill. Is it there?

Mr GAVIN JENNINGS — No, it is not, because the intention of the bill is not to discriminate on the basis of age. The provisions of the bill apply to anybody who is deemed to have a disability, regardless of age.

Hon. BILL FORWOOD — Are you telling me that clause 8(1)(a) includes planning, developing and providing services for children under six years of age?

Mr GAVIN JENNINGS — Yes.

Hon. BILL FORWOOD — Is that not explicitly said anywhere in the bill?

Mr PARSONS — The bill does not give any lower age limit for disability. You do not need to say 'under six', because there is no lower age cut-off in the bill at all.

Hon. D. K. DRUM — Would the minister be able to help me with a specific issue? We are trying not to be too specific in the discussions we are having, but on the specific issue Mr Forwood has raised it is common knowledge that there is quite a large waiting list for early childhood intervention services. Where is it in the bill? I am sure it is there. Where is the provision in the bill that has the secretary monitoring and reporting back on waiting lists? Where are all those aspects referred to in the bill? Clearly the secretary is failing in his role to plan, develop, provide and fund the issues Mr Forwood is talking about.

Mr GAVIN JENNINGS — It is under clause 8(2)(f) on the following page.

Hon. D. K. DRUM — To monitor, evaluate and review disability services. Is the public made aware of those evaluations? Is the public made aware of those reviews? Is there a course of action that the secretary has to follow in relation to acting on those evaluations?

Mr GAVIN JENNINGS — I think the simple answer is that that information is used to guide the development of the program and the funding arrangements, to guide the advice that may come to the minister and to guide the effectiveness of the role the secretary plays.

Hon. D. K. DRUM — This is one of those issues we tend to face which in some ways is a bit of an oxymoron — that there is a waiting list for treatment by early childhood intervention. By the time they get their treatment they are no longer of early childhood age. Is the minister saying this monitoring and evaluation is an internal mechanism to help the department and the minister, or to help the secretary, get right this aspect that Mr Forwood has raised?

Mr GAVIN JENNINGS — Unless I am about to be informed that that is not the case, that is my understanding.

Hon. D. K. DRUM — With Mr Forwood's permission, is that something we need to tease out in this instance? I only raise this, Minister, because this aspect that Mr Forwood has raised quite clearly is not working at the minute. Is it that we need to do something more significant in the legislation so that future governments can say, 'Now it is working.'?

Mr GAVIN JENNINGS — If that is a proposition in support of the amendment, it is not necessarily a closed loop. I am just re-reading what the amendment suggests, if you can bear with me for a second. That is the reason for my confusion: we have actually jumped forward an amendment, have we not, in that argument?

Hon. BILL FORWOOD — We will get to paragraph (b) next.

Mr GAVIN JENNINGS — Yes, but we are currently discussing — —

The CHAIR — Amendment 13, clause 8, page 21.

Hon. BILL FORWOOD — It is 8(1)(a).

Mr GAVIN JENNINGS — The reason I sound a bit confused is that I thought Mr Drum's argument related to issues under amendment 14.

Hon. D. K. DRUM — I am sorry, Minister, I have not even read that.

Hon. BILL FORWOOD — I have not got that far yet.

Mr GAVIN JENNINGS — That is what I am saying. We might try to square off on 13 before we move to 14. I will not be asking Mr Drum to repeat what he has said when we get to 14, but we are on a different item, are we not?

Hon. D. K. DRUM — Through you, Chair, I have decided to pick up this particular issue due to the fact that I think it is common knowledge that we have failings in this specific area. Therefore I am asking what mechanisms the legislation has in place to ensure that when we understand there is such a thing as a waiting list for early intervention there are flow-on questions in relation to what mechanisms are in place to fix up those systematic failings. I would still like to talk about 13, Minister.

Hon. BILL FORWOOD — I accept that the minister has said that clause 8(1)(a) includes everybody, that we do not discriminate on the basis of age and that it therefore does include early childhood intervention services. While I would prefer to see it in, and I will move my amendment, I am not going to die in a ditch over it, because we have an assurance from the minister that it does include early childhood intervention services. So what we now know is that it is the role — preferably soon to be the responsibility — of the secretary to fund early childhood intervention services. Yes, I would prefer to have it in the bill, but if it is not in the bill I know I have got it because the minister has said it. Is he helping?

Mr GAVIN JENNINGS — Yes, he is helping. He is making sure that I do not mislead Mr Forwood or anybody who may have an interest in this question. To unpackage the amendment, it definitely does not distinguish on age. I repeat that for clarity: the bill has application to those under six and over six. The difficulty between us may be as to how it specifies early childhood intervention services that may fall outside the scope of the bill, so in terms of that phrase in the amendment being incorporated, that is not necessarily covered by the undertaking that I have given to Mr Forwood, if those early childhood intervention services are outside the scope of the bill.

Hon. D. K. DRUM — Is the minister talking about early childhood intervention that is privately funded? What specific issues is he talking about in that regard?

Mr GAVIN JENNINGS — Mr Rogers will clarify the line of demarcation.

Mr ROGERS — The particular clause that the minister referred to before talks about individuals not services, so it actually defines 'disability' in terms of the people and does not talk about an age under six being excluded, so under six is included. But within the definition of disability it includes developmental delay and also includes people who need ongoing support. At the moment in terms of its funding the disability services division does not

fund early intervention services or specialist children's services. They are funded through another mechanism. Those early intervention services or early childhood services would not be registered service providers under this bill; they would be caught through the Office for Children. Some of the children who use those services may well be caught by this bill because they meet the definition of disability. But the particular issue around early childhood services is that they are not registered disability providers.

Hon. D. K. DRUM — Through the Chair: for example, Mansfield autism school is funded by the federal government as a special school, a private school, so that is an instance where you are saying — —

The CHAIR — I just remind the committee that questions go through me to the minister.

Hon. D. K. DRUM — Yes, sorry — through the Chair to the minister, and then to Arthur.

Mr GAVIN JENNINGS — It is a bit like advocacy.

Mr ROGERS — Again there are two issues here at play. One is that the people who use that service may well be caught under the definition of 'disability' in the bill; and also in that particular case you mention, Mansfield autistic services are in fact funded by disability services and so would be considered a registered service provider.

It is also funded by the commonwealth and other bodies, but we fund it for specific services to provide services to people caught under the definition of the current acts and would continue to do that with this new act. It will provide services to people who have a disability under the definitions of this bill. We will register it as a provider under the new act, but it may well provide other services as well.

Hon. BILL FORWOOD — I understand exactly what you have said, but I cannot help but feel that it is just a touch messy. If we are taking the opportunity to rewrite an act to cover disability and we are bringing together the Intellectually Disabled Persons' Services Act and the Disability Services Act, it might be useful, if it is possible without dying in a ditch, just to write these other things that are peripheral or even integral but are outside the scope of the act either explicitly in or out, just so people know.

We know because of what we do that this bit belongs here and that bit belongs there, but Mrs Smith, newly arrived in the sector, does not understand which bits fall in the act and which do not. If we are trying to make this the groundbreaking legislation we all wish it to be, it would be useful if we could just tidy up some of the things like that.

Mr GAVIN JENNINGS — I actually do not think that conceptually we would contest that proposition; I do not think as a concept we would. As to how it creates a bit of difficulty for us in creating a piece of legislation and how it deals with programs and the way in which that legislation will be enacted, it comes into play with other pieces of legislation, and it comes into play with other programs.

I come from an approach to government and public policy that tries to remove those artificial barriers so in fact people can live their lives without necessarily hitting brick walls time and time again in relation to what program they are responsible for and what bill covers the quality of their lives. I accept the logic of the proposition.

The difficulty that comes into play is the crossover in issues that we are dealing with between rights — let us concentrate on the rights — and opportunities that should be afforded to people with disabilities that come within the services that are attached to this bill as distinct from services not attached to this bill, and what the interface is between them. That is clunky; we have to acknowledge it is not as seamless as we would like it to be.

Also in terms of the centre of gravity in the thinking that it impinges upon some of those mainstream services or services that are regulated through different mechanisms outside the scope of this bill, they have an obligation to open their doors, minds and responsibilities and engage with people with disabilities so that in fact they do not actually say, 'We are only going to deal with someone with a disability if we are getting money for it' or 'We are not going to assume responsibility ourselves'.

They are the sort of things that, whilst they may sound to be simple and elegant to deal with in a piece of legislation, are very complicated matters. From my perspective they are the major challenge confronted by the public sector and to how we relate to regulating activity in our lives. We have to take that substantive issue as part

of our continual improvement to integrate these pieces of legislation, administration and programs so that people when they live their lives, do not feel the legislation or programs have artificial barriers.

That is a challenge for us, but it is a long-term challenge rather than being something that even if we sit in committee for a very long time, we might resolve around this table.

Amendment negatived.

Hon. BILL FORWOOD — My amendment 14 is crucial to the integrity of the legislation we are dealing with. I move:

14. Clause 8, page 21, omit lines 9 to 12 and insert —

"( ) provide and fund programs which afford services, facilities, privileges, advantages and accommodations to a person with a disability in the most integrated setting appropriate to the needs of the individual;

( ) ensure that despite the existence of separate or different programs or activities provided in accordance with this Act, a disability service provider must not deny any person with a disability an opportunity to participate in programs or activities that are not separate or different;"

That would substitute all the words now in clause 8(1)(b), namely:

provide and fund programs and initiatives that facilitate persons with a disability exercising their rights and meeting their responsibilities in the community —

with far better words. I make the point at the outset that these words are not mine; they do in fact, as I know the minister — —

Mr GAVIN JENNINGS — They belong to all of us.

Hon. BILL FORWOOD — I know that the minister and his advisers well know the words are from the American act. While we of course wish to be groundbreaking, sometimes we are catching up. I think this is one of those circumstances where we should bite the bullet and admit our words are not as good as those the Americans are using. While there are many things we disagree with in America, these are words we agree with. They indicate absolutely explicitly what we expect of our legislation, and I so move their inclusion in the bill.

Mr GAVIN JENNINGS — Even though my briefing notes start by referring to the first amendment and second amendment, which are concepts near and dear to the American constitution, they do not actually tell me where this is lifted from. There was an intuitive connection to the first and second amendments. I think, despite the laudable intent of the amendment — I do not deny that at all — that the difficulty comes from overstretching or a confusion with the specific provisions within the bill. I have been confronted by this in my own piece of legislation, so I will just give that as an example.

I have been dealing with the heritage bill now for about two and a half years, which is a similar gestation period to this piece of legislation, and we have a whole range of provisions to protect places and objects of Aboriginal cultural heritage. A number of people have come to me and said, 'How can you narrow the definition of "heritage", which may include language, folklore, songs and dance?'. They have never put 'fire' to me, until recently!

I have grappled with this issue, because in fact it is quite a valid argument to say the scope of cultural heritage is perhaps broader than what I have catered for within the bill. My bill is almost the same as this one, probably two-thirds of its dimensions, but we have specific sanctions and programs that respond to the aspects of the definition that we have included within 'cultural heritage'.

My argument was that it would be disingenuous to have things broader in the general provisions of the bill that I cannot hang my hat on and say there is anything to respond to that in any tangible way. I think that by overreaching we can sometimes lead to false expectations or in fact can run counter to the specific provisions that we may be able to provide for within the bill.

Again, I reiterate that we do not have any difficulty with the laudable nature of the sentiment that is outlined in those amendments. I go back to where I started this contribution: they are fine. Whether they in fact overreach or

alternatively cannot be backed up by specific provisions or indeed may run counter to those specific provisions, we are uncomfortable about including them, regardless of how eloquently they may be expressed.

Hon. D. K. DRUM — Thank you, Minister. Again, we are continually faced with terminology that for our carers and their families and the people who are living at the coalface of this legislation is certainly a further watering down of what we currently have, or in this instance what we are proposing.

The wording used by Mr Forwood clearly states that the role of the secretary is to provide and fund programs that afford services, facilities, privileges and advantages to the person with a disability in the most integrated way possible to suit the needs of the individual. It is just clear and concise and does not offer fluffy words such as 'initiatives that facilitate'. 'Initiatives that facilitate' could be helpful, but in the extreme minuteness of that help. This is a further weakening of the secretary's role and responsibilities to provide the services, compared with what has been presented by Mr Forwood in the first part of his amendment.

Mr GAVIN JENNINGS — We think that, as a starting point, to just again have a substantial debate about the relative merits of those two elements of the amendment, we could deal with the first one. We think that the cumulative effect of clauses 8(1)(a), 8(1)(b) and a combination of other clauses such as 8(2)(i) actually cover the scope of the first part of the amendment. That is no. 1; that is what we would contest. In relation to no. 2 , when I re-read it I do not think it is quite as eloquent as Mr Forwood may have suggested.

Hon. BILL FORWOOD — It was the way I read it.

Mr GAVIN JENNINGS — Punctuation and emphasis carry the day sometimes, but I do not think that necessarily adds to it, and it certainly would not have added to my understanding if it had been inserted in the bill. I think maybe we should perhaps tease out a little what you are trying to get at and see whether we can accommodate it, because at this moment we are a little confused about the ultimate objective of that second part.

Hon. D. K. DRUM — Thank you, Minister, and thank you, Chair. But again, by the minister's own admission we have a situation where the government is saying, 'We have three lines here that we have been offered up as better' — that is the mover's opinion. We have three lines which cover what the minister is saying — he will go through two pages and will take a clause here and a clause there and another clause over the page — to effectively match what could be delivered to this legislation in three lines. I think we have the opportunity here to enhance the legislation by accepting what is currently working in another country with exactly the same problems that we have, and yet we are saying 'No, we will cover it with 8(1)(a), 8(1)(b) and 8(2)(i)'. It might even be 8(1)(d), or whatever — I don't know. Here is an opportunity to simply improve what we currently are putting forward.

Mr GAVIN JENNINGS — I have already suggested that we would prefer our approach to no. 1, and in fact I have invited Mr Forwood or any other member of the committee to discuss what is hoped to be achieved out of no. 2, to see how we can accommodate that and see what is the key element that we want to achieve, as distinct from the last phrase which I am not quite sure about.

Hon. BILL FORWOOD — What we are looking for is complete flexibility in the way that service providers are able to service:

> … fund … facilities, privileges, advantages and accommodations …

What we are not looking to do is to limit the capacity for a provider to stop opportunities to participate in specific programs, for example, that are separate or different or not separate or different. It is a matter of ensuring that the maximum amount of opportunities exist for everyone in and around. It is difficult to separate the two because what we are talking about is providing and funding:

> … programs which afford services, facilities, privileges, advantages and accommodations —

in the most appropriate settings. But as well as that we do not want to be in a position where the service provider can then deny someone an opportunity because of the first part of the clause. What we are trying to do is be expansive and then inclusive, rather than not inclusive, if you follow.

Mr GAVIN JENNINGS — I think so, but this relates to what we debated for some time earlier this morning, which is in fact the principal clause 5(3), which outlines what a disability service should do. We have actually outlined a number of items there and we teased out what the cumulative effect was of clause 5(3)(a), (b), (c), (d), (e) and (f) about the nature of inclusive, flexible, locally based services and how that might be implemented. In terms of the logic of it, I think that is the place those issues should be dealt with, and they have been dealt with there. I do not think inserting that within the provision that talks about the responsibility of the secretary makes much sense, given that the secretary has a responsibility under clause 8(1)(a) to do that.

Hon. BILL FORWOOD — I am very pleased to hear you say 'a responsibility' under clause 8(1)(a), as opposed to 'a role'.

Mr GAVIN JENNINGS — I am building!

Ms MIKAKOS — I share the minister's confusion about the second paragraph.

Mr GAVIN JENNINGS — No, I am not confused now!

Ms MIKAKOS — I want to draw attention to clause 49, which deals with — —

Hon. BILL FORWOOD — I want to draw attention to clause 51!

Ms MIKAKOS — It deals with a person's ability to seek services from a particular provider, and essentially as I understand it, there are appeal mechanisms if there is a refusal of service. Essentially there is an obligation there, as I understand it, for providers to provide a service, and that will encompass the range of needs and flexibility that is covered in other parts of the bill that the minister has already alluded to. It is right to say that if it is going to go in, it should perhaps go into another part of the bill. It does not seem to fit into clause 8.

Hon. D. K. DRUM — Ms Mikakos wanted to talk about clause 49. We have had that discussion, but we will leave that until later.

Amendment negatived.

Hon. BILL FORWOOD — I have a couple of inquiries about clause 8. At the top of page 22, clause 8(2)(d) states:

> to develop and publish criteria to enable priority of access to disability services to be determined in a fair manner …

Could you explain how one anticipates that might work?

Mr GAVIN JENNINGS — I accept Mr Parsons's recommendation that I ask Mr Rogers to answer that question!

Mr ROGERS — This is a new provision that does not exist in current legislation. Members of the committee have referred to support registers and other things and said that there is no access to services immediately when that is requested. The intent of this is that the fair manner is to be achieved by the secretary publishing criteria so that people will be able to see that how the secretary and the department set priorities for access to services is transparent, and because it will be published and there will be detailed criteria people will be able to see that they have been dealt with in an even manner across the state. The priority around the criteria for access will be administered in a consistent way across the state, and it will be publicly available to people.

Hon. BILL FORWOOD — We are dealing with an environment where there will never be enough resources to deal with the demand and what I take this to mean is: how will we allocate the funds?

Mr ROGERS — How individuals will be given a priority of access — the criteria for why some people will get a priority of access and some will not. That criteria will be published and by access to services it obviously follows that there will be funding provided for those supports and services.

Hon. BILL FORWOOD — Do we not at the moment have such criteria?

Mr ROGERS — There are operational criteria within the department. It is probably in some of the policies that are published, and it is probably across a range of different documents. They may not always apply to service providers that are not government services. The intent of this is to actually put it together into one document that is easily accessible to people so that they can understand across the state how priority of access is determined.

Hon. BILL FORWOOD — This bill is due to come into operation on 1 July 2007. Does that mean we are unlikely to see what the published criteria are before then, or is there going to be a consultation process? How is it going to work that the secretary will develop and publish the criteria?

Mr GAVIN JENNINGS — As a starting point, at the moment the secretary does not have a mandate to develop them, apart from the good idea to do so. Beyond that, that obligation will actually commence on 1 January 2007. Let us go back; let us rewind. It is 1 July 2006.

Hon. D. K. DRUM — Is it 2006 or 2007?

Mr GAVIN JENNINGS — I was not doing too badly the first time.

Hon. BILL FORWOOD — You had the right year!

Mr GAVIN JENNINGS — I am very pleased that it is going to be enacted and implemented. I would envisage that obviously there would be discussions with the sector and consideration within the department. Given that there is an obligation to publish, I am confident that it will be an engaging process that will lead to these criteria being developed and published — notwithstanding the date.

Hon. BILL FORWOOD — Thank you for that. I have just one last thing on this matter of the secretary. I would like to quickly revert to clause 8(1)(d), which says:

> subject to the general direction and control of the Minister …

I wonder whether or not it would be appropriate for us to say that such direction and control is to be adumbrated in the annual report of the agency. If ministers are going to give directions and control the department when the whole thing has been built around what the secretary will do, if we are going to have the minister exercising direction and control, then I think that the Parliament and the people of Victoria are entitled to have that listed. I can give you a raft of examples, particularly in the Financial Management Act, where directions given by particular ministers are published in the annual report. It is a great protection for the Parliament, the citizen and the minister that this be done. I would be looking for any case where directions and controls are exercised by the minister to the secretary so that we actually get to know about it.

Mr GAVIN JENNINGS — I can assure you that my instincts as a minister would be to have given an automatic answer to actually say that there is not going to be any way in the world that the day-to-day transactions between a minister and their department will be recorded and set for public scrutiny. I can assure you of that.

Ms MIKAKOS — It would be a pretty big annual report.

Mr GAVIN JENNINGS — The reason why this provision is in place is to make a clear link that the minister is responsible for the wellbeing, the functions and the success of the bill. That is not said in the bill, but that is in effect what the ministerial responsibility is about to the Parliament and the people of Victoria. This phrase relates to the connection between the secretary, who undertakes a number of administrative functions, and everything that flows by delegation or by administrative practice from the secretary and links it back to the authority of the minister.

The provision is in effect a standard provision to provide for recognition of that link between secretary, authority and the minister. It is more useful if you think of it in terms of the connection between a minister and a statutory body that may be separate to a department but may be created with a specific mandate that sometimes receives referrals or directions from ministers or requests to act in a certain way. In those instances when they have a life independent of the minister — statutory obligations independent of the minister — then it is totally appropriate that the transaction of business between the minister and that statutory authority be reported to Parliament.

Hon. BILL FORWOOD — Far be it from me to interfere in the rightful responsibilities and relationship between a minister and his or her secretary. Let me point out that what we are talking about is the administration of the act. The bill is explicit. It has a whole bunch of clauses that say, 'This will be done'. It is quite explicit in what it says. What we are now saying is, 'The bill is explicit and will be dealt with in this way, except that the minister can give some directions and give them control'. Does that mean therefore that the minister can say, 'I want you to' — for example — 'put more emphasis on this clause rather than that clause', or 'In a general direction, I think it is more important that, despite everything in the act, we actually go in this direction than that direction.'? What we are talking about is the minister having the capacity to direct the attention of the secretary and control the secretary in the way the act works — not the way the service is run and not the way the sector operates, but in the way the act is dealt with.

I get very nervous when I see black-letter law being interpreted by ministers or others without there being a reporting mechanism. It seems to me that if the minister decides that there is something in the act that he or she wishes to direct or control, then I would like to know that the minister has directed or controlled in section X of the act — 'We will do this' or 'My interpretation of section X of the act is this or that'. I am not trying to be pedantic about this, but I am concerned when we see the administration of acts of Parliament — we already have the acts interpretation act saying how acts will be interpreted. I am not in favour of ministers having this capacity, as you might have gathered.

Mr GAVIN JENNINGS — I do not think that that is the most honest contribution you have made to the committee stage, Mr Forwood, because in fact we know full well that every day and in every practice ministers and the people who work within the scope of any piece of legislation have to act in accordance with their understanding, their interpretation and their priorities which are created within that legislative framework.

The problem that Mr Forwood and others may have is about when they act in a way that can be identified as being inconsistent with this or any other act or any other aspect of their responsibility in public life, as accountable to the Parliament and the people. If any action can be identified as inconsistent, then you have an issue. If you cannot identify any action as inconsistent, you do not have an issue.

Hon. D. K. DRUM — Before Mr Forwood went back to subclause 8(1)(d) the committee was addressing subclauses 8(2)(d) and (e) and there was discussion with the minister through his adviser. I would like to pick up those subclauses, which establish a set of criteria to enable a priority of accessing of services to be determined in a fair manner and allow for allocation of resources under that determination. Does the minister anticipate that the provisions will abolish the current system under which people who in their minds qualify for services are not able to receive those services?

Does the minister anticipate that we will get to a situation where clearly identified criteria will be published, people will be able to say, 'Yes, we qualify — we meet the criteria; therefore we must receive the services' or that we will still have the situation where a range of people who actually qualify under the set of criteria that will be established and have a right to receive those services will be placed back on a waiting list, where they are currently?

Mr GAVIN JENNINGS — Referring to Mr Forwood's black-letter law, in relation to this provision the black-letter law is what is written there. In fact the criteria is to enable priority of access to a disability service to be determined in a fair manner. We hope that in complying with that obligation under the act there will as much as possible be minimum waiting and dislocation and maximum effectiveness of the service. The limit is as described in the clause.

Clause agreed to.

Clauses 9 to 11

Hon. D. K. DRUM — I was under the impression that some amendments to clause 11 were to be moved. In Mr Forwood's absence I would be loath to allow clause 11 to be voted on.

Hon. C. D. HIRSH — There are no amendments to clause 11 on either Mr Drum's or Mr Forwood's list.

Hon. D. K. DRUM — The committee will be coming back to consider a range of clauses; is that right?

The CLERK — Consideration of some clauses has been postponed already. At the moment we are not aware of any specific amendments.

The CHAIR — Does Mr Drum know if he has proposed amendments to clause 11 in anything he has submitted this morning?

Hon. D. K. DRUM — I do not have any specific amendments. I was under the impression that Mr Forwood was proposing some amendments to clause 11 on page 23, but I am unsure.

Hon. BILL FORWOOD — I have, have I not?

The CHAIR — It is not on this list. Your next proposed amendment is to clause 12, Mr Forwood.

Hon. BILL FORWOOD — Yes, it is to clause 12.

Clauses agreed to.

Clause 12

Hon. BILL FORWOOD — I move:

15. Clause 12, page 25, after line 15 insert —

"( ) In performing its functions the Victorian Disability Advisory Council must act independently.".

A general concern raised with me is that the Victorian Disability Advisory Council will be appointed by and report to and deal with the minister. It would greatly strengthen its arm in dealing with the minister if it were to be given the right to operate independently. In the end, of course, the minister has the capacity to sack people and appoint new people, as is always the way. If the insertion were accepted, it would be a great comfort to many people when they are looking at the various functions of providing advice about various matters, communicating, raising community awareness, consulting and monitoring implementation.

We can never go too far in ensuring that, no matter how their members are appointed, bodies established by acts of Parliament act independently. I think that the minister would be delighted to know that the 8 to 14 people appointed to the Victorian Disability Advisory Council are acting independently in everything they do, so I look forward to that insertion being agreed to.

Does the committee want to take amendment 16 as well, or deal with just amendment 15? It goes to the same issue.

The CHAIR — And Mr Forwood's amendment 17 as well?

Hon. BILL FORWOOD — Yes. They all deal with the same issue.

The CHAIR — The committee will consider Mr Forwood's amendments 15, 16 and 17 as a group.

Hon. BILL FORWOOD — I move:

16. Clause 12, page 25, line 17, omit "Minister" and insert "Parliament".

17. Clause 12, page 25, after line 18 insert —

"( ) The report under sub-section (2) must specifically report on the advice provided on the matters specified in sub-section (1)(a)(iii).".

I have dealt with amendment 15 about acting independently. The second amendment states that the disability advisory council must report to the Parliament instead of to the minister, and I think that is a very strong and sensible recommendation. We do not want the disability advisory council to be a secret society established by the minister, doing what the minister tells it and reporting to the minister. It needs to be open, transparent and accountable. Therefore I think, firstly, it should be empowered to act independently, and secondly, that it should report to the Parliament.

The third of my amendments is that the report under subsection (2), which is any matter after line 18 — —

Hon. C. D. HIRSH — Clause 12(1)(a)(iii) states:

any matter relating to disability referred to the Victorian Disability Advisory Council by the Minister …

Hon. BILL FORWOOD — By the minister; that means that the report must specifically report on those issues. So if something is sent by the minister to the disability advisory council the report to the Parliament must say, 'The minister sent us this, and this is what we have done', and so the Parliament gets to know about it. We are great supporters of the concept of the Victorian Disability Advisory Council. We think it is a really strong and good idea that will be very useful for the sector. We just want to see it independent, reporting to Parliament and reporting specifically on those issues that the minister asks it to.

Mr GAVIN JENNINGS — What does the minister ask it to do in accordance with the bill? When you answer that question it is pretty impossible to see that it should be acting in a way that is independent of the minister because in fact its primary functions are to provide the minister with timely advice, vigorous advice and advice that is well engaged in the community and understanding of the various vantage points of stakeholders and community life, but to then come back and give the minister direction about the way in which the minister will administer the act in coordination with the secretary and the administrative arrangements within the act. That is its primary purpose.

In terms of an independent life, the independent appraisals of accountability that apply in the disability sector, there are a number of provisions that we are going to move on to after this one that incorporate the scrutiny and accountability mechanisms that apply within the sector. They range from the role that the Victorian Civil and Administrative Tribunal may play right through to the role that senior practitioners play, the roles that the Disability Services Board plays and the role that the disability services commissioner himself will play. So there are a number of checks and balances within the regime outlined in the bill. In fact, it is quite an elaborate one looking at it from outside — a very elaborate but coordinated yet quite detailed and comprehensive set of accountability mechanisms. In fact there are a quite a lot of them for somebody who is reflecting upon the structure of the bill. Many of those activities — obviously in the day-to-day practice — review the impact on quality of life, and have specific powers to deal with them independently of the minister. Taken as a suite of measures I think when you consider the role of the council in shining light solely on the council, the imperative for it to act independently does not bear up in the light of that range of accountability mechanisms and does not hold up in relation to what its primary function is, which is to advise the minister.

Hon. D. K. DRUM — It is which comes first. I do not want to speak for Mr Forwood, but we are looking at the very crux of your statement that the primary function of the advisory council is to report to the minister. We would like to change that so the primary function of the advisory council would not be to report to the minister but to the Parliament, and then it would be up to the minister to issue a report on whether he was going to acknowledge that response in the same way that the Auditor-General's office reports to the Parliament. It would be then up to the relevant minister to prepare a response to those reports. I would like to target the discussion right back there.

Mr GAVIN JENNINGS — On various occasions people in the committee have referred to recurring themes, so I am going to add to that list. One of the recurring themes that we have been subjected to has been taking the minister out of taking responsibility, receiving advice and making directions and making sure there is compliance with the legislation. Let us go back to first principles. Bills form the primary responsibility of ministers to the Parliament. That is what they are primarily responsible for. This mechanism we are talking about is a mechanism to ensure the minister acts wisely on the basis of advice that is well connected, respectful and representative of the community that is covered by the scope of the bill.

For the first time the minister is instituting a mechanism within a statute which provides for the advice. I think it is a sensible clause. I have an advisory council in my portfolio, but it does not have statutory responsibilities; it is not set up by statute. In fact quite often it does a whole range of things independent of me, yet it does not seek to act independently of me. It does not seek to have statutory cover. In fact it is well engaged with senior members of our community and provides advice to me on a regular basis.

There seems to be a great degree of comfort between the advisory council and me. This council could have been established without statute. In fact, it has actually been put into statute as a way of recognising its importance in terms of the decision-making process. As to whether it requires an independent life, I just do not think that bears fruit.

Hon. BILL FORWOOD — I wish to disagree with the minister. If you look at the functions of the so-called advisory council, you see that subclause (1)(a) of clause 12 refers to providing the advice we have just talked about, but paragraph (b) says:

> effectively communicate with persons …

Paragraph (c) says:

> raise community awareness …

Paragraph (d) says:

> consult and work with other disability advisory councils or bodies whether at a national, state or local government level …

Paragraph (e) says:

> monitor …

All those issues require some independence. In particular I would ask: what happens if we find circumstances where the Victorian Disability Advisory Council decides it wishes to communicate with persons with a disability about an issue which gets, to put it politely, up the minister's nostrils? One would hope there was a requirement that it act independently. One would hope there was a requirement that it had the capacity to report to the Parliament in the interests of protecting its responsibilities under the bill in relation to clause 12(1)(b), (c), (d) and (e), if not under clause 12(1)(a), on providing advice to the minister. So I think there is a very strong argument that we should have the capacity for the perhaps badly named advisory council to be independent at least when dealing with paragraphs (b), (c), (d) and (e) and in reporting to the Parliament on what it does and how it does it.

Mr GAVIN JENNINGS — I can assure you that we are not going to agree on this issue. I can absolutely tell you that we are not going to agree on this issue. In terms of the accountability mechanisms and reporting mechanisms that are available to people with grievances, whether they go up nostrils or they do not, there are other mechanisms and other opportunities for that to occur in other provisions of the bill — and the nature of the council is not the place for that transaction to take place. In fact, to be perfectly honest, a decent council which is doing its job in accordance with what you have said will from time to time have issues and will have discussions and conversations with ministers that, if they do not get up their nostrils, will be extremely vexing and difficult to deal with. Because that is the nature of the world we are living in and the nature of the advice that they will be required to give to ministers.

What we are looking for, and I think all ministers would actually want it, is frank and fearless advice coming from such an advisory council. All of them would actually want it to be well connected, and from time to time that would mean that you would embark upon robust discussions, but you would do it in-house within the relationship between the minister and their advisory council.

Hon. BILL FORWOOD — My final comment is that, if the statutory responsibility of the advisory council is to raise community awareness of the rights of people and of the role of government, the business sector and the community in promoting those rights, why would that not be reported to the Parliament? Why would the statutory role given to this council be only reported on to the minister? Why would it not be reported on to the Parliament?

Ms MIKAKOS — I think Mr Forwood needs to go back to the words at the start of subclause (1)(a), which are:

> provide advice to the Minister in respect of —

those matters. Essentially, the way that I understand the advisory council will work is that it will be providing advice to the minister about how best the government can communicate issues about the rights of people with a disability — —

Hon. BILL FORWOOD — No, that is wrong.

Ms MIKAKOS — If I could finish Mr Forwood, it will do that rather than the advisory committee actually going out there and raising awareness of its own accord.

Hon. BILL FORWOOD — That is factually wrong. Read it! Paragraph (a) deals with subparagraphs (i), (ii) and (iii). Paragraph (b) is separate from paragraph (a).

Ms MIKAKOS — Mr Forwood, you are entitled to your opinion, and I am able to express my own opinion without being interrupted.

Hon. D. K. DRUM — Ms Mikakos is saying that paragraph (c) comes under paragraph (a). It quite clearly does not.

Hon. BILL FORWOOD — How can paragraph (d) come under paragraph (a)?

Hon. D. K. DRUM — Subparagraphs (i), (ii) and (iii) come under paragraph (a), so the functions of the council are to provide advice to the minister in respect of subparagraphs (i), (ii) and (iii). Then we go back to subclause (1), which states:

> The functions of the Victorian Disability Advisory Council are to —
>
> …
>
> (b) effectively communicate …
>
> (c) raise community awareness …
>
> (d) consult … with other disability advisory councils …

So that is separate. I concur with Mr Forwood. What confidence can the community have that its concerns are being raised at all if the dialogue between the advisory council and the minister is not reported or published in any forum whatsoever?

Hon. C. D. HIRSH — Minister, in the past these sorts of councils with very similar sets of responsibilities were always called ministerial advisory councils. In that way their functions were always extremely clear. This is of course called the Victorian Disability Advisory Council, which might be why it is being confused with something other than what it is.

Mr GAVIN JENNINGS — I think that is a fair point. In fact I would like to convey to the committee that if I gave the impression through my contribution that I saw the logic of paragraphs (a), (b), (c), (d) and (e) of clause 12(1) in a way that led Ms Mikakos to her conclusion, I apologise to her and to the rest of the committee. I clearly differentiate between paragraphs (a), (b), (c), (d) et cetera. They are clearly stand-alone provisions, I think. Not withstanding that, I have great confidence that those functions can be undertaken in a way that enables the council to satisfy the statutory expectations of that work by being, in effect, a ministerial advisory council, but having the opportunity to present an annual report. I certainly know that in my instance my advisory council provides an annual report.

It is not statutorily obliged to, but it does. I certainly know that there has been no vetting from me in relation to its publication.

I think in terms of the Victorian Disability Advisory Council's reporting activities and its concerns, I would envisage that that will follow the usual practice. I do not share what might be a concern — that this is a mechanism to bury engagement with the community in the sector. I actually think it is done in the spirit of being inclusive and engaging and listening to people and sharing information.

Hon. D. K. DRUM — Can I just ask the minister how this differs from a ministerial advisory council, because we have ministerial advisory councils for the aged and you have ministerial advisory councils for your indigenous affairs. They are ministerial advisory councils. They are put together by the minister. Is this different? Who puts this together?

Hon. C. D. HIRSH — The minister puts it together.

Mr GAVIN JENNINGS — There is a slight variation in terms of a difference with my advisory councils, which are not there by statute. In my case they are not there on the basis of achieving national consistency with agreements as this one is. With this one there is a national coordinated approach under the commonwealth-state disability agreement to require a similar council to exist in all jurisdictions, so that is the area where there is a foundation difference in terms of its title and perhaps one or two of its functions that may make it slightly different from a normal ministerial council. But in many ways, going back to Ms Hirsh's proposition, in practice it functions as a ministerial advisory council with the clear expectation that it will be an active interface between the minister and the community.

Amendments negatived; clause agreed to; clause 13 agreed to.

Clause 14

Hon. BILL FORWOOD — I move:

18. Clause 14, omit sub-clauses (2) to (7) and insert —

"( ) The person appointed as the Health Services Commissioner under section 5 of the Health Services (Conciliation and Review) Act 1987 is the Disability Services Commissioner under this Act.".

Let me at the outset state that we are very pleased that the government has decided that it needs this sort of responsibility of having someone such as a disability services commissioner with the functions of investigating, reviewing and providing advice et cetera. Our concern is about its appointment, which does seem to be far more restrictive than is actually necessary. So in trying to think about how we can have the most independent person doing the functions that are outlined in the bill, I decided given the shortness of the time available to me — and despite the fact that I know that people will maintain to me that the health services commissioner should not be dealing with disability issues because disability is not a health issue — that the easiest thing, rather than seeking to rewrite the whole section, was just to say, 'Let us have the person from time to time acting and appointed as the health services commissioner doing this task'. This was not because they are the health services commissioner but because they are independently appointed.

I think another way of doing it — I do not have the act with me — would have been to say that the person acting as the disability services commissioner shall be appointed in the manner of appointment of the health services commissioner. My understanding is that they are markedly different mechanisms. I stand to be corrected if I am wrong, but my understanding is that they are very different. What we are looking for is for the disability services commissioner to have the complete degree of independence that is provided statutorily to the health services commissioner.

The CHAIR — Mr Forwood, can we deal with amendments 18 and 19 together? No, they are on different clauses.

Hon. BILL FORWOOD — It is the principle that I am after.

The CHAIR — So amendment 18 will be a test of 19?

Hon. BILL FORWOOD — Yes.

Hon. C. D. HIRSH — It is. It is part of the same thing.

Hon. BILL FORWOOD — I am happy to do them all at once, but if you are looking for any indication of the role and activity of the health services commissioner, look at clause 16 (m), which says:

subject to the approval of the Minister, to initiate inquiries into …

If we want to have someone who is independent, then they ought to be able to do what they ought to be able to do without being subject to the minister.

The CHAIR — So are you happy to regard both amendments 19 and 20 as being tested by — —

Hon. BILL FORWOOD — I would take amendments 18, 19 and 20 — —

The CHAIR — I cannot take them together.

Hon. BILL FORWOOD — All right, let us take 18 and 19, under clauses 14 and 15.

The CLERK — Amendment 18 tests 19 and 20.

Hon. C. D. HIRSH — It does.

Hon. BILL FORWOOD — Well, no it does not; 18 tests 19, but I want 20 separate.

The CHAIR — Right, that is fine. Minister, I am sorry about the process!

Hon. BILL FORWOOD — I must say, Minister, that I am sorry I did not bring with me, as I should have, a copy of the Health Services (Conciliation and Review) Act 1987 from which I would be able to read section 5 to you to indicate the difference between the mechanism used for the appointment of the disability services commissioner and the method that is used under that act for the appointment of the health services commissioner. That is because I am slack!

Mr GAVIN JENNINGS — I am very disappointed about that, because I was led to believe there were great similarities between the processes. I am not quite sure how to make best use of this technology I have been provided with. Let us scroll through it. What I am doing at the moment, for the sake of those who are recording this and those who may read this is — thanks to the wonderful nature of wireless technology — downloading the relevant act, and I have just learnt how to scroll through it to enable me to make a comparison between these provisions and the provisions in the other act. First of all there is a headline statement; it says the disability services commissioner is to be appointed by Governor in Council, similar to what we have in this bill.

(3) The Commissioner is to hold office for a term, not exceeding 5 years —

and in our bill we say the commissioner is to hold office for a term not exceeding five years —

specified in the instrument of his or her appointment, but is eligible for reappointment.

That is exactly the same.

(4) The Governor in Council may specify other terms and conditions of appointment …

That clause is exactly the same.

(5) The Commissioner is entitled to receive any remuneration or allowances …

That is exactly the same. The next summation of this is that the relative provisions under clauses 14(1)(2)(3)(4) and (5) are exactly the same as the provisions that cover the health services commissioner under a similar act.

The CHAIR — Mr Forwood, I seek clarification from you. Your proposed amendment 18 seems to me to suggest that the disability services commissioner will in fact be the health services commissioner.

Hon. BILL FORWOOD — I suspect that I have made a fundamental error, and that is that I thought I had discovered, but obviously I did not, that the health services commissioner had been appointed in a different way than the disability services commissioner and that had provided them with more independence. What I was at all times trying to do was to establish the independence of the disability services commissioner, but I think the minister is right in indicating that there is no difference in the way they are appointed. It would be pointless for me to proceed with either of my amendments 18 or 19, because I think the minister is right in indicating that the methods of appointment are identical. So with apologies for wasting the time of the committee, and thanking the minister for his correction of my error — —

Mr GAVIN JENNINGS — That is extremely civilised. Everyone will want one of these now. I will not give the brand name.

Amendments withdrawn by leave.

The CHAIR — We have 4 minutes, because I want to close the meeting at 1.00 p.m. Do we have time to deal with your amendment 20, Mr Forwood? While you are considering that, I will put the question that clause 14 stand part of the bill.

Clause agreed to; clause 15 agreed to.

Clause 16

Hon. BILL FORWOOD — I move:

20. Clause 16, page 30, line 1, omit "subject to the approval of the Minister,".

My amendment 20 seeks to omit the words 'subject to the approval of the Minister' on page 30:

(m) 'subject to the approval of the Minister, to initiate inquiries into —

(i) matters referred by the Disability Services Board …

I think the disability services commissioner should have the capacity to do its own inquiries into such matters.

The CHAIR — You want to remove the words 'subject to the approval of the Minister' in relation to subclause (m)?

Hon. BILL FORWOOD — Yes, in relation to subclause (m).

Mr GAVIN JENNINGS — Mr Forwood, I am very sorry about this, but I am about to ask for the technology back.

Hon. BILL FORWOOD — I have the act here.

Mr GAVIN JENNINGS — People are rushing to advise me that I have it in front of me. Yes, I do have it in front of me. The provisions for the disability services commissioner in the model provide exactly the same powers as those of the health services commissioner, which in a previous amendment you were seeking to actually bring us into line with. In this provision we are exactly in line with the health services commissioner in relation to those actions being subject to the approval of the minister.

Hon. BILL FORWOOD — I am very sorry I have wasted my time in going down a route that has been so unproductive, but I do not resile from my desire to improve the bill in enabling the disability services commissioner to initiate their own inquiries into matters referred by the Disability Services Board and broader issues.

The CHAIR — Mr Forwood, do you wish to add further to it?

Hon. BILL FORWOOD — No.

The CHAIR — I suspect, Mr Forwood, that you are going to bring on a private member's bill to amend the Health Services (Conciliation and Review) Act as well, then, in proceeding with this amendment.

Hon. D. K. DRUM — He was not thinking about it, but now he will.

Amendment negatived; clause agreed to.

The CHAIR — Given the time being exactly 1.00 p.m., which was our proposed closing time, I propose that we conclude our proceedings today. I thank the minister, his advisers, committee members and interested members of the public for again attending. The next meeting will be at 1.00 p.m. next Wednesday, 19 April.

Hon. D. K. DRUM — Can I ask the chair if the Minister for Community Services has planned to make herself available at any stage of this committee hearing?

The CHAIR — No.

Committee adjourned 1.01 p.m.

Wednesday, 19 April 2006

DISABILITY BILL

The CHAIR — Ladies and gentlemen, I will declare open this meeting of the Legislation Committee and the public proceedings on the Disability Bill.

Before commencing I would like to make the following statement: this public meeting of the Legislation Committee is a proceeding of the Legislative Council and therefore enjoys the same powers and immunities and warrants the same respect that is enjoyed by the house. The sessional orders governing the operation of the committee require the committee to consider a bill in detail in the same order that applies to the consideration of a bill in the committee of the whole Council. In relation to a question on a clause or a proposed amendment to a clause, all questions will be decided by a majority of committee members present. The Chair has a deliberative vote, and in the case of an equality of votes, will give a casting vote.

The proceedings are being recorded by Hansard. Members of the committee, the minister and any witnesses accompanying the minister will have an opportunity to request corrections to the proof of *Hansard*.

I welcome the minister representing the Minister for Community Services, Mr Gavin Jennings, and I also welcome his advisers.

There are a couple of points on which I would like to advise the committee: Mr Forwood has requested that a casual staff member sit behind him to reduce the need for a mountain of handwritten notes coming from the gallery, and after consultations with the clerks, unless the committee has an objection, I have said that I am happy with that.

I also wish to remind the committee that today is our last public hearing for the Disability Bill. We are due to finish at 4.00 p.m., and given that we have no other allocated time for the committee to consider this bill, and on Friday we will be considering the Education and Training Reform Bill, I remind all committee members of that time constraint.

Are there any apologies?

Hon. BILL FORWOOD — I have an apology from Mr Rich-Phillips.

The CHAIR — That is noted.

At the request of a couple of committee members, in order to meet our time obligations of completing this bill by 4.00 p.m. today, there has been a suggestion that we have a short adjournment. Are there any objections to that?

On that request, I propose to suspend the committee meeting for about 10 minutes.

Sitting suspended 1.11 p.m. until 1.33 p.m.

Clauses 17 to 250 postponed.

Further discussion of postponed clause 3 and Mr Drum's amendment:

1. Clause 3, page 2, after line 12 insert —

   '"**advocate**" means any individual who acts to intercede or mediates on behalf of a person with a disability and includes a family member, a friend or the Public Advocate;'.

The CHAIR — We will now deal with the 7 to 10 proposed amendments in order as agreed by members of the committee. Mr Drum, you have previously moved an amendment to clause 3, defining the word 'advocate'. The amendment you have circulated to the committee today is different, so can you first withdraw the previous amendment?

Hon. D. K. DRUM — Thanks, Chair. I wish to seek leave to withdraw my original amendment in relation to the word 'advocate' and to replace it with the new amendment that has been circulated.

Amendment withdrawn by leave.

Hon. D. K. DRUM — Thank you, Chair. I move:

1. Clause 3, page 2, after line 12 insert —

'"advocate" means a person who —

(a) primarily represents the interests of a person with a disability in a way consistent with the expressed wishes of the person with a disability; or

(b) who acts in the best interests of the person with a disability where he or she is unable to express his or her wishes, in order to assist the person with a disability to exercise control over his or her life;'.

This is a definition of the word 'advocate' that has been taken out of the commonwealth state/territory disability agreement of 2003 and also the national standards for disability services. We believe it is more comprehensive. It refers to an advocate as primarily representing:

the interests of a person with a disability in a way consistent with the expressed wishes of the person with a disability; or

…who acts in the best interests of the person with a disability where he or she is unable to express his or her wishes, in order to assist the person with a disability to exercise control over his or her life …

We have spoken earlier in this committee about the over 160 000 people who are not able to speak and act on their own behalf, and we think that this more descriptive terminology of an advocate gives us a more comfortable feel in relation to who it is that is going to have control and who it is that is going to be looking after our people with disabilities — for that very large portion of the group who are unable to speak for themselves.

Hon. BILL FORWOOD — Just briefly, we support this amendment. As Mr Drum said, it is included in the national standards for disability services, and of course it is an eligible service under the current CSTDA. For those reasons, we believe the bill would be enhanced by its inclusion.

Mr GAVIN JENNINGS — As I indicated to the committee the other day when this issue was discussed while considering the previous amendment moved by Mr Drum, our concern about this falls into two categories. Firstly, the reason the word 'advocate' does not appear in the definition is because we believe it has a well-understood and well-recognised meaning in common usage. Secondly, in the context in which the word 'advocate' appears in the bill it is an open definition and can incorporate people who could easily fit under this definition, but could actually be a broader category of people than might be defined by this definition.

So it is a combination of, firstly, common usage, and secondly and perhaps more importantly, the fact that this definition may limit more than enable a broader scope of people who act as advocates on behalf of a person with a disability.

Hon. BILL FORWOOD — I understand where you are coming from, Minister, but I wonder if there is such a widespread acceptance of the common usage of the word 'advocate' that it does not need a definition in a specific piece of legislation such as this. In some places 'advocate' means a lawyer. I would have thought that there is a lot to be gained and very little to give away, even in terms of the hierarchy you talked about last week, by including this definition. I am not going to belabour it, but what do you think 'advocate' means in these circumstances?

Mr GAVIN JENNINGS — I would have thought the definition in paragraph (b) invites dispute about who acts in the best interests. So do we, after inserting such a definition, then have to go back subsequently and ask, 'How do you determine who acts in the best interests?' Do we then create a hierarchy? Do you actually say that lawyers trump family or family trumps lawyers? They are the types of problems that we might have, which I am sure is an unintended consequence of the amendment, but a consequence nonetheless that we have to at least consider and account for.

The word 'advocate' appears very rarely in the bill, and only in the specific context of specific provisions. For instance, in clauses 7(4)(a) and 20(3)(c) there are two occasions where we have identified that the word 'advocate' is contained in the bill. In both of those provisions we are comfortable with the notion that the broadest definition of

'advocate' should apply and be able to act in accordance with those provisions, so we would be worried about limiting those people who might be advocates through the application of the definition.

Amendment negatived.

The CHAIR — The next amendment is in your name, Mr Forwood — your amendment 3 to clause 3 on page 4.

Hon. C. D. HIRSH — Are these new or are they the original ones?

Hon. D. K. DRUM — These are part of the original.

The CHAIR — I apologise. I did not pick up that your next proposed amendment, Mr Drum, is ahead of that. So it is your proposed amendment 2 to clause 3 on page 2.

Hon. D. K. DRUM — Thank you, Chair. I move:

2. Clause 3, page 2, after line 26 insert —

'"**carer**" means a person such as a family member, friend or neighbour, who has been identified as providing regular and sustained care and assistance to the person requiring support;'.

We would like to think that this definition comes out of the commonwealth state/territory disability agreement and the national disabilities standards, and therefore should be included.

This type of definition currently exists in Western Australia in similar legislation. In South Australia they have similar legislation that uses this definition. The ACT, Queensland and Tasmania all use this exact definition for 'carer' in their disability legislation, yet in Victoria we do not have even the word or a definition of it. It is quite astonishing that we are having this debate again and that we can have this bill with its intent but we do not have this definition for the thousands of Victorians who fall under the classification of carer.

Hon. BILL FORWOOD — We had this discussion at length last week, and my position has not changed. Given the contribution that carers make to the system, it seems very odd to me that we do not have carers up in lights as well. So in those circumstances I fully support Mr Drum's amendment, which would define it and would therefore provide some clarity as well. Given that every other jurisdiction has got a definition of 'carers', I would be interested to know why the government decided that Victoria would not.

Mr GAVIN JENNINGS — Presumably you want me to respond.

The CHAIR — Thank you, Minister.

Mr GAVIN JENNINGS — Last week we had a bit of a circular debate in this committee about whether we incorporate definitions of 'family carer' and 'primary carer', and when it boiled down to it the real reason they needed to be defined was because they were part of the subsequent amendments Mr Drum had proposed to insert in the bill and which were subsequently defeated. At the moment we are confronted with a bill that does not, as I am advised — and I would be happy to be proven incorrect if I am wrong. I am advised that the word 'carer' does not appear in the bill, and on that basis the definition would not have any application within any provision of the bill.

Hon. BILL FORWOOD — I thought we put it in the principles.

Mr GAVIN JENNINGS — I do not think we have.

The CHAIR — Mr Forwood, do you have a question?

Hon. BILL FORWOOD — We are proposing a register of carers, and therefore there would be a mention of carers. We are also proposing that there be a principle that does include carers, and we think that you cannot have a Disability Bill without acknowledging the role of carers. After we have finished with it, there will be at least two occasions where the word 'carer' appears — probably more.

Mr GAVIN JENNINGS — I just drew to the attention of the committee — and you would know that I did it in a way that invites this analysis of the relevance of that concept — that the definition would only have relevance if in fact there were amendments to the bill before us.

Hon. D. K. DRUM — Minister, I also share that same fear, but without reading through the entire bill I could not be sure — a bit like 'families'. I did not think 'families' was in the bill at all, but I was proven wrong; there were six or seven instances where the word 'family' was put in. Does the minister not think it somewhat strange that we can have a 240-page Disability Bill without the word 'carer' being mentioned once?

Mr GAVIN JENNINGS — In the realm of things I have to deal with, I do not find anything strange these days.

Hon. D. K. DRUM — That was a very straightforward question, Minister. I find it more than strange; I find it absolutely and totally beyond belief that we can have people in charge of the disability sector prepare this bill and not use the word 'carer' once — absolutely beyond belief!

The CHAIR — Minister, do you wish to comment?

Mr GAVIN JENNINGS — As Mr Rogers is reminding me, there are any number of instances within the bill where a variety of phrases and terms are used to cover either members of the family, significant others, advocates or guardians — a whole range of words are used in the bill. Certainly in the breadth and scope of our understanding of the roles they play in the lives of people with disabilities, they play caring roles each and every day, and that is not acknowledged or ignored within the bill; it is just that the word that we are currently debating is not in the bill as it stands.

Hon. BILL FORWOOD — I would have thought, Minister, if those other words appear you should have no objection to the word 'carer' being added to them.

Mr GAVIN JENNINGS — At this point in time I am not able to agree that this definition be added to the bill.

Hon. D. K. DRUM — Minister, in light of the fact that we are proposing a new principle in subclause 5(6) on page 16 to recognise the role of carers, if that were successful would you then feel it appropriate if we were to then put in the definition of 'carer' as is listed? Would you acknowledge that the definition of carer that we have put forward is an accurate definition?

Mr GAVIN JENNINGS — Let us leave that discussion to when such a clause is adopted. I did not argue about what I think of it in terms of just the use of plain English. Every time I see the phrase 'such as a' I think to myself: how useful is such a definition?

Hon. BILL FORWOOD — My understanding of the way we are proceeding at the moment, Chair, is that we are trying to test, once-off, each of these issues. So if we are dealing with the issue of carers, then surely we should be now dealing also with the suggestion that we have a register of carers and why we want to have a register of carers — because we do not want to come back to it, do we? Are we not dealing with all the carers issues now?

The CHAIR — Mr Forwood, the procedure for the inclusion of new clauses is that they come at the end of consideration of the bill. Mr Drum has not indicated to me that he wishes to move that. I have been given seven things that I am happy to entertain, for the benefit of — —

Hon. BILL FORWOOD — I do not want to come back to it later.

The CHAIR — I am happy, if Mr Drum wants, to entertain the inclusion of that in this discussion and treat it as a test.

Hon. BILL FORWOOD — Just treat it as a test.

Hon. D. K. DRUM — I am happy to treat this as a test for — Mr Forwood?

Hon. BILL FORWOOD — It is a new clause to be inserted after clause 48, which relates to 'Register of carers'.

The CHAIR — It is your proposed amendment 177, Mr Drum.

Hon. BILL FORWOOD — I think it is Mr Drum's amendment 177. It is part of the carer issue. The effect of this is to give some recognition to carers in the construct of the new legislation. I think it also gives some substance to the support and assistance provided by carers. We all know that without the work done by carers the system, with all the best will in the world, would just collapse.

The CHAIR — I inform the committee that in relation to Mr Drum's proposed amendment 177 the clerks have advised that it is the view of parliamentary counsel that this would impose a financial obligation on the state and so it has to be a proposed amendment from the Legislative Assembly, so it would not be in order. Whilst Mr Drum will not be able to move that, what I am saying is that in the spirit of what we have tried to do here I would be happy if the principle of that were to be included in this current discussion.

Hon. BILL FORWOOD — Thank you. Just to finish before Mr Drum moves his amendment, my very strong view is that the bill would be greatly strengthened by the inclusion of the word 'carer' and therefore the register of carers and what it entails. In particular I would be looking for the Legislative Council to send a suggestion to the Assembly, which is standard practice, suggesting that the Assembly make the amendment because it deals with the resources of the state. I know Mr Drum will not now be moving it, but let me say I fully support a suggestion being sent to the Legislative Assembly that at least we do go down this particular route.

The CHAIR — Mr Forwood, I have to advise you that this committee cannot make a recommendation to the Council in relation to proposed amendment 177. That can only be something that the house considers in the committee of the whole.

Hon. BILL FORWOOD — That is my intention. Did I not make that clear?

The CHAIR — You are going to take this bill into the committee of the whole, Mr Forwood?

Hon. BILL FORWOOD — No, I am just suggesting that there is a mechanism available to the house but not to this committee.

Hon. D. K. DRUM — I thank the Chair for his flexibility in enabling us to use this to also discuss the carer argument so that we might be able to save some time. We understand we cannot move the amendment due to the fact that it may cost the state some finances, but the spirit of the argument is based around the fact that we believe a register of carers would be kept by the secretary so we would know exactly who is playing this caring role. The information obviously would include the names, date of birth and address of all the carers, whether that carer is a co-resident or a visiting carer, the relationship with that person, the date of birth of the person requiring the support and the length of time during which the support is taking place. We would expect the carer would notify the secretary in writing within 28 days if there is a change to the information on the relationship between the carer and the person needing support.

We would then expect the secretary to report annually to the Parliament as to the total number of carers who are registered. We would also expect that the report would identify the respective ages and how many people fitted into the respective ages of the carers registered. We would expect information as to how many people are being supported in the state of Victoria by the registered carers and they would be in specified age brackets. We would have a much clearer picture as to how we are in fact handling our carers.

We think we need to put some actual strength around the carer group; we need to give them some real confidence that they have a legislated role. We believe we should be able to give strength to the statements that are made in the state government's disability plan where carers are formally acknowledged for their existence and the support they provide. Similar to the commonwealth state/territory disability agreement we believe this set of data would be invaluable, given that 90-odd per cent of disabled persons in this state in fact use carers to have services provided. We believe it is only fitting that the government should procure a full register of carers.

The CHAIR — Before calling the minister, I should explain that my preparedness to entertain this discussion, even though the amendment is not in order, is to avoid us going into committee of the whole. That is the reason for my question, Mr Forwood. If you wanted to entertain this issue in the committee of the whole, we would not

entertain it now. Whilst this amendment is not in order, minister, if you wish to make further comment on Mr Drum's amendment no. 2 in the context of his general comments on his principle about a register of carers, I am happy to entertain your response.

Mr GAVIN JENNINGS — I am relatively confident to say that my answer to the question in this place would be the same as if it were in the committee of the whole and if in fact it came from the Legislative Assembly. No, I will not comment on the Legislative Assembly, but if it were there, I am sure the minister would say in the Legislative Assembly that the register of carers in Mr Drum's proposed clause 177 would not be agreed to by the government because of its overburdening the system in terms of an administrative overlay that we would not think would be in accordance with its benefits. Indeed we do acknowledge the role of carers in our community and how they permeate the needs of people with disabilities, and also how many of them there are. The department would estimate that probably at this point in time only about a quarter of carers across the state would have chosen to make contact with the department. The vast majority of carers do not make regular contact with the department.

Hon. BILL FORWOOD — I presume as we debate this that we also include discussion of what would have been Mr Drum's amendment no. 6, which is:

> 6. Clause 5, page 16 …

the insertion of:

> Carers of persons with disabilities have a right to —
>
> (a) supports and services … and
>
> (b) increase their opportunities to influence …

I guess the question I am still trying very hard to come to grips with is that given that every other jurisdiction in Australia in its equivalent legislation has a definition of 'carer' and acknowledges in its legislation the role that carers play and in consequence gives rights and responsibilities to carers through that process, why is Victoria so opposed to including carers in its legislation?

Mr GAVIN JENNINGS — I do not know. You would have to be able to demonstrate what those rights and opportunities are — because I am not aware of what they are — that you alluded to in other states. They may include a definition, but quite often pieces of legislation, while they may have definitions and they may have insertions of principles, may not enunciate them in any way further than what is envisaged here in proposed amendment 6, which is in fact to take it beyond what the Victorian government believes are the relative responsibilities of the state to provide support to the individuals in our community who have disabilities and recognise that there is also an associated need to provide a supportive environment and a relationship with carers, families, significant others and a whole range of other people who provide that care. There is a different quality of connection that is identified both within the law and within the programs between those who have a disability and those who provide for their care.

Specifically, the principle that is involved, the philosophy that is involved, is that our bill creates rights and responsibilities in relation to individuals who have disabilities in our community and acknowledges the caring relationships as distinct from assuming responsibility for the needs of the carers quite abstracted from them in the context of their caring relationship.

Hon. BILL FORWOOD — Just picking up your earlier comment, which was put to me not all that long ago, of why people would continue to contact the department when it did not seem to be particularly responsive to their needs. Putting that to one side, the South Australian Disability Services Act has a definition of carers. Under 'disability services' it says:

> 'disability services' means services provided, whether wholly or partially, for persons with disabilities or their carers and, without limiting the generality —

and it goes on to various things. It also says, under its objectives:

> … to render the service provider accountable to all persons who use the service, the carers and advocates of persons with disabilities who use the service, the Minister and all other interested persons …

I would have thought that they were two highly practical examples of where this particular piece of legislation, without causing great angst to anyone, could be really strengthened by the inclusion of those words.

Mr GAVIN JENNINGS — As we discussed last time — if not last time then the time before when we were in one another's company — under this bill, clause 5(3)(h) on page 15, under the principles that are attached to the bill, does provide that obligation. The words that are in 5(3)(h) are:

> consider and respect the role of families and other persons who are significant in the life of the person with a disability.

In our context we believe carers are significant people in the life of a person with a disability. We acknowledge that as an obligation service providers must be cognisant under the principles. In that sense there is a direct parallel with one of the examples from the South Australian act, even though we fall short currently in our mindset about the philosophical approach between clearly identifying rights and opportunities and responsibilities for people with disabilities as being the headline focus within this piece of legislation. Those who are in a caring relationship are dealt with and acknowledged, but not through the same prism of roles and responsibilities.

Hon. D. K. DRUM — Minister, there is also the fact that there are some 600-odd services that are provided to carers in this state. Is it not also strange that we actually miss out on that as well? The fact is, as a state, as a department, we do provide for carers. We provide services for carers, and yet again that is not listed. It just seems incredible that we have in fact been able to, whilst we are providing a service for them, wipe them off the map in relation to their legislated existence.

Mr GAVIN JENNINGS — I agree. In fact when I was here previously I talked about them within my portfolio responsibilities and I certainly acknowledged within the community services responsibilities there are programs that support carers each and every day, so in a practical sense there is an acknowledgment of that. The Department of Human Services has been for some time developing a framework around the caring relationship and the important role carers play and the way in which we can support that across all the activities of DHS. From my part in that endeavour I am acutely aware of the programmatic support and response warranted to carers. We are at a slight tangent today about the best way to incorporate that within the bill.

Amendment negatived.

The CHAIR — Mr Forwood, your proposed amendment 3.

Hon. BILL FORWOOD — This deals with 'developmental delay'. At the bottom of page 3 clause 3 defines it as:

> **"developmental delay"** means a delay in the development of a child under the age of 6 …

Paragraph (b) of that definition says:

> is manifested before the child attains the age of 6 …

I would have thought that at the very least paragraph (b) is entirely superfluous given that you cannot have 'developmental delay' unless you are under six, surely it has got to be manifest before you are six; I would have said there is absolutely no reason for paragraph (b) to exist and therefore the amendment suggests that those words be deleted.

'Developmental delay' as I understand it is not included in the state disability plan, and I do not think it is included as operational within the early childhood intervention services either so there are some interesting questions as to why we are going down this particular route.

The CHAIR — Mr Forwood, you did not actually move your amendment.

Hon. BILL FORWOOD — I move:

3. Clause 3, page 4, after line 32 insert —

> "or

( ) an autism spectrum disorder;".

Maybe I could help the minister a little by suggesting that in the current Intellectually Disabled Persons' Services Act, section 8(a) has an assessment of developmental delay which is six paragraphs on page 19; that has not been brought forward into the current bill.

Mr GAVIN JENNINGS — I am advised that the reason why there is a stand-alone definition for 'developmental delay' is to make sure that it does pick up the provisions or account for the provisions that were under the existing act, but they do so in the context of being able to comply with the best definition of 'disability' that applies consistently throughout the act.

The real reason this has been addressed this way in a drafting sense is to be able to accommodate the use of the term 'disability' consistently throughout the bill that covers various elements that are outlined on page 4 in that definition, which includes under paragraph (c) the 'developmental delay', which then has a subsequent definition that is enabling the drafting and the interpretation of the bill to go back and use the term 'disability' to actually include those three folds.

Hon. BILL FORWOOD — All of that is true, what is not logical is why you would not then take section 8(a) from the Intellectually Disabled Persons' Services Act, the assessment of developmental delay, and put it into the new bill? You have taken section 8 which is the is assessment of intellectual disability and put it into the new bill, but if you want to do what you are doing and if you have in the definition of 'disability' a 'developmental delay', why have you not included the existing ways of assessing developmental delay?

The CHAIR — Ms Mikakos, are you seeking clarification?

Ms MIKAKOS — Mr Forwood, I seek clarification that we are on amendment 3 and that relates to — —

Hon. BILL FORWOOD — My amendment 3: the deletion of 'is manifested before the child attains the age of 6' on the top of page 4 of the bill.

Hon. C. D. HIRSH — That does not say that. Have you got new amendments?

Hon. BILL FORWOOD — There is just the one set of amendments.

Hon. C. D. HIRSH — They are Mr Drum's new amendments, not yours? That would help.

Hon. BILL FORWOOD — Yes.

The CHAIR — No Mr Forwood, you should be moving your proposed amendment 3: 'Clause 3, page 4, after line 32 insert — '

Hon. C. D. HIRSH — No, that is Mr Drum's amendments you are speaking to, not yours.

The CHAIR — I have asked you to move your proposed amendment 3, Mr Forwood.

Hon. C. D. HIRSH — You are speaking to a totally different thing. This is where it did not make any sense.

Mr GAVIN JENNINGS — No wonder I did not sound good!

Hon. C. D. HIRSH — It is all right. I am sorry, I could not make it out.

Hon. BILL FORWOOD — My understanding is that I have been dealing with one set of amendments, namely Mr Drum's amendments, and I am doing some of them to speed up the proceedings.

The CHAIR — Let us be clear. I have a list of amendments from Mr Drum, plus a couple of amendments left over from last week. And I have four amendments outstanding in your name from last week, Mr Forwood — your amendments 3, 4, 5, and 6 that are outstanding from last week. I am doing them in sequential order. In other words Mr Drum has not indicated to me he wishes to move his proposed amendment 3.

I now come to your proposed amendment, Mr Forwood.

Hon. BILL FORWOOD — I apologise. What I want to do is move my amendment 3 which is the inclusion of the words, 'or … an autism spectrum disorder …' which I canvassed in some detail last week. Obviously there is some grave concern — —

Hon. D. K. DRUM — On a point of order, Chair, we are not skipping over my amendment 3. The amendment was called in another colleague's name. Therefore I simply made the assumption that Mr Forwood has the same amendment I have, and it is quite common for two members to be moving similar amendments. I am simply happy to let Mr Forwood talk on this amendment.

The CHAIR — Mr Drum, when we adjourned the meeting for 10 minutes we agreed that you would indicate to me 6 or 7 amendments that you particularly wanted to discuss. I have had an indication from the clerks of which ones they are, and your proposed amendment 3, which comes before Mr Forwood's amendment 3, was not one of them, so I called Mr Forwood on the basis that what we had previously discussed was that we would go through the 6 or 7 amendments you indicated to me. That meant that I would not call you for those other amendments.

Hon. D. K. DRUM — That is fine.

The CHAIR — Mr Forwood, I now invite you to speak on your amendment 3, which you have moved.

Hon. BILL FORWOOD — Last week we canvassed at some length whether or not the words 'an autism spectrum disorder' should be included in the definition. While I know there is some variation — and this is an issue that the minister indicated, and *Hansard* will show that this is an issue that is still being considered by the minister and his department — I still wish to move the inclusion of those words now. I hope that the government will accept it, but I anticipate that it will say, as it did last week, that this is something it will be looking at in the future because it is a complex issue, which is a disappointing response.

The CHAIR — Minister, I hope you are as clear as we all now are as to which amendment we are discussing.

Mr GAVIN JENNINGS — To assist the committee to expedite matters, let me say that I will stand by what I said last time we discussed it.

Hon. D. K. DRUM — Sorry, Minister, could you refresh — —

The CHAIR — On Mr Forwood's amendment 3.

Hon. D. K. DRUM — Could the minister quickly refresh where that is, please?

Hon. BILL FORWOOD — It is being considered.

Hon. D. K. DRUM — Okay.

Hon. BILL FORWOOD — *Hansard* shows it.

Amendment negatived.

The CHAIR — For the assistance of the committee, the next amendment that I have for you, Mr Drum, will be amendment 16, which is on clause 39. So in advance of that I have a few other amendments from Mr Forwood — another two relating to clause 3, and one relating to clause 4. I hope everyone is on the same page now.
Mr Forwood, to move his proposed amendment 4, relating to clause 3, page 5.

Hon. BILL FORWOOD — Again, I canvassed these issues last week, so I will not go to them again in detail. The definitions in this legislation will be greatly enhanced by the inclusion of a definition for 'early childhood intervention services'. The definition that I propose means 'intervention services used to modify a health or development outcome for a child with disability aged 6 years or less', and I so move:

4. Clause 3, page 5, after line 16 insert —

'"**early childhood intervention services**" means intervention services used to modify a health or development outcome for a child with a disability aged 6 years or less;".

The CHAIR — Mr Drum, do you want to comment?

Hon. D. K. DRUM — No.

Mr GAVIN JENNINGS — Again, in terms of the circular nature of what we have done in the committee, but also the nature of what we might do, 'early childhood intervention services', as I am advised, as a phrase does not occur within the bill before us. The definition is only relevant if there are subsequent amendments to the bill that would warrant its being defined.

Amendment negatived.

The CHAIR — Mr Forwood, I invite you to move amendment 5 standing in your name.

Hon. BILL FORWOOD — We also canvassed this at some length last week. It refers to the inclusion in the definition of the word 'inclusion'. In relation to persons with a disability it means 'the participation of persons with a disability in educational, social, recreation, vocational and community environments according to their needs and choices'. Again, I do not resile from the position I put last week — that is, that the bill will be greatly enhanced by the inclusion of the word 'inclusion' in it. I move:

5. Clause 3, page 6, after line 4 insert —

'"**inclusion**" in relation to persons with a disability, means the participation of persons with a disability in educational, social, recreational, vocational and community environments according to their needs and choices;".

Mr GAVIN JENNINGS — The last time the committee discussed the word 'inclusion' it got us into a great deal of difficulty. Philosophically, as I probably put on the public record last week, the government and I are very supportive of the notion of inclusion in its broader sense. We would recognise that the various scope of involvement in community life, as accommodated within the definition, we would be very supportive of. Indeed part of our challenge is to rise up and deliver that degree of inclusion.

We did have an argument in the committee last week about the application of those various requirements in the context of specific provisions in the bill, so we slightly got lost for a little while in relation to its application to specific provisions. But in a practical sense, without knowing what the absolute effect of every time the word 'inclusion' is used within the document within the bill, I am not quite sure whether it is relevant for it to be read down in that way in every instance, so on that basis I would oppose the definition, but I am not opposed to the concept.

Hon. BILL FORWOOD — I have one final comment. My next amendment, which we will deal with in a moment, deals with a change to clause 4, which says:

The objectives of the Act are to —

(a) advance the inclusion —

first —

and participation in the community of persons with a disability …

I would have thought that there was no way I am reading it down when I am including such a fantastic definition for inclusion. Again, I am very disappointed that the minister has decided that the government cannot accept that and that strengthening of the bill before the house.

Amendment negatived; clause agreed to.

Further discussion of postponed clause 4 and Mr Forwood's amendment:

6. Clause 4, after line 5 insert —

"( ) advance the social, communication, emotional, intellectual and physical development and wellbeing of persons with a disability;".

The CHAIR — Mr Forwood, you moved an amendment here last week. The question to be put is that the amendment that stands postponed be agreed to. It has already been moved, so Mr Forwood can speak to his amendment to clause 4.

Hon. BILL FORWOOD — Whichever way we are doing it, I wanted to include my amendment in the objectives of the act. Part of clause 4 says:

(a) advance the inclusion and participation in the community of persons with a disability;

My amendment would add:

advance the social, communication, emotional, intellectual and physical development and wellbeing of persons with a disability …

I am confident that the minister will come back to me and say that what that is going to do is talk down the definition that is already there. That is not true, Minister. What I am trying to do is to expand it and give it some meat. While you and I may disagree on this, I know that I am correct. I am sorry that the government did not see its way forward to expand on this particular objective — a fundamental and core part of the act — in a way that provided more meaning and in particular, more strength and meat to the bill.

The CHAIR — Minister?

Hon. BILL FORWOOD — He agrees with me.

Hon. D. K. DRUM — Of course he does.

Mr GAVIN JENNINGS — What I am not going to agree to is the amendment.

Amendment negatived; clause agreed to.

The CHAIR — Mr Forwood, am I correct in saying that all of your proposed amendments have now been dealt with?

Hon. BILL FORWOOD — Yes, but there are some clauses that I wish to speak to and oppose. So rather than move their deletion, I am just going to argue that they should not be in the bill. Hopefully you will agree and we will vote them down at the time.

Postponed clause 7 agreed to.

The CHAIR — Clauses 8 to 16 have already been agreed to.

Clause 17

Hon. D. K. DRUM — Are we able to have a brief discussion about clause 17?

The CHAIR — Yes.

Hon. D. K. DRUM — In relation to the powers of the disability services commissioner, last week we had a brief discussion, Minister, about this clause. It was highlighted to Mr Forwood that the same process was used to appoint the disability services commissioner as was used to appoint the health safety commissioner — if that is the right terminology. But one difference in their roles was the ability to lay issues or matters before Parliament. Was that something that has been spoken about or could it in fact enhance the role of the disability services commissioner if he had the ability to put matters before Parliament?

Mr GAVIN JENNINGS — Clearly there is an opportunity for material to be reported to Parliament. The issue that we have raised for the second time during the course of today is whether there is an ability for the health services commissioner to report at any time. At this moment, I am on my feet and not immediately able to confirm or deny whether the health services commissioner has that capacity to report at any time.

Hon. D. K. DRUM — I am led to believe that in fact she does and that it is a mandated role of her listed roles, responsibilities and duties. It seems that there are so many similarities between the roles that were pointed out here last week, but it does seem, though, that there is this glaring difference between the role of the health services commissioner and the disability services commissioner.

Mr GAVIN JENNINGS — I am seeking some advice on whether that assertion is correct or not.

Hon. D. K. DRUM — I think it is probably best if we take the minister's answer on notice rather than defer the clause. I am just trying to get this clarification of the differentiation of roles that was not pointed out last week.

The CHAIR — You can postpone the consideration of the clause until later.

Hon. D. K. DRUM — I would like to move that the committee defer further debate on this clause until later this day.

Clause postponed.

Clauses 18 to 36 agreed to.

Clause 37

Hon. BILL FORWOOD — I note that Mr Drum had some amendments that I understand he has withdrawn, but I did want to make some comments in relation to clause 37 which concerns the state disability plan. The state plan was one of the great innovations in the 1986 IDPS legislation. I was very pleased to see that the government had decided it would continue with the state plan and has done some work on it since, although I do think it is very odd that it has pushed it out and now made it a 10-year state plan.

As the CSTDA has five-year goals and objectives I would have thought it would have been better had we aligned our state plan with the five-year objectives and goals of the CSTDA. I fully accept that the requirement of the 1986 legislation that there be a new one every three years and that it be reviewed each year was a touch onerous and did not happen, but I am disappointed that we have decided to take the length of time that we have.

I also think it is disappointing that we do not in the state plan have a greater commitment to funding. I note that Mr Drum at one stage suggested that an amendment be moved along the lines of identifying the funding sources of an amount required to achieve the goals of the state plan. While I understand that that amendment has been withdrawn, I think if we are to have a state plan that is meaningful, then we really need it to be more than just words. I think that while it is good that we still have a state plan, it is disappointing that it is not stronger, that it does not report more often and that it does not have greater capacity to positively and proactively influence the lives of so many people.

Hon. D. K. DRUM — I would also like to comment on the state disability plan. According to figures there seems to be a total lack of any sort of monitoring of how the plan is progressing. There seems to be a total lack of coming forward and effectively saying, 'Are we meeting our targets? Are the outcomes being achieved?'. We talk about an increased amount of services being offered, but nowhere does it state that the services being offered are a fraction of what they are replacing. We might be servicing more but we are servicing more with dramatically less.

We are having a lot of individual support that represents a huge increase in the number of instances of support, but the fact is that they might be one-off respite opportunities. So there may be gigantic leaps in the amount of additional support, but it is a fraction of what has previously been replaced. There seems to be no real accountability to, 'Are we actually reaching our outcomes or are we not?'. There do not seem to be any instrumental or incremental measurements. I was just wondering what the minister has to say about the monitoring of the progress achieved under the plan.

The CHAIR — Minister, before calling you, as the parliamentary secretary for assisting in the preparation of the last state disability plan I cannot let this opportunity pass without a brief comment. I would take the criticisms or comments of the opposition members here a little more seriously if, on coming into the role of Parliamentary Secretary for Human Services, I had found that the previous government had in fact done anything to prepare the 10-year state disability plan. I was disappointed that it had not.

We then did a substantial amount of work over a two-year period to bring that state plan into order. I would suggest to Mr Drum that the state plan that was prepared at that time had a comprehensive approach to the provision of disability services, and he needs to perhaps refresh his memory on what is in it. But I note that the proposals in the legislation are consistent with the state plan prepared at that time and a quite exceptional consultation process that occurred throughout Victoria.

Mr GAVIN JENNINGS — Can I suggest that on the most substantive time lines, where there is a difference between the first clause or subclause of Mr Forwood's amendment, that in fact there be a five-year regularisation of the plan. In substance, once this bill is enacted, we will be in the second five-year duration of the state disability plan — in fact it will be a key marker of moving into the second five years. In that sense there will be an opportunity at the end of the period in 2012 for the culmination of the assessment of the disability plan. Indeed, there is an obligation, which is acknowledged within the bill, that the new plan be prepared to coincide with the conclusion of that second five years of the current plan.

There are mechanisms within the bill to provide for scrutiny and accountability within the domain of the bill and to reflect on aspects of the plan that can be updated, whether they be through the mechanism of the disability services commissioner or other reports that could be issued from time to time. Certainly I would envisage that in the annual reports of this section of the department, there should be appropriate reporting and transparency of the effort that has been undertaken within the context of the plan. We can have a look at the suite of those measures to ensure that there is no erosion of accountability from one year to the next, and we can have mechanisms in place that reflect the second half of the current plan.

The government shows that, given that the life of Parliament is now four years in the state of Victoria, notwithstanding the fact that the commonwealth state/territory disability agreement may have a tenure of five years, it thought it was appropriate to mark the cycle of the Parliament in Victoria as perhaps a more appropriate benchmark and probably to account for the preparation and consideration of changes that may be appropriate within the commonwealth state disability plan by anticipating them by having a slightly shorter time frame.

Hon. BILL FORWOOD — I refer to page 47 of the current state plan for 2002 to 2012, which says, amongst other things, that the Victorian government will do this — that is, monitor its progress and evaluate its outcomes — by:

> Undertaking a yearly review of the priority strategies.

I am pretty sure that I have not seen the yearly review for 2002, 2003, 2004 or 2005 — and also:

> Publishing reports that show the government's progress.

It also says:

> Evaluating the outcomes of the priority strategies before developing new strategies for 2006 …

I am not sure that I have seen the 2006 strategies either. What amuses me intensely, given our debate a few moments ago, was, of course:

> Ensuring that the views of people with a disability, their parents, families and carers —

would you believe —

> … are listened to and taken into account.

I want to put on the record that we need to get to a situation where it is more than just the words. If you look at the submission from the autism people, they note that the government's own autism in Victoria report found that Victorian families with a preschool child with ASD spent large amounts of money accessing whatever private

services they could afford. The report showed each year 3 per cent of those people spent more than $40 000; 6 per cent spent between $20 000 and $40 000; 12 per cent spent between $10 000 and $20 000; and 63 per cent spent between $1000 and $10 000 of their own resources. It is a massive amount of money.

In those circumstances, one would think that we ought to have a state plan that had real qualitative measures, which were not just rhetoric of 10 years because it suits the department. It seems to me, Minister, we have to remember that the legislation here is about best practice for disabled clients, their carers and families, and not about the convenience of the department. That I think is a fundamental focus that this legislation seems to have missed.

Mr GAVIN JENNINGS — I do not share that view, although I am alive to the potential perceptions for this, and all of us should be alive to the potential of that perception. But I do not agree with the assertion that that is the case. I think there is an underlying rationale for the length of investment that is required and the length of legislative reform that is required, and how that could be enacted in a timely and stable fashion. They are the underlying reasons rather than the assertion of convenience. In relation to the accountability requirements, Mr Rogers and I have had a discussion about that. He is going to outline some degree of accountability to add to what I have said to my previous answer.

Mr ROGERS — As the minister mentioned, the department releases an annual report which covers a review of the year. In addition the Minister for Community Services has indicated that she will release a progress report on the state plan in the near future. I do not have the date when the minister will release that, but she has indicated that she will release a review of the past three years.

Hon. D. K. DRUM — Minister, with the report being handed down by the department, are you aware whether there are any endeavours to try and ascertain the difference between supports offered or provided and the needs that exist in the community? And therefore are we in a position with these reports being handed down to identify how much of a shortfall there is between the actual implementation of the state plan versus its ability to try and meet the needs in the community?

Mr GAVIN JENNINGS — Currently there is a needs register which is published twice a year, which in effect is a measure of the issues you have described, Mr Drum, so there is no shirking the obligation to make those reports known, even though I am sure that they are sometimes painful from every vantage point in terms of the evidence that may be in that documentation. The department and the minister recognise their obligation to make that material available.

Hon. D. K. DRUM — I was going to ask the question — and I do not know whether to ask it in this forum — but in relation to trying to get this implementation plan up and running and getting closer to meeting the actual demand, does the department have any plans to move towards a population-based benchmark model of funding for these areas? We seem to have a situation in this state where the whole disability sector, including the disability plan, is funded on a historical basis, so effectively what gets funded for this year is based on what got funded last year, with the addition of what can be aggregated out of the system. And what will be funded next year will be what was funded this year, plus what can be aggregated out of the system.

This has no relevance at all to the need that exists within the sector, unlike the aged care facilities or the aged care sector, where we have a population-based funding benchmark and we understand the need because we have the statistics — we have the data — and therefore we put in place a funding model that will meet the need. That is the type of funding model that I would be looking for from the minister.

Mr GAVIN JENNINGS — I took advice on this issue, and it is something I am acutely interested in myself because, as the person responsible for home and community care, I am interested in equity applying across the state and access being enhanced through that program.

Mr Rogers advises me that there is an equity formula that applies in terms of the allocation of money which incorporates the known number of people with disabilities in an area, the weighting for social and economic factors, and also a weighting for the regional or rural aspect of the location of the individuals with a disability. Those factors are overlaid on existing funding arrangements to provide for growth. So this is an allocation of growth funding. It has been subject to scrutiny by the Auditor-General previously, and he may have made some recommendations about the rate of growth funding impacting upon what might be historical inequities.

You do make decisions. It relates to some of the debates we had before about priorities and the ways in which you make administrative decisions and about the way in which you address this question of equity. Decisions have been made to address the equity question through growth funding rather than disadvantaging any existing participants or programs across Victoria.

There could be a deeper cut in terms of addressing equity which may come at the expense of some service providers and some recipients of service, but the minister and the department have not made that decision to take money off providers or their clients. They have decided to address the question of equity through growth, and that may take longer than we may like, but in fact it is a balance to try to achieve the very laudable aims of equal access to the services and to rise up and meet needs, but not at the expense of those who may be dependent upon a service.

Clause agreed to; clause 38 agreed to.

Clause 39

Hon. D. K. DRUM — I move:

16. Clause 39, page 52, line 3, after "guardian" insert "or the person's representative".

When put into context we have a situation where day to day in the disability sector many families — and I emphasise 'many' — come into my office and, I imagine, into the office of every member of Parliament. There is genuine concern among parents and families as they are unaware of some of the consequences that have befallen their siblings or children with a disability simply because they are unaware.

It is hoped this will create a flow of any information that would be given to a disabled person and guardian or the person's representative. I think it would help solve so many of the problems that derive from a lack of information getting through to those who look after people with disabilities.

Mr GAVIN JENNINGS — It has been an interesting challenge for us to try to work out who is roped in by these provisions and who is not roped. If we had inserted the word 'advocate' previously, Mr Drum may have come forward and made an extra suggestion that 'advocate' be inserted here.

The difficulty is to try to incorporate the words or sets of words that scope whom it may be legally appropriate to give information to. 'Guardian' has been included because in the context of this bill and in the context of other statutes it has some legal implications in terms of the status of the person seeking the information and certain protections that are provided in this and other law in relation to guardian provisions. Our concern would be to open it up generally, but we may then fall foul of the expectations of the privacy commissioner in relation to this, and that is why we start from a cautious perspective.

Hon. D. K. DRUM — We find that this obstacle is put in front of our families and carers time and time again. We understand that there is a need for a person's privacy, but at the moment it just seems that this balance is far too aggressively skewed away from the families, the carers and the representatives of the people who are trying to look after these people, who in many cases are incapable of looking after themselves or of making those decisions themselves. I suppose we need to have another look at this issue of privacy stopping loved ones from looking after their own.

The CHAIR — Mr Drum, last week Telstra would not give me information about my elderly mother's phone account without her approval, and I do not have any difficulty with that.

Mr GAVIN JENNINGS — The application of this clause relates not to the release of the information to a person but to the authorisation of the person to whom the information has been passed on to use it subsequently and to pass it on to somebody else. The reason we have been a bit restrictive in this regard is to try to ensure maximum compliance with the privacy of the person with a disability in the first instance.

If this is a problem in practice — I have sought some advice on this — I have just been advised that the guardianship provisions would apply, and perhaps either we or the department or the family may apply for a guardianship order. There may be an approach to the public advocate who would then play this role. The importance of this role is to prevent the inappropriate distribution of private information and to try, without being

overly cumbersome or restrictive, to allow for certain procedures to be followed in relation to who is eligible in the first instance to then make decisions about the distribution of this information.

Hon. D. K. DRUM — I understand what the minister says, but the truth about this whole issue is that only a fraction of the people out there are ever granted a legal guardian. Most of the people wander around in some nexus where they have no legal guardian, they are effectively their own person; and yet we have 160 000 disabled people who are unable to communicate. So how are these people, who are unable to communicate and who do not have a legal guardian, represented?

Time after time we have tried to throw up ways of having advocates, carers, more strength to families and recognition that effectively very few of these people have legal guardians once they are over the age of 18.

Mr GAVIN JENNINGS — There are a couple of assumptions embedded in Mr Drum's submission to us that I have to challenge. The challenge is that there are 160 000 people who cannot either communicate or make some decisions on their own behalf. We do not believe that is an accurate estimate of the number of people in those circumstances.

Hon. D. K. DRUM — Would you have an approximation, Minister?

Mr GAVIN JENNINGS — I have not. What worries me is the inbuilt assumption that all the people with profound disabilities that Mr Drum refers to, which is the number 160 000, are automatically incapable of making decisions on their own behalf. I think that is a false assumption.

Beyond that, what we are trying to talk about is the way in which we can provide for certainty about who makes decisions on the release of information to others. The decision to release information, we contend, should be fairly tightly controlled and regulated. We believe it should be regulated in the way the bill provides. We do not think it is overly onerous in this circumstance, and in this application we are talking about, for the person to have a formal guardian relationship with the individual in question.

Hon. BILL FORWOOD — My understanding, and I stand to be corrected, is that this particular amendment tests a number of other amendments, including Mr Drum's amendment 25. No or yes?

The CHAIR — Mr Drum has not indicated that he is going to proceed with that.

Hon. BILL FORWOOD — It comes under the same category because what his amendment 25 seeks to do is to insert 'or a person on their behalf', which is similar to a person's representative. That is in clause 50 on page 59. What we are talking about in that clause is a person who has been refused a service. It says that a person to whom service has been refused may request the secretary; in those circumstances one would think there really should be provision for the person's representative to be involved.

A person may have their application for services rejected. The whole system is predicated upon the fact that if they do have this happen, they then have a right to appeal to the secretary. If they have not got the capacity to do that, surely we should be giving them the right to do it. We should be saying that a person to whom clause 49(4)(b) applies, or a person acting on their behalf or the person's representative, may request the secretary, because otherwise what we are doing is putting the requirement entirely into the hands of the disabled person who has been refused a service.

Hon. C. D. HIRSH — I think there is a difference between release of information and making a request for service.

Hon. BILL FORWOOD — Can I also make the point that in the current IDPS act section 52(i) says:

> Any person who is aggrieved by a reviewable decision may within 30 days …

It does not say it has to be the disabled person. So we have gone from a situation where the existing IDPS act says 'any person' — that is, someone acting on their behalf — to a situation where we have excluded people acting on behalf of.

Hon. C. D. HIRSH — But again that is not about release of information.

Hon. BILL FORWOOD — No, it is not.

Hon. C. D. HIRSH — Mr Drum's amendment is about release of information. which is different altogether.

Hon. BILL FORWOOD — Mr Drum, in his attempts to help the committee, has decided that he will lump all his amendments into various categories. One of the categories he is dealing with is the category of people and their representatives, and as part of his amendment I am expanding the discussion just slightly to include clause 50, which otherwise is not going to be dealt with.

The CHAIR — That is right; thank you. So the question is the principle. You are advising it is the person's representative and we will hear from the minister in due course.

Mr GAVIN JENNINGS — Yes, I am getting advice on this.

Hon. D. K. DRUM — Whilst the minister is getting advice, it was brought to my attention yesterday that a family is again at odds with the department and at odds with the service provider in relation to something as practical as being able to put a padlock on the fridge at the respite home their daughter attends, because that is what happens at home. The family understands that if they turn their back on her the girl will gorge herself to the extent where she will make herself sick. One way of fixing that is to padlock the fridge. But when this girl goes to a respite centre, they are not allowed to padlock the fridge because it is an infringement of her rights. So we have a situation where this is not allowed although it is for the girl's benefit, but what her parents say is considered totally irrelevant. The service provider, the manager, wants to put a padlock on the fridge, but his department boss is telling him he cannot do it because it an infringement of the girl's rights.

We are making it so difficult for our families to look after their young ones. This is a case where there is no legal guardian who has the ability to say, 'This is what has to happen'.

The CHAIR — I think that is broadening the discussion a little, but I understand the point Mr Drum is making. I would have thought that the individual service plans ought to be able to deal with some of those issues. And if it does not in that case it ought to be dealt with, but I will leave it to the minister to respond to the broader principle of the question of a person's representative.

Mr GAVIN JENNINGS — I am in the interesting situation of having substantive clause 50, in the way in which its total application works, include under subclause 8 an appeal for a review under VCAT processes. The way in which VCAT processes work would allow for a person with an interest to bring such an application, so that the net effect of this provision is to allow for a guardian or representative to commence such a review process. That may appear to be a very obscure set of rights as laid out within the clause.

The CHAIR — An unintended obstruction, an unintended obscurity.

Hon. BILL FORWOOD — It is on the record.

Mr GAVIN JENNINGS — As we dive deeper to find the clear pools at the bottom of this legislation, in terms of trying to clarify it, I have gone down to clause 50 in relation to how VCAT would see it, but clause 49 also relates to the sequence of the logic of the bill. Clause 49 is headed 'Request for disability services' and talks about a person with a disability — —

Hon. BILL FORWOOD — 'Or a person on behalf of'.

Hon. C. D. HIRSH — 'Or a person on behalf of a person with a disability'.

Mr GAVIN JENNINGS — Exactly. That is in fact the other reason — —

Hon. BILL FORWOOD — You are reading that to include every other part of division 2 in the part?

The CHAIR — I think it would read that way.

Hon. BILL FORWOOD — The whole part? What about the next clause?

The CHAIR — True; it is separate to the next clause.

Hon. BILL FORWOOD — If you have got it in 49, surely you have got to put it in 50.

The CHAIR — Except, Mr Forwood, I would have assumed that 50 relates to the decision to provide a service and 49 deals with the request for a service.

Mr GAVIN JENNINGS — The logic of this becomes a bit contorted in terms of recognising the relativities of different provisions, but clearly 50(1) does not assume that the person referred to in the first line, or at the beginning of that sentence, is the same person who is referred to at the end of the sentence, who is the person with a disability. Whilst I could understand in one sense that it may have been construed to mean that, that is not the meaning of it, because the person who is referred to at the beginning of the sentence is the person who applies for the request, and they have applied for the request in accordance with the provisions of clause 49. The determination is about the person with a disability, and that could be a different person, as is clearly foreshadowed in clause 49.

Hon. D. K. DRUM — I beg your pardon?

The CHAIR — I think I am reading it the same way as the minister, because — —

Hon. BILL FORWOOD — Can I have one more crack?

The CHAIR — Mr Forwood, you can, but as the minister has explained it, I understand his explanation to be that in the provisions under division 2, 'Accessing disability services', in the first instance a request for a disability service needs to be made, and it can be made — in 49(1) — by 'a person with a disability or a person on behalf of a person with a disability', and all of the subsequent clauses through to division 3 relate to that request.

Hon. BILL FORWOOD — Except I point out the word 'person' in the fourth line from the bottom on page 58, which says:

> … that the person in respect of whom disability services have been requested has a right to have the issue of whether the person has a disability decided by the Secretary.

On both occasions we get back to 'the person' not 'a person acting on behalf of' a person. While it was a nice try, Minister, I do not accept that under the Acts Interpretation Act it goes far enough. The only way around this, therefore, is to insert in clause 50 what we have got in the first sentence, 'A person with a disability or a person on behalf of a person with a disability'.

The CHAIR — The reason for the refusal is that the disability service provider is of the opinion that the person for whom the disability services are requested does not have a disability, but it does not relate to who made the request. It says it is their opinion that 'the person for whom the services are requested' — I think that is clear.

Ms MIKAKOS — I think the key words here are the words just before the hyphen in 49(4), where it says 'the person making the request'. That links back to 49(1), which could be 'a person on behalf of a person with a disability'. The way I read it, clause 50 would enable another person to seek a review by VCAT.

The CHAIR — I think everything subsequently relates to that.

Mr GAVIN JENNINGS — I am just going to take advice about a sentence to clarify this. Hopefully I am assisting the committee, and in fact I have taken the opportunity to repeat a question Mr Forwood asked me in the running of that discussion a few minutes ago: is it the government's intention in all of division 2 of this part to have it apply that the reviews relate to the circumstances that cover a person with a disability or a person on behalf of a person with a disability in terms of making the application for review? The answer is yes.

Hon. BILL FORWOOD — Thank you. I will let it go.

The CHAIR — I remind the committee that we are discussing clause 39, not clauses 49, 50 or 51 but in the flexibility of the discussion about the person's representative we went to those other clauses.

Amendment negatived; clause agreed to; clauses 40 to 48 agreed to.

Clause 49

Hon. D. K. DRUM — The terminology that is evident throughout clauses 49, 50, 51 and 52 forms part of my next amendment, which I would like to talk to. It is a range of words such as 'may' that have replaced words in the Disability Services Act and the Intellectually Disabled Persons' Services Act. Previously it was stated the government 'had' to act; now we have a situation where that has been replaced. Clause 49 begins with:

(1) A person with a disability or a person on behalf of a person with a disability may request disability services from a disability service provider.

(2) If a disability service provider receives a request under sub-section (1), the disability service provider may —

(a) agree to the request; or

(b) refuse the request.

There is also the opportunity for them to do absolutely nothing. Effectively I believe there is a whole cohort of the word 'may' on behalf of government departments. We really need to make the departments either refuse the request or agree to it, and not just 'may' do it — they must. If they are going to refuse services, the person needs to know that they are having services refused.

The CHAIR — Mr Drum, my understanding is that you are not actually proposing a raft of amendments you have got relating to the word 'may' but you want to have a general discussion about this clause?

Hon. D. K. DRUM — I do not think that is correct.

The CHAIR — You have not indicated the proposed amendments because I have not called you to move the amendments.

Ms MIKAKOS — You were speaking to your amendment 19?

Hon. D. K. DRUM — On my list of amendments starting at amendment 31, clause 52, page 60, line 28, my amendment, if moved, would omit the word 'should' and insert 'must'. It is the same philosophy associated with this argument and that is why I thought we would have the debate here where I believe it matters equally to that on page 60.

The CHAIR — Mr Drum you have a number of amendments relating to clause 49 — amendments 17, 18, 19, 20, 21, 22, 23 and 24. What I am clarifying is that in accordance with our earlier discussion you are not proposing to formally move those amendments but to have a general discussion on the principles of clause 49, which I am happy to entertain on the question that it stand part of the bill.

Hon. D. K. DRUM — I would like to officially move amendment 31 to clause 52.

The CHAIR — I have not yet called clause 52; we are dealing with clause 49. Do you want to have a general discussion on the question of inserting 'may', or do you want to leave that to your proposed amendment 31?

Hon. D. K. DRUM — We should have the general discussion because you are going to vote it down anyway. I would rather have the discussion on this clause than any of the others.

The CHAIR — Mr Forwood, do you want to comment on this? We are having a general discussion on the question of whether clause 49 stands part of the bill.

Hon. BILL FORWOOD — There is a particular thing I would like to say. If you look at the existing conceptual framework in the Intellectually Disabled Persons' Services Act, it works like this: you get assessed and accepted; you have a plan done; you are eligible for services under a clause way back under the act, then you get reviewed — it is all part of the state plan.

My question is: what is the conceptual framework for the new system where people trot off to a service provider? It does not seem to have the coherence of the existing one which leads to the circumstance where you could end up under 5(j) with:

> it is the responsibility of the State of Victoria to plan, fund, ensure the provision of …

The links and the structure, the conceptual framework of the old IDPSA seem to have been lost. My question is: what is the new conceptual framework for the system?

The CHAIR — Can I just clarify it? I think there is a simple question that this boils down to. If I look at clause 49, if I am understanding Mr Drum's question clearly, it says under (1) a person or a person's representative may make a request for a service and under (2) it says the service provider may —

> (a) agree to the request; or
>
> (b) refuse the request.

The real question is what does the word 'may' mean. I understand Mr Drum seems to be suggesting that an option that is neither (a) nor (b) exists for the service provider — that is, to not provide any answer. I guess that is the nub of Mr Drum's question. Mr Forwood's is a little broader than that so can you, Minister, deal with Mr Drum's question and then Mr Forwood's?

Mr GAVIN JENNINGS — Okay. The simple way for me to answer Mr Drum's question is that there is no (c). The only thing you can do is either (a) or (b).

Hon. D. K. DRUM — And nothing?

Mr GAVIN JENNINGS — No, nothing is not provided for.

Hon. D. K. DRUM — I am afraid nothing is provided for, Minister.

The CHAIR — Hang on, Mr Drum. You have asked the minister for clarification. He is giving you clarification on that.

Mr GAVIN JENNINGS — Nothing is not provided for, because you either agree to it or you refuse it. You cannot do anything else.

The CHAIR — Would you like to respond to Mr Forwood's general question, and I will come back to Mr Drum.

Mr GAVIN JENNINGS — I think in general terms, Mr Rogers would be best to outline that process in terms of the logic.

Mr ROGERS — In terms of clause 49, the conceptual framework in that is that, rather than everybody needing to go through a formal assessment process, where there is an agreement that the person has a disability they can actually access services. If there is a disagreement, there needs to be a formal assessment. In terms of the Intellectually Disabled Persons' Services Act and this bill, this bill, later on, in terms of planning, still provides that a person can request individual assistance with planning — and that is talked about in the act as well — then, when they are in receipt of a service, they must receive a support plan within a certain amount of time.

In terms of the access process, there is no intention to change the fact that some people now go to different providers for different things, so they can go for respite. If they have an intellectual disability, they can go to a provider; they do not need to come to the department. People who are wishing to access ongoing supports which are described under the SNR at the moment, such as the accommodation day programs Home First — and that will change in terms of the descriptions — would still come to the department for that process of their planning, and they would be placed on the service needs register, the SNR, soon to be called the disability support register, the DSR, under the department process. That is not proposed to change.

The SNR process and so on is not actually prescribed in the IDPSA and it is not prescribed in this bill. There is no proposal to change that for a regional process where people come through from the disability support register or the service needs register through the same process as happens now. There is no proposal to change that, but they can go to disability providers and request a service, particularly for the ones who do not require the larger investment and the longer term support, such as respite or some of the smaller packages, as they do now.

Hon. BILL FORWOOD — Through the minister, can a TAC client request disability services from a disability service provider?

Mr ROGERS — They will be able to request the service. At the moment our policy guidelines to providers would say, and would continue to say, that where a person is covered as a compensable client they would not receive priority for the service.

Hon. BILL FORWOOD — They would not receive it?

Mr ROGERS — They would not, if they are a compensable client through another means.

Hon. BILL FORWOOD — That is not in the legislation, though, is it?

Mr ROGERS — No.

Hon. D. K. DRUM — Through the minister, Mr Rogers has just made a statement there where he said that once the request is made then the individual must receive a support plan in a certain amount of time. I am pretty sure they were the words Mr Rogers used, but that sort of terminology is not used in the bill. That is exactly right. When Mr Rogers is explaining exactly what has to happen, and when the department is explaining how it is going to work in the field, they use a certain style of language — that is, that clients must receive support in a certain amount of time — but when you look here, that is not how the bill is structured. There is no 'must receive support' and there is no time frame. If they are refused there is a time frame, but if you do not receive any word, how long is it before you are refused? What if you are simply on a waiting list and you just have to wait? You have neither been refused nor granted the service. You just wait. This is the reality of the situation. As I said, you are not being refused and you have not been granted services. It is just that nothing has happened.

Mr ROGERS — My earlier comments were in relation to planning, so in relation to 'A person with a disability or a person on their behalf may request assistance with planning', it says under clause 53(2) that that must be provided 'within a reasonable period'. Then under 54 it says that a person who is receiving services must receive a plan within 60 days.

Mr Drum is correct in that I was not referring to the receipt of the service. The person may actually be placed on a support register. We mentioned the other day that there is a requirement for the secretary to publish guidelines for priority, and they would be available, but I was not intending, and I do not believe I said, that a person would receive a service within a certain amount of time. Certainly there is a requirement for support planning within 60 days and for assistance with planning within a reasonable period.

Clause agreed to; clause 50 agreed to.

Clause 51

Hon. BILL FORWOOD — This is one of the fundamental clauses of the whole of the bill. This is the one that says:

> A decision by the Secretary under section 50 that a person has a disability does not of itself entitle the person to the provision of disability services.

This is the departmental get-out clause, and I am pleased to see that one of the original clauses saying we are not going to fund things has been taken out between the exposure draft and now. Again I refer the committee to the provisions on page 11, and more than that, to section 8A(6) of the IDPS act, which says:

> A declaration of eligibility entitles the eligible person to receive services …

We are now saying that someone can be found to have a disability but that does not mean they are entitled to services.

I think that it is a dark day in Victoria for us to have come to this situation. My personal view is that if there is a problem about providing services, then you ration them in a different way, but if someone is eligible then they are eligible and you should assist them, provide them with support. I said that during my second-reading contribution.

I say here and now unequivocally that I will be voting against this clause; I think it should be deleted entirely. Someone who is found to be eligible under the act ought to be entitled to services, and I think it is appalling that we would put in a piece of legislation like this something saying that just because you have a disability, you are not entitled to have a service. I do not want to labour the point any more than that to say how strongly I feel about this.

Mr GAVIN JENNINGS — I can appreciate the heartfelt sentiment about that issue in terms of the concern it represents, so I am not sitting here oblivious to that real and that felt need, and that desire in the community for that to be the case. Let me acknowledge that.

To the interpretation and the programmatic response that accompanied the 1986 act, it was always, in practice, interpreted to mean an entitlement to planning as distinct from service. So in practice the sentiment that Mr Forwood has conveyed now has not been the reality for 20 years in terms of the practical application of that existing provision. It goes back to my comments the first time this committee sat and considered this. The government's view is not to overreach in terms of the way in which it describes elements of the bill, and indeed it has not designed this bill to be disingenuous in terms of its commitment to the people of Victoria. In a sense, if we are erring, perhaps we are erring on the side of honesty in relation to this specific provision that Mr Forwood draws attention to.

Again, relating to the assessment that shows that a person has a disability and that that disability would see them eligible to be covered by the provisions of the bill in terms of the roles and responsibilities and the programs that may accompany the implementation of this bill, there is a difference between being eligible and receiving an automatic entitlement to a provision of service. The day-to-day reality, unfortunately, as Mr Drum has indicated and Mr Forwood has just put to us, is that there is an eligibility for a service to be provided at some point in time but not an entitlement that it will be provided immediately.

That is what it boils down to, in that we have erred on the side of saying people are eligible to be scoped within the provisions of the bill, but it does not automatically entitle people to the provision of a service automatically. We think that is a preferable construction to say that they are ineligible, and in fact I do not think there would be any centre of gravity anywhere in Victoria, or anywhere else for that matter, to say that anybody would be, on the basis of their assessment that they have a disability and because of the limitations of service provision, ineligible to be covered by the bill.

If we err, we err on the side of recognising eligibility, for acknowledging that, for acknowledging our obligations to provide a service plan and to guarantee that the service plan be provided for. We acknowledge the reality and unfortunately it is expressed in a negative way in this clause, but it does not actually come with an automatic entitlement to service.

Hon. D. K. DRUM — We are all acutely aware that it is possibly unrealistic to think that upon the declaration of a disability you are going to receive automatic services but as the minister says, if that is the case would you not put the word 'immediate' into the bill so that a decision by the secretary under clause 51 that a person's disability does not in itself entitle a person to immediate provision of disability services but effectively that it does in fact entitle them to services — not automatic, and not immediate — but it does entitle them to services?

To simply say, 'Just because you have got a disability does not mean anything — we will plan for you, we will put you into a support plan but we do not have to provide services to you' — would that not have maybe been a better way to put an honest, not misleading front on the reality of the problem? We are all aware of the problem, that there is a huge black hole out there in relation to service in this sector, but not to put a blanket, 'It is not our responsibility' as clause 51 puts it.

Mr GAVIN JENNINGS — All of us may share the same intent if we all actually sat down to draft a piece of legislation, we probably would have come up with a different sequence, different order and a different way of expressing it. I acknowledge that this bill is expressed in a different way than the way I expressed it to the committee, just a few minutes ago, although I understand the intention of this clause is to acknowledge the realities and to acknowledge commitments in the way that I describe it. The way that I describe it probably used about 20 times more words.

At the end of the day it may provide some comfort to some people, but probably not. If they are waiting for service, they would probably be very disappointed with my words. I acknowledge that this concept could have been drafted in different ways. It is not in any shape or form understood to be philosophically different from what I have described to the committee.

Committee divided on clause:

The CHAIR — Those in favour, please raise your hands: myself, Ms Hirsh and Ms Mikakos.

Hon. D. K. DRUM — What part do you like about it, Carolyn? You are voting for it.

Hon. C. D. HIRSH — Damian, there is no call for that.

The CHAIR — Mr Drum and Ms Hirsh, this is not an appropriate time for any interplay across the room. I am trying to call the division.

Ayes, 3

Hirsh, Ms	Viney, Mr
Mikakos, Ms	

Noes, 2

Drum, Mr	Forwood, Mr

Clause agreed to.

The CHAIR — Mr Drum, no-one denies your passion for this.

Hon. D. K. DRUM — I am sorry — —

The CHAIR — But it does not mean that other people do not share it.

Hon. D. K. DRUM — But some people put their hands up — —

The CHAIR — Thank you!

Ms MIKAKOS — We can speak on every amendment you have put, Damian, but we will just be here another day.

Clause 52

Hon. D. K. DRUM — I do not want to use that as a — —

The CHAIR — Mr Drum, if you want to have a debate about the way we are handling the bill — —

Hon. C. D. HIRSH — I am happy to sit down with you, Mr Drum, for the next three weeks if you want to keep nitpicking.

The CHAIR — Mr Drum, if you want to have a debate about the way we are handling the bill, I am happy to entertain that debate, but I would appreciate it if you would stop casting aspersions on members of the committee who are trying to cooperate with the procedure of the committee and enable us to complete this bill by 4.00 p.m. today.

Hon. D. K. DRUM — I was about to say I think we have handled clause 52.

The CHAIR — Thank you, Mr Drum.

Clause agreed to; clauses 53 and 54 agreed to.

Clause 55

Hon. D. K. DRUM — Before we go on with this one, Chair, we probably have a good 20 to 30 minutes on this issue, and we probably have another 15 minutes on the next. I have two remaining amendments. I am conscious of what the Chair has mentioned earlier.

The CHAIR — The meeting of this committee is set until 4.00 p.m. We do not have another scheduled meeting. I urge you, Mr Drum, to get on with putting your points as succinctly as you can, because I do not have a meeting set aside for a subsequent — —

Hon. BILL FORWOOD — Could we not extend for half an hour?

The CHAIR — I think the minister has an obligation.

Mr GAVIN JENNINGS — I do.

Hon. D. K. DRUM — Is there a situation — —

The CHAIR — Hang on! Do you have an obligation, Minister?

Mr GAVIN JENNINGS — Yes, I do. At 4.15 p.m. I am meant to be meeting one of my ministerial colleagues in preparation for a meeting at 4.30 p.m. with external stakeholders.

The CHAIR — Thank you. We will close the meeting at 4.00 p.m. I invite Mr Drum to speak on clause 55.

Hon. D. K. DRUM — Is there any chance that we could talk about this in the house, when the bill returns there, to do two more, or is that not the case?

The CHAIR — The agreement is that we are going to avoid going into a committee of the whole, Mr Drum. It is by leave.

Hon. D. K. DRUM — The explanatory memorandum contains a reference to a residential institution. Again we are faced with a situation where this is the only piece of legislation in Australia that dares talk about a residential institution. We do not have them in any of the other states. We do not have them in any of our federal legislation, but Victoria has seen it necessary to introduce the terminology to identify residential institutions.

In itself it might not seem so bad, but when you look at what the state disability plan says about residential institutions, it is very clear that the government wants to close them down and is making every effort to continue closing down residential institutions. It also talks about the most wide-ranging definition of what a residential institution is. It is totally up to the secretary at the behest of the minister to proclaim any residential service to be an institution. We believe that all references to the word 'institution' need to be deleted and replaced with 'residential facility'.

The CHAIR — Thank you, Mr Drum.

Hon. BILL FORWOOD — I support the amendment. I think it is a dreadful word to have in the bill, particularly when you read later on that the minister can declare anything to be an institution, including a community residential unit.

Mr GAVIN JENNINGS — Let me be clear that it is not the government's intention to have any more institutions.

Hon. BILL FORWOOD — We know that.

Mr GAVIN JENNINGS — There is a conservatism about the word that relates to practice and human resource management issues, if not industrial relations issues and a whole range of other imponderables that may create some of their own difficulties. That is why there is some maintenance of the word. It is for no other reason than the scope of those issues.

It is not our intention to use this provision at this point in time for any other form of institution. Certainly in a policy sense, the government has no ongoing desire to add to the number, the presence, or the service provision of institutions, but we are committed to the clause as it stands in relation to describing those circumstances and for adding certain protections. The irony of Mr Drum's intervention in relation to clause 55 is that clause 55 has been designed to try to give additional support and additional protections to those people who may be currently residing in those facilities.

Hon. D. K. DRUM — Why would Plenty Residential Services have been excluded from that list? Why has Thomas Embling Hospital been excluded from that list?

Mr GAVIN JENNINGS — Mr Rogers is going to answer this question.

Mr ROGERS — The list in clause 86(2) lists three institutions — Sandhurst, Colanda and Kew Residential Services — and mirrors the provisions we have now in terms of what is called a residential institution. The Thomas Embling centre — the name of that place is actually run through the mental health program — but we do run a facility next to that called statewide forensic services, which is in fact a treatment facility, so it has different provisions under this act as a residential institution. Plenty Residential Services is currently not being proclaimed as a residential institution, and there is no intent to change that. We are basically mirroring the provisions under the IDPSA and bringing forward the three remaining institutions that are covered under that proclamation under the IDPSA into this current act.

Hon. D. K. DRUM — So they are already proclaimed as institutions under the IDPSA?

Mr ROGERS — The IDPSA actually has the same clauses in it — proclamation of residential institutions — and under section 17 of the IDPSA, there are three currently operated places that are proclaimed as residential institutions: they are Sandhurst, Colanda and Kew. We have brought forward that provision into the current act, as the minister mentioned, to provide the additional safeguards that currently apply under the IDPSA to those people residing in those institutions, such as a more often review of their support plan and also appeals to VCAT against their admission to those institutions. These are similar to the provisions under the IDPSA with the exception that at the moment the appeal goes to — I think — the IDRP, the intellectual disability review panel. It is proposed under this bill to go to VCAT.

Hon. BILL FORWOOD — I am sorry, I just do not understand this. If you read the clause, the words say:

> (1) The Governor in Council may on the advice of the Minister by a proclamation published in the Government Gazette proclaim any premises used to provide residential services to be a residential institution.

We have had a statement from the minister that he does not think there is going to be any more. But what that means is that any premises that are currently being used to provide a residential service — and that might be a CRU of five people — can be declared by the minister to be an institution. For the life of me, why do we need that clause? Just say we do not!

The CHAIR — You do not answer for the minister, Mr Forwood.

Mr GAVIN JENNINGS — The clause can actually relate to reducing that number. It can, in theory be used when you — —

Hon. BILL FORWOOD — No!

Mr GAVIN JENNINGS — Currently the three are gazetted in that way and future changes could reduce that number.

Hon. BILL FORWOOD — No, it does not work like that, Minister. Nice try, but!

Mr GAVIN JENNINGS — One, it creates the mandate for (2) to be the roping in provisions of the three services in question.

Hon. BILL FORWOOD — I guess that I would prefer that you put firmly on the record that there is no intention for any new institutions to be created.

The CHAIR — That has already been put on the record, I think, Mr Forwood, right at the beginning.

Mr GAVIN JENNINGS — I think I did that.

Hon. BILL FORWOOD — Just satisfy me — no CRUs will be called institutions?

Mr GAVIN JENNINGS — Mr Rogers has advised me, and I am very pleased to say to you, that no CRUs will be so-called gazetted to be institutions.

Hon. BILL FORWOOD — Thank you very much.

Hon. D. K. DRUM — In terms of the clients that are currently residing in Sandhurst, Colanda and Kew — we are aware of what is going to happen at Kew — but certainly the client base at Colanda and Sandhurst are fulfilling an extremely important role, and a role that probably cannot be replicated in the community. If it is the government's will to close these institutions — as you want to call them or have them proclaimed — what is going to happen to these people who are clearly better suited to be in the facility that they are in?

Mr GAVIN JENNINGS — I do not think we should get too far ahead of the way in which these provisions and these services are going to be provided into the future. I think that is a matter that is more appropriately addressed by the minister and the department in terms of the running. I do not want to be overly prescriptive or drawn on the question of what is the intention of the minister and the department in relation to the facilities in question. I think that is a programmatic issue and a day-to-day responsibility of the minister.

Hon. D. K. DRUM — I have one last question. I just need a minister or one of his advisers to simply define what constitutes an institution. We have got them there. We have brought them in from some other piece of legislation, but we need to have a definition. Is it a certain size? Does it have a certain clientele? Are there certain types of actions that go on there? Is it a certain treatment facility? What is it that defines an institution?

Mr GAVIN JENNINGS — Clause 86(1) says it is a proclamation made by the Governor in Council, by the minister, of those residential services. That is what it does. That is what it is.

The CHAIR — And it is defined in the definitions as well.

Hon. D. K. DRUM — But Minister and Chair, there is no definition in the definitions.

Hon. C. D. HIRSH — The definition is section 86.

The CHAIR — When it is declared.

Hon. D. K. DRUM — And in section 86 there is no definition. It just says it is up to the whim of the secretary and the minister

Hon. C. D. HIRSH — It says that Sandhurst, Colanda and Kew Residential Services — —

Hon. D. K. DRUM — What is it? What is it?

Mr GAVIN JENNINGS — It is the instrument of the proclamation.

Clause agreed to.

Clause 56

Hon. BILL FORWOOD — Very briefly, Minister, because we are running out of time: I am, like so many people, severely disappointed that the government did not keep its promise of putting CRUs and residential services under the Residential Tenancies Act. I think that this, as drafted, is poor; and for the life of me I cannot work out what happens when somebody gets a notice to vacate — what the heck are you going to do with them? — or about the repairs part of it, either.

But given that we are out of time, I just want to let you know that I intend to vote against this clause. I hope everyone else does too, and we will get the whole of part 5 out of the bill and we will go back to the government's original intention, as evinced by the minister when she said that she would put it all under the RTA. Mr Parsons can arrange very quickly for a one-line amendment to the RTA to be made, and that will be that the RTA covers people who are the recipients of housing through the government system.

Mr GAVIN JENNINGS — I am not quite sure whether that means that — —

Hon. BILL FORWOOD — We are going to vote against it.

Mr GAVIN JENNINGS — Yes, we are foreshadowing that we might see one another another day.

Committee divided on clause:

Ayes, 3

Hirsh, Ms	Viney, Mr
Mikakos, Ms	

Noes, 2

Drum, Mr	Forwood, Mr

Clause agreed to.

Clauses 57 to 86 agreed to.

Clause 87

Hon. D. K. DRUM — Again I have a general matter for discussion. This discussion will test further amendments 106 to 110, so we can have the discussion while we are on clause 87. Effectively the first line of clause 87 is:

(1) A person with an intellectual disability may be admitted to a residential institution if the Secretary is satisfied …

Why would we limit that? If we are going to proclaim some of these facilities to be operating as a different type of activity offering different services, why would we limit access to the services only to people with an intellectual disability, therefore ruling out autism and therefore ruling out ABI patients? Why would we only make it available to those with an intellectual disability?

Mr GAVIN JENNINGS — It relates actually to something that you raised before, Mr Drum, which was in relation to the types of service provision within the facilities that are covered by division 3. There are certain programs that are provided within these facilities that are quite specific to the group of people who have been located and supported in these services. It is the government's view that the service mix and the service needs of other groups of people who may warrant support, such as the ones you have just described, would be best accommodated flexibly in other situations.

Hon. D. K. DRUM — Minister, that is extremely judgemental in relation to the needs of those groups that I have just mentioned. Your ability to differentiate between those with autism, those with intellectual disabilities and those with ABI is to say that only one portion of those three have the ability to get certain services.

Mr GAVIN JENNINGS — Effectively, Mr Drum, I am not going to move substantially from my answer, apart from expanding on it. For instance, for a number of people who have acquired brain injury, I am advised in my

interaction with service providers in that sector that this is not the type of facility that either the providers or those clients would necessarily gravitate towards and that they would prefer smaller, more flexibly based individual circumstances, accommodation and service provision.

Clause agreed to; clauses 88 to 250 agreed to.

Postponed clause 17 agreed to.

Clause 5 reconsidered.

Mr GAVIN JENNINGS — There are some amendments that the government will be moving that have been circulated in my name. The intention of these amendments to be moved by me is to insert within the principles an acknowledgment of the importance that families play in the role of supporting people with disabilities. It is enunciated in a number of different ways in accordance with the principles. The second amendment makes it an obligation, within the service provision, that the secretary recognise the eligibility and delivery of planning for persons with disability, in accordance with the eligibility, which was a vexed question that we had before.

These amendments have responded to a number of issues — clearly not all of the issues that have been raised during the course of the committee's consideration — and are a clear acknowledgment by the government of the important role that families play in caring for their loved ones and supporting them on a daily basis. It is important for us to recognise that in a variety of ways and so reinforce it through the principles of the bill.

The CHAIR — Thank you, Minister. I am advised that you are in fact able to formally move the amendments in your name, so we will deal with them one at a time. If you would like to move amendment 1 — obviously you cannot vote on it.

Mr GAVIN JENNINGS — I thank the committee, even though I cannot vote on it, for the opportunity to move:

1. Clause 5, page 15, after line 15 insert —

"( ) acknowledge the important role families have in supporting persons with a disability;

( ) acknowledge the important role families have in assisting their family member to realise their individual physical, social, emotional and intellectual capacities;

( ) where possible strengthen and build capacity of families who are supporting persons with a disability;".

Hon. BILL FORWOOD — I support the amendment. I am very glad the government brought it to the committee. If nothing else it has meant that these three days have not just put things on the record but have actually achieved an outcome in getting the recognition for families. I thank the government for its sensible response. It would be churlish to say this, but I am going to say it anyway: I am sorry there were not a few other things that it picked up as well. But I am very pleased to see that the role of families is now acknowledged in the legislation before the house. I congratulate the government on its initiative.

Hon. D. K. DRUM — Hear, hear!

Amendment agreed to.

Mr GAVIN JENNINGS — I move:

2. Clause 5, page 16, after line 5 insert —

"( ) be designed and provided in a manner which continues to reflect the role of the Secretary in providing and funding planning for persons with a disability;".

Amendment agreed to.

Hon. BILL FORWOOD — I am very pleased to see that clause 5 has been amended. I want to take this opportunity to thank so many people who have helped me come to grips with this bill. I hope that in some senses they feel that their incredible efforts have not been entirely worthless and that the energy and effort they have put

into this have led to a better result. I trust that the work they have done is also informed to some degree by members of the government and staff, who have spent the last three days doing this as well. I particularly thank them — they know who they are — for their assistance to me in the course of this debate.

Amended clause agreed to.

The CHAIR — That concludes the consideration of the bill and all its clauses. I advise committee members of a proposed meeting for the consideration of the education bill on Friday afternoon. I propose that the committee meet to formally adopt the reports on both the Disability Bill and the education bill next Thursday at 11.30 a.m.

Ms MIKAKOS — I so move.

Motion agreed to.

The CHAIR — I thank the minister, his advisers, all the members of the committee, the members of the government and the members of the gallery for their interest in this important legislation. I concur with Mr Forwood's comments that this has demonstrated that, at least in this instance, the process of the Legislation Committee has been of assistance in getting legislation through in a way that meets a range of objectives. I thank everyone for their participation and declare the meeting closed.

Committee adjourned 4.05 p.m.

PARLIAMENT OF VICTORIA

LEGISLATIVE COUNCIL
LEGISLATION COMMITTEE

Education and Training Reform Bill

21 April 2006

Internet: www.parliament.vic.gov.au/downloadhansard/council.htm

Chair
Mr M. Viney

Deputy Chair
Hon. Bill Forwood

Members

Hon. Philip Davis
Hon. D. K. Drum
Hon. Bill Forwood
Hon. C. D. Hirsh
Ms Mikakos
Mr Viney

Substituted members

Hon. Andrew Brideson (for Hon. Philip Davis)
Hon. W. A. Lovell (for Hon. Bill Forwood)
Hon. P. R. Hall (for Hon. D. K. Drum)

Also present

Ms L. Kosky, Minister for Education and Training; and

Mr J. Livi, chief legal officer; and

Mr M. Kane, general manager, strategic initiatives, Department of Education and Training.

Friday, 21 April 2006

EDUCATION AND TRAINING REFORM BILL

Referred from Legislative Council.

The CHAIR — I declare the meeting open. Before commencing with the introduction of the Minister for Education and Training and the witnesses accompanying her, I wish to make the following statement for the information of all participants and the public.

This public meeting of the Legislation Committee is a proceeding of the Legislative Council and therefore enjoys the same powers and immunities and warrants the same respect as are enjoyed by the house. The sessional orders governing the operation of the committee require the committee to consider a bill in detail in the same order that applies to the consideration of a bill in a committee of the whole Council. In relation to a question on a clause or a proposed amendment to a clause, all questions will be decided by a majority of committee members present. The Chair has a deliberative vote and, in the case of an equality of votes, will give a casting vote. The proceedings are being recorded by Hansard, and members of the committee, the minister and any witnesses accompanying the minister will have an opportunity to request corrections to the proof through Hansard.

I welcome the Minister for Education and Training, the Honourable Lynne Kosky. Before inviting her to introduce her advisers, I would like to thank the minister, as a minister from the lower house, for her preparedness to attend this hearing of the upper house Legislation Committee and to extend the committee's appreciation to the Assembly for its resolution enabling ministers to attend these proceedings.

These Legislation Committee hearings are a trial, and I hope this proves to be a worthwhile process in enabling the Legislative Council to consider, as a house of review, legislation that comes before Parliament.

I ask the minister to introduce the advisers whom she may wish to use during the course of this hearing.

Ms KOSKY — Mr John Livi, the chief legal officer with the department, will be with me, along with Mr Michael Kane, the general manager, strategic initiatives.

The CHAIR — I ask each of the advisers to state their name and address and the capacity in which they appear, for the Hansard record.

Mr LIVI — My name is John Livi. I am the department's chief legal officer. My work address is 2 Treasury Place, Melbourne.

Mr KANE — My name is Michael Kane, general manager, strategic initiatives, and my address is 2 Treasury Place, Melbourne.

The CHAIR — We will now consider the bill in the same manner in which the committee as a whole would. The first clause I will call is clause 1, and in doing so I invite the minister to make some opening remarks on the bill.

Clause 1.1.1

Ms KOSKY — I thought it would be useful to you to give a very brief background on the bill — I know the second-reading speech has been tabled — just really to indicate that this is obviously the first complete rewrite of the Education Act since not the last century but the century before. What we have attempted to do is build a new framework that is contemporary — obviously modernising its language — but is contemporary in our expectations in terms of education and training now as a society.

What it does is establish a very robust framework for education and training that I think compares very favourably with the best across the OECD countries. We have also developed it so that, hopefully, it will stand us in very good stead for many years to come. It is not just about now, but about future times as well.

Just in terms of consultation, because I know there has been some discussion — certainly in the lower house there were some comments about the lack of consultation — we have consulted on this legislation for the last 14 months, so we have had a very, very long and developed consultation process. It began with the release of a discussion paper which provided some of the broad areas and some questions that we wanted people to respond to, followed by a white paper and then an exposure draft of the bill. So it has actually been a very lengthy process. There have probably been no, or very few, other bills that have gone through this type of consultation.

We have had a very strong response from a whole variety of stakeholders and a lot of feedback, and that has been both in written form as well as when we had a whole range of meetings around the state. In addition to that, more recently we have had quite a number of consultations around Victoria with the home-schooling community.

The bill — just very briefly — includes for the first time a set of guiding principles that will underpin the delivery of education and training. That is a first for Victoria, and I believe it might be — no, a couple of the other states do something similar, but it is a first for Victoria. We also established a new common regulatory authority for all schools, training providers and higher education providers, apart from universities, as well as for home-schooling. That is a first in Victoria, and I believe it is a first across Australia, where we are trying to have a common regulatory regime rather than have quite separate responses to each of the different systems.

Given that we want consistency through our education and training system as well as across it, we do need to make certain that all providers are meeting minimum standards so that all students have the opportunity to reach their potential. These standards are not about lowest common-denominator standards, but they are a guarantee that all of our children can have access to a quality education, no matter what school they attend or which training provider or higher education institution. It is light touch in approach and it is consistent in approach to regulation.

I know there have been some amendments that were tabled, which we can discuss in more detail as they come up. Some were put forward in the Legislative Assembly. Those amendments were not accepted in the lower house because there were a number of exceptions that were made, particularly for home-schoolers in terms of regulation and for non-government schools. We believe it is important to have the same consistent approach for all children across Victoria in terms of a set of standards and that we can guarantee parents that all children, no matter where they are being schooled or educated, actually achieve those standards and have access to those standards.

We are taking a consistent approach across all, and I must say we are the only state — it is a first again for Victoria, that we are actually applying this regulatory regime to government schools. It has always been there: another regulatory regime has always been there for non-government schools, not for home-schoolers. In fact home-schoolers have not been acknowledged previously in legislation, and we are doing that for the very first time — that is, acknowledging that home-schooling exists and should be supported; and it separates it from truancy.

Previously the only time it had been referred to was in relation to truancy provisions, and I have to say that the penalties in place were actually very severe and very inappropriate for home-schooling. Now we acknowledge home-schooling, and there is a minimum set of regulations in relation to home-schooling and that consistency across government and non-government schools in terms of the regulation.

We are establishing a new statutory authority that will deal with those regulations in relation to all schools — government, non-government, home-schooling and also the training system — and that will be transparent in the way that it operates — and we are attempting to get consistency across the different systems.

I probably should say that since I tabled the set of draft regulations in the lower house — I know some concern was expressed by some within the home-schooling community about what the regulations would look like and whether they were light-touch regulations — we have received very positive feedback about those regulations. Indeed one of the home-schoolers has written to me stating that they welcome and support the changes that have been introduced and that they felt our stated goals of being light touch and non-onerous were certainly achieved when they were handed a copy of the draft regulations.

We are going to continue to consult with the home-school community in relation to those regulations, but I think the regulations that I did table demonstrate that it was a light-touch approach and we were being true to our word.

With regard to the regulation of non-government schools, we are wanting to have a certain consistency in the regulation right across the board of government and non-government schools. I think that is appropriate, and we are giving that commitment to parents so that we are not only applying regulation to government schools but we are applying that to the non-government sector.

That probably covers the main areas of contention, and obviously with the amendments that are brought forward I can talk about any of those in more detail if the need arises.

Hon. ANDREW BRIDESON — Chair, can I make a brief response in — —

The CHAIR — Yes, I was in fact, Mr Brideson, about to say that my approach to this committee has been to have maximum flexibility, and I was going to invite anyone on the committee, if they wanted to, to ask a question or make a brief comment in that regard.

Hon. ANDREW BRIDESON — On behalf of the Liberal opposition I would like to welcome the minister from the other place to this august committee and also extend our welcome to representatives of the education department whom she has brought with her. I note that this will probably be John Livi's only visit to such a committee, because he will be retiring in the not-too-distant future. I did make some appropriate comments in relation to John in the second-reading debate.

Minister, thank you for putting your position quite clearly on the table. I note you have mentioned there will be a light-touch approach to the regulations, and we would like to explore that a little bit more as today unfolds. I note that you have also acknowledged the home-schooling fraternity, and we do have quite a few of the home-schoolers here today who are listening with great interest to our proceedings. I note that you have acknowledged them so much that you are going to support them, so we would like to know a little bit about what sort of support will be offered.

It is probably fair to you that I put on the table now the position of the Liberal Party. I have just prepared a very brief summary of the points I made during the second-reading debate. We believe that parents must have the right to choose what they consider to be the best form of education for their children. It is the position of my party that the government should not proceed with compulsorily requiring home-educators to register. We are taking a fairly hard line — that is, of no registration. We also believe that the VRQA should have representation from the non-government sector and the independent sector. We are of the strong view that 20-year-olds and those older should not have to pay to complete their VCE.

The final point that we will be exploring is to do with the power of self-regulation of the non-government schools and systems. We believe that it should be in the act that they have direct responsibility in relation to all matters concerning those systems. I am sure you have received correspondence from Michelle Green and the Catholic education system in relation to those.

They are essentially the four issues that we will be exploring, and we will have a range of questions on all of those issues. I should give you notice that the Liberal Party will not be moving any amendments today. We will be reviewing our position after today, and we reserve the right to move our amendments in the house when it next meets. I think that basically sums up our position.

The CHAIR — Thank you, Mr Brideson. Mr Hall, I am assuming you will make some comments. Before that, however, since Mr Brideson has raised the position his party is taking, from the government's point of view we are disappointed that in the process of trying to establish this committee, the intention was to give members who had a strong interest in particular legislation the maximum amount of time — in fact, more time than would normally be available through the processes of the committee of the whole in the house to explore issues.

I think it was a general understanding that we would try to deal with all amendments in this process rather than going into a committee of the whole. However, it is of course the opposition's right to take that position, but seeing that you raised it I felt that it was important to put on the record the different understanding we thought we had.

Hon. ANDREW BRIDESON — I note your comments.

Ms KOSKY — Can I respond to that briefly in terms of the amendments, which I suppose is the one issue for this committee to make a decision about. If you are keen to have ministers from the lower house coming along and then choose to actually move the amendments in a separate place, it means that this becomes a discussion rather than actually responding to the particular amendments and addressing the issues, so in a sense I am guessing what your amendments are likely to be in the upper house, rather than being able to respond to them directly. It is your decision, it is your call, but as a minister it is easier to respond directly to the issues rather than skirt around them.

Hon. ANDREW BRIDESON — The amendments that we are currently proposing are identical to the amendments that were moved in the lower house. It may be that after today's meeting we will not go ahead and move those amendments; it may be that there will be some different amendments, but we will keep you in close communication in relation to that.

Hon. P. R. HALL — I do not want to reiterate in its entirety the position of The Nationals on this legislation. That was well expanded on during the second-reading stage, and I am sure the minister will have either looked at it herself or will have been well briefed as to where we as a party sit on this legislation.

I want to also thank the minister for appearing before the committee. I think there are some benefits, as the minister has just said, in terms of having a direct response from the minister who is actually responsible for the legislation and indeed having advisers sit beside her rather than having the farcical situation we sometimes have of having ministers race backwards and forwards to an adviser's box to get a response. I am appreciative of that.

Essentially The National's point of view, in about one sentence, is that we support this legislation, apart from aspects relating to home-education. That was signalled during the second-reading debate. I also circulated in the second-reading debate seven amendments in my name, which I have now circulated before this committee. It is my intention to move those amendments and seek to have them adopted by the committee as part of the process towards making this better legislation. What I want to do is indicate that of the seven amendments that have been circulated, six of them relate specifically to home-education. One of them is slightly at variance to that but in some respects related. When I get the opportunity to move my first amendment I wish to canvass some of the other issues and perhaps question and promote some discussion of the issues associated with six of these seven amendments as I go through.

Beyond that there are some general questions and issues that I want to explore in the legislation as well, but essentially my first amendment, which relates to the purposes clause, will canvass the substantial issue regarding home-education.

The CHAIR — We will come to that very soon, Mr Hall.

Hon. C. D. HIRSH — I just want to say briefly that having been involved in the passing in 1990 and 1991 of the Adult, Community and Further Education Act and the Vocational Education and Training Act, and having been involved in education for many years, I want to congratulate the government on this new bill. It is a very exciting thing to revamp old legislation and turn it into something that is up to date. Reading speeches that many people, including the ministers, made on the bill in the early 1990s you can see that there was a great need to update the legislation. It was landmark stuff then, but of course 15 years have gone by. Congratulations Minister, and to the government generally on this great bill, although I will ask you a question or two later.

Ms MIKAKOS — Just briefly I want to thank the minister for attending today to assist this committee in its consideration of the bill. I will be coming back to some specific comments later on once we get into it, but I want to say that I too regard this as groundbreaking legislation. In particular the inclusion in the bill of democratic principles is something that I welcome. The fact that it is acknowledged in the bill that choice of education options is at the cornerstone of the legislation is important to acknowledge, as is the reaffirmation of the commitment to free public education in this state.

I will come back to the issue of home-schooling once we get into the discussion that Mr Hall wants to raise. Firstly, it is important to acknowledge that all members of Parliament have received a great deal of correspondence in the lead-up to Parliament's consideration of this bill, so I think it is important to acknowledge the fact that people have taken the trouble to communicate with us.

The CHAIR — Including from the United States.

Ms MIKAKOS — Can I say at the outset that I did not have a single local constituent that I can recall contact me expressing concerns in relation to this bill. I did however have a number of emails from overseas, and I regard that as reflective generally of the support there is in the Victorian community for a historic rewrite of this legislation. That has not occurred I think for 150-odd years. I could have the number of years wrong.

Hon. C. D. HIRSH — 1872.

Hon. ANDREW BRIDESON — 1872.

Ms MIKAKOS — Right, so I am close enough. Generally there is a great deal of support for where the government is going with this legislation; I think it is important to say that. It is also important to say that there have been concerns raised particularly amongst people who educate at home. Those people are perfectly entitled to choose to educate their children at home. That is something that you have acknowledged in your second-reading speech, and I am sure we will explore those issues further. But I do think that some of those concerns, as I understand from the information I have been provided with, were based on a misunderstanding of the scope of the legislation and the government's intent.

I think it would be useful today if you could perhaps explore those issues with us further just in terms of reassuring people who choose to home-educate what the government's intentions are in that regard. I will leave it at that, Chair.

Hon. W. A. LOVELL — Minister, I would just like to say that one thing that really is important to me is choice for parents to have their children educated in a manner that they find appropriate, whether that be through a government school, a Catholic school, an independent school or home-schooling. Is also important to me that Catholic and independent schools have a right to self-govern their schools. They are not part of the state school system, and that is why some parents choose to send their children to those schools, whether it be based around religion or the type of curriculum practised within those schools.

Also on the home-schooling issue, unlike Ms Mikakos I had a number of home-schoolers within my electorate contact me, and perhaps that is because Ms Mikakos is a metropolitan-based MP and I am a country-based MP. In the country we have less choice of where to send our children to school, and there are probably more parents who choose to home-educate because of that.

The CHAIR — The question is that clause 1.1.1 stand part of the bill. Mr Hall, to move his amendment.

Hon. P. R. HALL — I move:

1. Clause 1.1.1, page 2, lines 12 and 13, omit "and the regulation of non-Government schools and" and insert ", the regulation of non-Government schools and the registration of students for".

Amendment 1 standing in my name seeks to amend clause 1.1.1(2)(c), which talks about the establishment and regulation of government schools. We are deleting 'and the regulation of non-Government schools and', so it will now read:

> the establishment and regulation of Government schools**,** the regulation of non-Government schools and the registration of students for home schooling.

We all know that parliamentary counsel's words are rather verbose, but the intent of this amendment is simply to still impose upon home-educators a system which will require registration but a system which will no longer require them to be regulated in any way at all.

By contrast perhaps I should say it is my understanding of the government's legislation that what the government is seeking to do is to have students who undertake home-education registered and to have home-education regulated. The provisions which enable that are clauses like 4.2.2 on page 252 and some of the subclauses in 4.3.9 on page 265, which set out the parameters by which somebody can be registered and the arrangements by which some regulation will take place.

What The Nationals seek to do by way of my amendments — and as I said in my opening remarks, six of the seven amendments relate to this very principle — is to steer a centre course, or a moderate course, and one that I think would be acceptable to home-educators, or the majority of home-educators — and, I would have thought, acceptable to the government, given the promise, with the words having been said, that this is light touch. What we have proposed is light touch, will give the government something it wishes to achieve but at the same time will sit comfortably with the majority of home-educators.

What we are proposing in this set of amendments is to establish a registration system by way of a simple, no-cost notification to enable registration to take place but that they not be subjected to any scrutiny in respect to minimum standards, as has been proposed by the government in this bill. I outlined very clearly in the second-reading debate the reasons why we thought there was no need to have a regulated environment for home-education.

To flush out some of those issues and explore some of the reasons why we have taken this approach, through you, Chair, I want to ask the minister a series of questions relating to this subject. The first is probably one of terminology — that is, I wondered if the minister is able to explain to the committee why the government chose to use the term 'home-schooling' instead of 'home-education'. It simply seems to me that you go to school to be educated, and the outcome is an education. If we talk about school education, why do we not talk about home-education, and why has the government chosen to use the terminology 'home-school' and 'home-schooling' throughout the bill?

Ms KOSKY — Very simply, because we are talking about only those people who are doing home-education in relation to school-age children. If we had taken 'home-education', we would be talking about adults who are educating themselves at home, we would be talking about people who are doing training online. To use 'home-education' would be too broad. We were very specific that this was to relate to children who were of school age, the compulsory school age, who were receiving their education at home rather than at school. That is why it was 'home-schooling'; it was very simple.

Hon. P. R. HALL — Is 'home-schooling' defined in the bill?

Ms KOSKY — No, it is not, and that goes to the issue of light touch. Can I just give a bit of an outline of why the regulations are here in relation to home-schooling, because I think it would be helpful.

I suppose one of the dilemmas I have had as minister for education over a period of time is this: for those children who are not attending a formal school setting, what do we as a government and an authority do, given that we are saying schooling is compulsory up until the age of 15, or 16 in the future — it was the age of 15; if this bill passes through both houses, it will be 16 — because then you have to say that not providing schooling has a penalty attached to it? We can define that easily where children are enrolled at government schools or non-government schools, because they are clearly enrolled and they are going to school. If they are not formally enrolled at a school, then how do you actually acknowledge that a child is receiving the education that we as the state are saying is compulsory for children within that age to receive, and how do we make sure that it is treated differently from truancy, where children are both absent from school and absent from any form of education?

Clearly we wanted the penalties to be different for home-schooling as opposed to truancy. Previously, because of the legislation's lack of definition or acknowledgment of home-schooling, it became truancy, and it was treated under those mechanisms. So we deliberately have not defined 'home-schooling', apart from, one, saying we want parents to provide notification that their child is being educated at home so that they are making a commitment, and that is through a statutory declaration, and, then, being able to follow up — and you mentioned the amendment from The Nationals about not regulating.

The difficulty I have as a minister is if someone rings up and complains that a child is receiving absolutely no education — and we have that in the office and through MPs who come to see me and ask, 'What do I do?'. If we have no mechanism for actually confirming that education is indeed taking place at home, the only provisions we can use to apply to that family are under the truancy provisions. It seems to me that that is a very punitive measure. It is not the sort of measure we want for home-schooling. What we are wanting is both a notification and a commitment or guarantee that parents are continuing to provide education.

Where there is a complaint we need the capacity — I use the word 'investigate', but I use it advisedly — to actually make sure that education is taking place. We have examples of parents who have a mental illness or who are lonely at home and who keep their children at home for company. That is not home-schooling; that is truancy. We need a mechanism that can respond to those circumstances differently from those of home-schoolers. That is why this provision is in the legislation: it acknowledges that home-schooling is a legitimate form of schooling.

We also, through the regulations, refer to the sort of support that we are prepared to provide if home-schoolers wish to take that support up, and it is a choice by them as to whether it is for curriculum or whether it is for professional development. We also acknowledge that children can be enrolled, and we will alter the enrolment requirements so that if they want to do, say, art or sport through the school they will be able to do that. Some home-schooling parents have asked us if they would be able to do that.

In home-schooling there is a range of different approaches to schooling. We have tried to cover the range, and we have tried to keep it light touch, but I need to make the distinction between what is truancy and what is education occurring in the home. That is why the provisions are as they are within the legislation. That probably covers really what we are trying to address in the legislation in relation to home-schooling.

The CHAIR — I just want to get some clarification from Mr Hall on his amendments. It is absolutely your call, Mr Hall, but in going through your proposed amendments it appears to me that all but your proposed amendment 2 relate to the same issue — essentially, the registration of students for home-schooling and the mechanisms by which that might occur.

The Clerk has advised that each of your proposed amendments could be treated as a stand-alone, but it seems to me that there are a lot of links to your first proposed amendment. If you wish to have your proposed amendment 1 regarded as a test for your proposed amendments 3, 4, 5, 6 and 7 — and amendment 7 is in fact a new clause — I am happy to entertain a discussion now that goes across all those proposed amendments. In other words, we can have a discussion on any of the detail of the subsequent clauses while discussing this one and regard your amendment 1 to clause 1.1.1 as a test. Can I also say that that does not remove the opportunity for you to subsequently raise issues as we go through the bill clause by clause.

So rather than our coming back and voting on all the various amendments, I am happy to treat it as a test. If you want to treat them all individually you can, but that would limit the discussion to each clause, whereas you might want to broaden the discussion to include all of your other subsequent amendments and the implications of them. I will give you a minute to think about it.

Hon. P. R. HALL — No. as I said before, six of the seven are all related, but it is no. 3 that is the stand-alone.

The CHAIR — Amendment 3 is the stand-alone. It is clearly different; it is not related to that. What I am suggesting is that your proposed amendment 1 be treated as a test of your proposed amendments 2, 4, 5 and 6; and of course getting to the new clause in amendment 7 requires 5 to be agreed to by the committee.

Hon. P. R. HALL — As I said before, I am happy to canvass all of those as part of this, because they are all on the same principle.

The CHAIR — We will treat them all as a test, and of course as we go through the individual clauses you still have the right to vote against individual clauses. There are a couple that you want to completely omit, so we can still deal with those and raise issues individually. But rather than our coming back and formally putting all the various amendments separately, I am offering to have us canvass the broad discussion now and regard this one as a test.

Hon. P. R. HALL — Yes, that is fine with me.

Following on from the minister's response to that, can I ask her to outline the current process for people wishing to undertake home-education for their children?

Ms KOSKY — The current process is that parents make that decision entirely by themselves. They do not register their child; the state could, if it were going to take action, do that under the truancy provisions. The current regulatory arrangements I believe are very punitive. They mean that the government can take action where there are

doubts about the education being provided in the home, that being through the courts, which I do not believe is the appropriate mechanism to use. It makes it very adversarial and confrontational.

What we have picked up is what is in place in other states and also overseas, which is both registering and providing the opportunity — the regulations indicate what is required — and then obviously if there are any legitimate concerns that are registered, they can be investigated to the point where parents just have to indicate that they are providing education at home — and that is what is being provided.

There are no current regulations. There is no acknowledgment that home-schooling exists. Therefore, really the reading of that is that if the child is not in a formal educational setting, they are truant.

Hon. P. R. HALL — They do not have to have approval from a regional office?

Ms KOSKY — They are actually truanting. Because there is no acknowledgment of home-schooling in the legislation, they are truanting. That is what the current legislation indicates in relation to children who are not at school, given that schooling is compulsory up to the age of 15.

Hon. P. R. HALL — With due respect, Chair, I want to follow up that point. With respect to that answer, is it not true that they are not truanting if they have a reasonable excuse as provided for in the Community Services Act? I fail to understand why you can say that anybody not attending a school now is truanting because they would have a reasonable excuse under the Community Services Act.

Ms KOSKY — They do not need approval at the moment. I believe, as a government, that if we are saying schooling is compulsory up to the age of 16, we are saying that not because we want to punish children for being at school, we are saying it because we believe it is a fundamental right of children, not of their parents, to receive an education of a certain standard up to the age of 16.

That debate was had a very long time ago when governments of all persuasions decided that we had to make schooling compulsory. That is a fight that was had when children were being kept home or sent out to work and were not being provided with education, and that was seen as a liberating experience for children. All parties of various political persuasions actually believe it is important for children to receive a certain level of education up to the age of 16. I understand The Nationals support that, given that you are not challenging the compulsory school leaving age being raised to 16.

If we accept that as a fundamental premise, you cannot then say, 'If you choose not to send your child to school and not to give any evidence of the education you are providing, it is okay', because you are actually saying that you are not absolutely committed to that fundamental principle of the right of a child to have education up to the age of 16.

That is where this government stands. We believe it is the right of the child. What we are asking for, through the regulatory system that we are putting in place, is some form of evidence — it is very light touch, because we are not asking for all the curriculum to be provided and we are not asking for home-schooling parents to defend why they have chosen a particular type of education — and for them to sign up to the fact that they are providing that education at home so that we can be assured that a child is being provided with that education up to the age of 16 in a setting that is a non-formal setting and so that where there are complaints, we can actually determine whether they are legitimate or not legitimate.

We are making the commitment to the child, and parents have rights in that, but the view of our government is that it is the fundamental right of a child to have access to quality education. We acknowledge that home-schooling is one of those forums, but we want evidence that that is the case, just as — you would well know the newspapers covering the absenteeism rates — both the opposition and The Nationals have a bit of fun when the absenteeism rates come out for government schools and it becomes, 'Shock, horror! We must be very tough on absenteeism'. That is why we are putting these regulations in place. It is not to punish the parents or the children. It is to make sure that all of our children right across Victoria have access to a certain level of education, and I do not shy away from that.

Hon. ANDREW BRIDESON — I am really reluctant to jump in. I do not want to stop Mr Hall's train of thought.

Hon. P. R. HALL — In terms of the issue of complaints, you have raised the fact that the department has received complaints, including from members of Parliament, about the quality of education that somebody undertaking home-education may be receiving. What action has the government taken in respect of those complaints? Is it not true that there have been no court cases in the last 16 years with respect to certain provisions under the Community Services Act and the Education Act?

Ms KOSKY — I will ask John Livi to comment on that. I understand that there has been some court action.

Mr LIVI — Thank you minister. The last court action was in 1990, and it was before Magistrate Cosgriff. That involved the situation where home-schoolers refused to allow the department to see what a child was being taught. We had some concerns about what the child was being taught. Under the legislation, the only way we could address those concerns was to prosecute the parents for not sending their child to school.

There have been other instances since then. Might I say the department lost that case, because the way the case proceeded was that the department had its experts before the magistrate and the parents came along with their experts before the magistrate. The magistrate got to see what the child was being taught. Having seen what the child was being taught, the magistrate formed the view that the child was receiving efficient and regular instruction.

There have been, since then, about four cases that have come to my attention, where the department had concerns but where the only way we could address those concerns would again be to launch prosecutions. I gave the advice that the prosecutions would have to be launched. I am not sure how the cases were resolved. They may have been resolved amicably and with cooperation.

In the 1990 court case the magistrate did say that parents could be expected to cooperate with the department and that the department had a duty to ensure that the children were receiving an appropriate education but the department had no option in the circumstances of that case but to prosecute.

Hon. P. R. HALL — Do you think four cases in 16 years — that is, four expressions of concern about the quality of home-education in 16 years — warrant a major overhaul of the way home-education is regulated and registered in this state?

Ms KOSKY — No, I do not think it requires a major overhaul. This is not a major overhaul. This is absolutely a very light-touch approach — both asking that parents register their child if the child is being schooled at home and also monitoring that in a very light-touch way. We are not asking to approve the curriculum that is being provided, just for parents to acknowledge that an approach to education is being provided.

It is quite different from the level of regulation that is being applied to government schools and to non-government schools. This is very light touch. We are not doing this because of cases in the past. We are doing it because we believe it is a right of every child in this state up to the age of 16 to have access to education. That is why we are doing this. Truancy is not on, and we need an ability to actually distinguish between a child whose parents have decided — deliberately or not deliberately — that their child will not have access to education and those who want their child to have access to education but in a form that is not in a formal educational institution. We need the capacity to distinguish between them so we can ensure that every child has access to education up to the age of 16. That is why we are introducing this.

As I have said, this bill is about making the legislation contemporary; it is not about just responding to issues and concerns that have arisen in the past. It is actually trying to bring it up to a particular level so that it will stand itself in good stead well into the future. I think it is very light touch, and this is a commitment we are making to all of our children.

Hon. P. R. HALL — Through you, Chair, the minister has spoken about a light-touch regulatory framework. Could the minister explain to the committee how the monitoring or the regulation of home-education is going to take place?

Ms KOSKY — I have tabled the draft regulations. They are in front of me somewhere.

Hon. P. R. HALL — No, I want to know the mechanisms by which the Victorian Registration and Qualifications Authority is actually going to regulate home-schooling.

Ms KOSKY — Obviously the VRQA has not been established at this stage, but it will be advising me. In discussions about this bill, as I have said, we have indicated that the regulation will be, first, notification, and that notification will occur each year that the child is continuing to be educated or schooled at home. Then it really will be only where a complaint is made that there will be some monitoring — 'monitoring' is the wrong word — or some checking of whether that education is still taking place at home.

It is not going to be an annual check on the parent. If the parent is indicating that the child is being home-schooled, that will be accepted unless there is a complaint or a suggestion to the contrary, which would mean that the VRQA would seek information from the parent about whether the child is being schooled at home. Also, obviously if a child is stopped in the street — and it is probably more likely to be by a police officer than a truancy officer — then they would have to indicate, and that would be followed through. But it is at that level. We are asking not to approve the form of education that is taking place at home but to have parents indicate that that education is taking place. We have to take their word for it. That is the position I have adopted, and it has been mentioned in discussions we have had with a lot of people within the home-schooling community; and when the VRQA is established that is the advice I will give it in terms of those regulations.

Hon. P. R. HALL — My reading of clause 4.3.9 is that it gives certain powers that the authority, after the passage of this bill, can call upon to review. I particularly refer you to clause 4.3.9(b)(i) on page 265, which states:

> the parents of the student or the student refuse permission to authorised officers of the Authority to review the educational program, material or other records used for or related to the home schooling of the student —

et cetera. I am interested to know what sort of evidence and material the authorised officer here will be requiring of parents to establish whether they are meeting minimum standards of education.

Ms KOSKY — Can I make a distinction here between the legislation and the regulations. Obviously the legislation sets the framework; the draft regulations are quite clear about what the requirements will be. If a future government chooses to change those regulations, then that is its right. It could do that, but certainly this government will not be changing those draft regulations. I cannot speak for future governments. You might be able to.

Hon. P. R. HALL — I am not asking about future governments.

Ms KOSKY — It is legislation that will be about the future. Can I say that we will be establishing the advisory committee on home-schooling, and we will have home-schoolers on it. The fall-back position, and the reason I tabled the regulations, was to assure home-schoolers and others of the mechanisms that would be put in place to, in a sense, stay in touch or monitor the home-schooling. I can keep repeating what I have said, but I do not think there is a lot of purpose in that.

The CHAIR — I am happy to come back to that. Mr Brideson keeps trying to grab my attention.

Hon. ANDREW BRIDESON — On the same train of thought — and I am sure Mr Hall would ask this question of you, Minister — at the end of the draft regulations is a heading 'Review'. You have said that it is a condition of registration that the VRQA may review the program, material or other records relating to home-schooling where the authority has reasonable grounds to suspect otherwise. You have said that an authorised officer could be called to go into a home upon receiving a complaint. Who do you envisage would make such a complaint? There could be all sorts of vexatious complaints. There could be neighbourhood disputes, family disputes or whatever. Can I explore with you what reasonable grounds would be? What do you see as being reasonable grounds for having a program reviewed?

Ms KOSKY — I am going to ask Michael Kane, who has been doing lots of the work on this, to respond in more detail. The mechanism for review is in the regulations, as it is in other regulations, because there needs to be the capacity for review.

Can I also say that the authorised officers cannot enter the premises of a home-schooler without permission. I understand why you are trying to build this up into a scaremongering tactic — probably if I were in opposition, I

would do the same, but that is not the purpose. I think any reasonable person reading all that we have tabled would understand this is a light-touch approach, but we are giving that guarantee to young people. Yes, there will be the opportunity to review, and we will be using the home-schooling advisory group committee to give us the advice on how and under what circumstances that should occur.

It might be MPs, too, who actually make complaints about children who are not being schooled. From my past experience that is certainly an area where I have had some of the complaints expressed to me, and I do not think they are vexatious.

Hon. ANDREW BRIDESON — Chair, for the record, I am not scaremongering. I am expressing genuine concerns that have been expressed personally to me both verbally and in writing from home-educators. It is a genuine concern, and that is the reason I raised the question.

Mr KANE — I have a brief comment, Chair. We have had a number of consultations chaired by the parliamentary secretary, the most recent one in Bendigo last Wednesday. The issue of vexatious complaints has troubled a number of home-schoolers in their conversations with me, as opposed to the genuine cases, which we all acknowledge would be few and far between. How you might in fact distinguish those is something that we believe — and home-schoolers have told me — would be best taken on advice from groups of home-schoolers. The issue is how the committee that the minister is proposing to establish is best representative of a range of views in the home-schooling community.

With respect to the VRQA, they will advise the minister on regulations, but I am presuming that the minister will take advice from the home-schooling community as well through the committee structure envisaged. The vexatious issue is one that we left for further consultation.

Ms KOSKY — Any parent who is home-schooling should not have a concern with this legislation; but any parent who is keeping their child away from any form of formal schooling should be concerned about it. That is the purpose of it.

I have spoken with a whole range of home-schoolers, from those who probably have a more formalised curriculum right through to those who talk about un-schooling and have a very open approach. But it is actually having a form and an approach to education and ensuring that the environment is provided for that education to occur in that is important for us. It is the education that is important to us. We do not want children to get to the age of 16 without having had access to education, frankly then leading to some of the literacy and numeracy concerns that have been expressed by the opposition on many occasions.

Hon. P. R. HALL — I have to say in terms of everything I have heard that it reinforces in my mind that there is a truancy problem out there and not really an education problem when it comes to home-education, because you just said it yourself, Minister, that there are very few genuine cases out there of kids who stay away from school. Nevertheless let me say this — —

Ms KOSKY — Can I ask a question? How would you be able to tell if they were truanting or being schooled at home at the moment under the current legislation?

Hon. P. R. HALL — You assume it is a truancy issue, and you put in place mechanisms to address truancy. It seems to me that in many instances home-educators are being made a scapegoat for inadequate provisions in relation to truancy.

Ms KOSKY — Playing politics.

Hon. P. R. HALL — I am not playing politics.

Ms KOSKY — It is playing politics. I accept — —

Hon. P. R. HALL — In respect of these amendments, I have consulted with your office, as you know, to try and steer a middle course down this road. I accepted your light-touch mechanism, and I have put in place what I believe is an appropriate light-touch framework to address these particular issues.

Ms KOSKY — I know you have been working with the office. The difficulty with the amendments you have put forward is that once a child is registered, if there is a complaint — if there are complaints from 30 people within a community — about a particular child not receiving home-schooling when they have been registered as being home-schooled, there is no absolutely no capacity at the moment to actually deal with that. What do you do when the child gets to the age of 16 and says, 'No, I sat in front of the telly the whole time. Mum and dad filled out the form and said I was being home-schooled, but I was not.'?

Hon. P. R. HALL — Do you reckon that is what happens now?

Ms KOSKY — I think there are a number of cases where parents do keep their children home from school — because of issues of loneliness and because of issues of illness — and the children are not getting support in school. Now there are a range of ways of dealing with that. I do not think the people who define themselves as home-schoolers and who have been writing to all of us about home-schooling fit within that category. But at the moment the only way we can deal with that is through very punitive measures which are truancy measures, and the only way that we can deal with some of the vexatious complaints is again through those measures.

What we are trying to put in place is something that, firstly, works for home-schoolers so they can register their child, and secondly, so that if there are complaints — and no doubt there are some vexatious complaints from time to time — the home-schooling parents have a very easy way of indicating that they are providing that schooling and so we can get out of their lives very quickly and they can go on with the education.

If we continue with the system that operates at the moment when we decide to step in, you actually step over a line immediately. There is no in-between point. But if we do not have some mechanism for checking, then it is just that notification at the beginning of every school year, which means that parents could do that — whether it is parents who are home-schooling or those who are lonely.

I do not know whether you have had any complaints, but I have had complaints about people who are very concerned about children not getting any access to education because the parents are lonely — single parents sometimes; I am not saying that is all the time — but they want the child at home to look after them. That is not in the best interests of children. We need a way of distinguishing that. This is not about punishing home-schooling parents — far from it

Hon. C. D. HIRSH — I would like to speak briefly on the issue that the minister has just been referring to — that is, the concept of truancy where a child stays at home with a lonely parent. It is something that, when I worked in psychology in education, occurred from time to time, and there was a need to address that issue. A complaint would be received, perhaps from a neighbour or another parent or through the school, that a child was home.

On investigation — and this was not a legal investigation — on occasion it was found that the child was not wanting to go to school because mum needed the child at home. It usually meant that the child was afraid that something would happen to mum while he or she was at school and would not go. It was called 'school refusal': it is a type of truancy where the child actually stays home. In the days when I was working in the field it was easy to separate those children from children who were being home-schooled, because in home-schooling they used the old Correspondence School curriculum and would usually work through the Correspondence School. That does not seem to happen now in the distance education program.

Some people in my electorate wrote to me or contacted me, and I wrote back to them. It was not until I started getting deluged with emails from interstate and from the US, as we all were, that I gave up on the whole thing and just deleted the lot, so I am afraid a few local people ended up in that mishmash.

However, it does not concern people who are legitimately providing an education for their children at home. It is not about them; it is about that very sad group of families — and the minister has been saying this — where the children are at home and they are being kept at home by mum, often out of fear. Often the child is depressed; often mum is depressed. The child is too scared to go to school. That group of families will be covered, and the children will be cared for, by this legislation. I am very pleased to see it happening. Certainly when I was working in the field it was always a difficult situation to work out.

Ms KOSKY — I understand why, when we brought the legislation in at the beginning, the home-schooling community was very concerned. In the absence of the regulations which really define what we mean by 'light-touch approach', it could have meant a wide range of things. I understand why the parents would have been concerned. We have had consultations right around the state. Certainly since the draft regulations have been tabled, the response from the bulk of the home-schooling community, through the consultations that we have had before and since the legislation was introduced, and also from some of the letters, is that they are much more comfortable now.

I have spoken with some people who are doing home-schooling who believe that what we have done in terms of the draft regulations is very appropriate. Some of their earlier concerns were that this was trying to stamp out home-schooling, but that is not the case at all nor is trying to define what the curriculum and teaching product should be within the home.

They are also appreciative of what we are doing and what we can do through this process once parents have notified about home-schooling — that is, provide support, if that is wanted and requested, to provide a form and a forum for home-schoolers to say they would like some extra information about whatever they would like to be put in touch with — whether it is interstate or overseas.

This does exist overseas. In America some of the states have this approach and some have a more detailed and inventive approach. I have certainly spoken with home-schoolers who have indicated that that support around additional education materials might be requested — not our formal curriculum materials necessarily, not the correspondence and not the distance education materials, but other materials to assist with home-schooling and also access to some of the facilities at the schools. At the moment we have no mechanism for doing that.

Whilst we are focusing on the legislation and the regulations, the support mechanisms are going to be established there. We will have an advisory committee, and I think we will all become much better educated ourselves about the home-schooling community. Some people will still sit outside the more formally connected home-schooling community and just do the notification, and that will be it. But it does allow us to actually provide support where that is requested.

Every other state has legislation on home-schooling that is similar to what we are providing in our bill.

Hon. P. R. HALL — That regulates home-schooling?

Ms KOSKY — Yes.

Hon. P. R. HALL — Every other state?

Ms KOSKY — Michael, would you like to comment?

Mr KANE — Every other state has regulation. Indeed, in New South Wales and Queensland, it is far more intensive than this proposal is. Much of the advice we have had from a number of home-schoolers is that the Tasmanian model, which includes an advisory committee, is the way forward. I was speaking with home-schoolers as late as yesterday about that.

Hon. P. R. HALL — Can I respond to a couple of the answers that have been given in terms of this and then go on to seek some information, because I do not think we are going to come to an agreement on some of the more contentious issues of this. First of all, the minister asked how you discriminate between a case where a parent is just keeping a child at home because the parent is lonely and where they are not receiving an appropriate home-education.

One way you can differentiate and investigate the two is to do as I am proposing in these amendments that I am putting forward — that is, set up a registration system or a notification system as proposed by my amendments. Then if it is a simple case of a parent keeping at home a child who has not been registered for home-schooling, then it is obviously an issue of truancy, and there are truancy provisions which you can follow up. That is what I am saying: I think the whole home-educators situation is being made a bit of a scapegoat for truancy in respect of that.

The other thing that I have some concerns with is, when we talk about people making complaints about standards of home-education, what we are actually doing is imposing a value judgment on that level of home-education. I am concerned that MPs think that they know what is best for other people's children if they are making complaints about it or if third parties are making complaints about it, and when the investigating body is a government authority — that is, the Victorian Registration and Qualifications Authority — knows best. Is that so?

We have a court system, as John Livi said before. There are previous cases. There is a court — there is a democracy in this country — that makes those judgments about what is regular and efficient regulation. I have some concerns with this system that what we are seeking to do is for government to impose a subjective, values decision on what is, quite rightly, the responsibility of parents to raise their children.

That being said, I want to ask a specific question. The question I was asking 15 minutes ago was that the draft regulations and clause 4.3.9 of the bill say in the case of a review that the VRQA may review the program, material and other records relating to the home-schooling. Minister, I would like to know what is intended. What material and what documentation is likely to be called for by the VRQA when such a review is taking place?

The CHAIR — Mr Hall, I have to say I think I hear every day I sit in Parliament MPs express views on a whole range of things, and I have to say I read on page 3 of today's *Age* some very significant opinions by the Prime Minister about English education.

Hon. P. R. HALL — I think I know what is best for my kids rather than you knowing what is best for them.

The CHAIR — The Prime Minister seems to think it is okay to express his opinion.

Ms KOSKY — I would back a politician over a lawyer any day. Sorry, John!

Ms MIKAKOS — And what about politicians who are lawyers?

Ms KOSKY — Previous governments to this government have made decisions that we are going to have compulsory schooling. We make a decision that we know best what is the right of every child in Victoria, and that is education. I do not shy away from that. In relation to the particular question, we are going to have discussions with the home-schooling advisory group, because it is in the best place to actually be able to indicate what it thinks would be an appropriate way to demonstrate the sort of instruction it is providing. We need a mechanism. The difficulty I have — and I think you probably have missed me before — is that it is not the parents who do not register their child for home-schooling. If you only had to register and there was no follow-up, then if you had a child you wanted to keep home from school, with no home-schooling, you would just register them because there is going to be no follow-up.

It is not a distinction between those who register and those who do not. We want to make sure that those who register are not only saying but are doing home-schooling. That is why we have the registration and why we have the capacity to follow up with the parents where there are concerns that are expressed, whether within the community or by others within different community groups, about a child not receiving any education. That is why we need both aspects of it rather than just the registration. We will be talking with the home-school advisory committee and consulting it about the way it would prefer, if there were a complaint or concern, to point to the education people are providing for their child.

Ms MIKAKOS — In speaking against Mr Hall's raft of amendments in relation to home-schooling, I want to say I agree with the minister that the best interest of the student needs to be our first and primary consideration in relation to this legislation. I think there is a distinction to be had between home-schooling and the issue of truancy. They are interrelated, and the way I see it is the registration process works basically to ensure that students are not truant. That is I guess the primary reason for setting up this registration process. Mr Hall's proposed new clause, and I specifically refer to subclause(3), states:

> (3) The Authority must cancel the registration of a student for home-schooling —
>
> …
>
> (b) if the Authority is otherwise satisfied that the student is no longer receiving home schooling.

Even Mr Hall's proposed new clause presumably envisages that the authority could on advice received from outside third parties and through information derived through its own investigation be able to deregister a student for these purposes, in which case presumably the student is then regarded as being truant. Even Mr Hall in his thinking about how an alternative system may work is acknowledging that you have to have some system whereby the authority can take some action if there is a determination — it does not matter that you do not use the word 'standards' — that home-schooling is not in fact being delivered to that particular student.

Minister, I thank you for your comments, and you have been discussing this issue now at some length, because of the further detail you have provided to this committee today. When home-schoolers read it in *Hansard* at a later point in time they will get some comfort from the assurances you have given them as to how this process of checking and registration will actually work. I think people will take great comfort from the fact that there is no intention to actively go out and audit people at home and that this is essentially a safety mechanism.

I said earlier on than I had not received correspondence from local constituents; however, I had an email forwarded to me by Mr Geoff Hilton, who is a member for Western Port Province and is unable to be here today. He asked me if I could raise with you an issue that has been sent to him by one of his constituents, Mr Peter Dun. It is a very lengthy email, and I think in the explanation you have given you have really addressed many of his concerns. It comes back to what I was saying earlier: that there is a fundamental misunderstanding, I think, amongst some home-schooler as to how this will work. He specifically raised the issue of the home-education advisory group. I wanted you to flesh out — perhaps to give him some comfort — how that group will operate, what its intended role is and how it will assist the department in terms of conducting these types of checks and the whole regulatory mechanism for home-schools. If perhaps you could give us some more information on that particular advisory group, it would be much appreciated.

Ms KOSKY — I will get Michael to talk about this in more detail. Thank you for your comments. We have absolutely no intention of trying to get children who are being home-schooled into schools. We have no intention of trying to frogmarch kids off to schools about learning. What we are wanting to do is set up a regime where I suppose we are saying as a standard that all children have the right to education and therefore acknowledging the range of different forms of education that occur and wanting to support that.

I do not think this government could be criticised at all for having a punitive position in relation to education, and the previous government did not either. Maybe 20 or 30 years ago there was a much more punitive approach in terms of children who were truanting; it is now much more an approach of trying to support all children to have access to that education. I think it is important to put that on the record. We have no intention of looking through people's windows, trying to go through people's information to check whether in fact they are home-schooling or not. What we are trying to do is to set up a regime which allows home-schooling parents to indicate that that is what they are providing — they have not had that opportunity before, so there has often been a question mark by the broader community about whether those children are being educated or not — and also the capacity to follow through any concerns if they are registered.

I suppose, Mr Hall, the one concern I have — and I understand what you are trying to do through the amendments — is that if there is not a capacity to have some sort of discussion with parents about the home-schooling taking place, then it is very difficult, and I think irresponsible, for the VRQA to actually make an assessment that home-schooling is not taking place. What we do not want is for people to be looking through rubbish bins or talking with a whole lot of other people to try to get that information. But I think the advisory committee can best give us the advice on what form that information can be provided in, which gives them comfort and gives the government comfort that all the children who are at home are actually being schooled. That is the intent of this part of the legislation.

In regard to the advisory committee in terms of the representation, I will just refer to Michael, because he has been following it through in a lot more detail.

Mr KANE — The issue with respect to the advisory committee, and members of the committee would understand this, is that the very diversity of home-schooling makes it a process of broad consultation just to get a broadly representative group together who can genuinely cover the range of philosophies and beliefs and be a useful group both for home-schoolers in general and for the minister.

My understanding is, though, that the intention would be to have that consultation and a group of up to a dozen would form an advisory committee to the minister, not to the VRQA. The VRQA would advise the minister on regulations and I presume the home-schooling advisory committee would have a view with respect to regulations on home-schooling, as indeed the Catholic Education Office will have a view with respect to regulations on non-government schooling and will no doubt advise the minister, and — I should perhaps make this distinction — as will the department on behalf of the schools it owns on behalf of the people of Victoria, which is the government school system. The VRQA, remember, is at arm's length from the department as well as from the Catholic Education Office, as well as from the Independent Schools Association, and as well as home-schoolers, all of which are acknowledged in the bill as legitimate forms of education for compulsory-aged schoolchildren. The home-schooling advisory committee that we have been advised by home-schoolers as working very well is a Tasmanian model, which I understand has been in place for a number of years.

Hon. P. R. HALL — I would like to know about the draft regulations that have been produced. What was the process for producing the draft regulations; what will the process from here on be in terms of finalising regulations; and what legislative structures do they have to go through to be approved — that is, do they go to Parliament, or what?

Ms KOSKY — The draft regulations have been developed. I will go back a step before that. The reason we have looked at home-schooling within the legislation is through all of the consultations and discussions that have been held, and in a sense that has also informed the regulations. So the reason that I tabled the draft regulations was that I knew what I meant by the legislation, but it was probably important that others actually understood what 'light touch' meant. So it was one thing to say 'light touch' in the legislation — and you do not put in legislation the sort of detail that is in the regulations — so it was providing much more definition, based on a whole range of the consultations we have had to date and also based on the government's intention in terms of the legislation.

We will continue to have consultations with the home-schooling community before the formal regulations are recommended by the VRQA. They come to me as minister and I then agree to them. We have to do a regulatory impact statement, and then I make recommendations to the Governor in Council. So it does not come back to the Parliament in terms of regulations.

Hon. P. R. HALL — So there is no regulatory impact statement and there is no opportunity for the disallowance of these regulations by either house of Parliament?

Ms KOSKY — I will refer to John.

Mr LIVI — Under the Subordinate Legislation Act following a regulatory impact statement — —

Hon. P. R. HALL — And that will take place for these?

Mr LIVI — Under the Subordinate Legislation Act you have to do a regulatory impact statement depending on certain criteria, and one of them is if the regulation imposes — I think the wording is — an appreciable economic or other burden on the public. One might try to argue that the regulations are so light touch that there is no appreciable burden on the public, but as I understand it the minister's and the department's intention is to, or it is the minister's decision to issue a regulatory impact statement, where the public will be given a month's notice and a month's opportunity to comment on the regulations. All those comments are then received by the department; a report has to be done to the minister examining all those comments; the minister has to consider those comments, then decide whether or not any amendments should be made to the draft regulations.

By the way, I should also mention that before the regulatory impact statement and the draft regulations are published to the public, the parliamentary counsel settles those draft regulations.

Returning to the situation where we have gone to the public with the regulatory impact statement, the draft regulations have gone to the minister to consider all the submissions; if the minister then decides to proceed with the regulations, a notice is then published in the *Government Gazette* and in the newspaper to that effect and then the minister makes the recommendation to the Governor in Council that the regulation has been made. Following that, a copy of the regulations must be forwarded to the Scrutiny of Acts and Regulations Committee and that

committee — I am sorry, it is towards the latter sections of the Subordinate Legislation Act — has the power to recommend to Parliament that the regulations be disallowed.

There is a very long list of criteria — for example, if the regulations are retrospective, if they infringe the rules of privacy or a number of matters. If the Scrutiny of Acts and Regulations Committee considers any one of those criteria have been infringed, the committee can recommend to Parliament that the regulations be disallowed; and then, as I understand the procedure under that act, it is up to either house of Parliament to decide to disallow them.

Hon. P. R. HALL — They do not come to Parliament as a matter of course for potential disallowance?

Mr LIVI — No, not under the Subordinate Legislation Act. I recently looked at that act. If you could give me another 10 minutes I could double check it again, but the procedure and the sections do not allow for the automatic disallowance of the regulations if Parliament, for any reason it considers appropriate, were to disallow them. I think that is the position you are putting to me.

Hon. P. R. HALL — Yes.

Mr LIVI — No, that is not the position under that act.

The CHAIR — Thank you, Mr Livi. Mr Hall, I remind you that all questions go through me to the minister. Thank you.

Hon. ANDREW BRIDESON — I have three quick issues I wish to raise with the minister in relation to light touch in regulations. I hope we can dispense with them quickly so we can move on. Fees: there will be no fees. Can you guarantee that there will not be any fees in the near or distant future?

Ms KOSKY — There is no power to prescribe a fee for home-schooling, so there will be no fees under this government. I cannot promise for future governments.

Hon. ANDREW BRIDESON — No, you cannot. All right, that dispenses with that one.

If consent to enter a home is refused, does this constitute a reason for not renewing registration for a home-educator?

Ms KOSKY — The regulations still have to be developed. My view is that it may form one of the reasons, but it alone probably would not be enough of a reason.

Hon. ANDREW BRIDESON — Of itself?

Ms KOSKY — Of itself. You would need other supporting information, which clearly would have been there if anyone had decided to go and ask for evidence of the home-schooling. They do not do that just because they have been walking down the street; they do that because there has been at least one if not several complaints, and there would obviously be evidence within those complaints. But of itself, no.

Hon. ANDREW BRIDESON — Finally, through you, Mr Chairman, in relation to the key learning areas it has been drawn to my attention that not all home-educators have the capacity to teach in all eight key learning areas — for example, technology has been cited as one and languages was cited as another. Would failing to teach in one or both of those KLAs also constitute refusal to renew?

Ms KOSKY — No. Through the Chair, I would ask Michael Kane to respond.

Mr KANE — We have had several discussions at these consultations with home-schoolers about this, and it is understood that some home-schoolers will emphasise some of those key learning areas rather than others. Not everyone has the capacity to teach languages. Indeed, one of the issues that has been raised is this part registration home-schooling, part attendance at school which takes place in a number of government and non-government schools already, and it is true of course in schools. Not everyone does languages all the time, even with the best intention in the world of government policy. We know this. So really words we have been discussing within the

regulatory framework here would be acknowledging, or within the general framework of the eight key learning areas, which is precisely what happens in a range of government and non-government schools.

Hon. ANDREW BRIDESON — Thank you. I think it is important to have that on the record and that is the reason I asked.

Hon. P. R. HALL — Through you, Chair, I want to ask the minister whether she will today give a commitment to ensure that these regulations go through a regulatory impact statement?

Ms KOSKY — I am not prepared to do that until I look at the advice that I have. If it needs to go through an RIS, then yes, I would do that. If the requirements of the RIS indicate that I should do that then, yes, of course I would do it; but I am not going to say that I will put this through an RIS even if it is not required by the RIS. So no, I am not prepared to give that commitment today. But I will certainly give the commitment to consult with the home-schooling community about the regulations.

Hon. P. R. HALL — Further to those regulations, what is the process if you want to change matters within the regulations themselves?

Ms KOSKY — The process if I as minister want to?

Hon. P. R. HALL — If you as minister wish to change the regulations in any way in the future, what is the process involved in that?

Ms KOSKY — I will get John to detail that.

Mr LIVI — The process is that an amendment to the regulations would have to be made. Depending on the substance of that amendment, again you would have to face issues as to whether a regulatory impact statement would be required. The end result is that the paperwork would have to go to the Governor in Council, who has the power to make the regulation, and the minister at the end of the process would be making a recommendation to the Governor in Council.

Ms KOSKY — It has to be published?

Mr LIVI — Yes, the regulation also has to be published, and again it would have to go to the Scrutiny of Acts and Regulations Committee. But if you are trying to home in on whether or not another RIS would be required, it is very hard to answer that because it would depend on the substance of the amendment.

Hon. P. R. HALL — I understand that. I just wanted to know, through you, Chair, the process that would be involved, and in particular where it says at the moment 'No fee is payable for any application or renewal on the cancelling of the registration'. If it was decided by government, with the publication of these regulations, that a fee would be required, or if indeed in the future the government decided to charge a fee for the registration, would it then be required to go through an RIS, because there is an economic implication then?

Ms KOSKY — My understanding — I will get John to comment — is that we would actually have to go through legislation because there is no capacity for the charging at the moment.

Mr LIVI — The regulation makes explicit a position which is already in the act. You cannot charge for registration for home-schooling. And clearly we could not charge to deregister or cancel the registration, as well. There is no power to do it.

Hon. P. R. HALL — Can I ask whereabouts in the act it says that there is no charge for registration?

Mr LIVI — It is not so much that there is a section there which says there is no charge; there is no section there which says we can prescribe a fee. When one examines the act one will find various sections which enable either regulations to be prescribed for certain matters — and, for example, the fee on registration of certain education authorities; the minister may fix a fee, or regulations may be made. But when it comes to home-schooling, there is no reference and no power in that particular section which would enable us to make a regulation prescribing a fee.

The CHAIR — Mr Hall, I know I am being finicky about this, but this committee does not have the power to question witnesses, other than to ask questions of the minister. I know that it seems finicky to say, 'Please direct questions to the minister and then we will allow the minister to determine whether or not an adviser will answer it', but it is an important principle. I appreciate that in the context of trying to get information it is perhaps a little bit too process focused, but I think it is an important principle that we need to follow. Mr Hall, is there anything further?

Hon. P. R. HALL — I still have a couple of questions, or a couple of arguments to put forward in relation to my amendments.

The CHAIR — Yes, remembering that the committee will finish at 4 o'clock, that there are some other issues that I am sure members wish to raise and that we have a whole series of clauses we need to adopt.

Hon. P. R. HALL — I am getting close.

What I want to do is draw the committee's attention, through you, Chair, to similarities between the draft regulations relating to home-schooling that were circulated in the Assembly debate — and I presume other members of the committee have a copy of those draft regulations?

Hon. W. A. LOVELL — Yes.

Hon. P. R. HALL — And the amendments which are standing in my name. In particular, I refer, for example, to amendment 2:

> … to register the child for home schooling and to ensure that the child receives regular and efficient instruction in the learning areas set out in Schedule 1 …

That is a direct reflection, I suppose, of some of the current terms of the act itself.

If you look at the regulations and at those matters which are going to have to appear in the state register — and that is on page 2 of the regulations — and compare them to the items in subclause (2) of my proposed new clause, to be inserted by amendment 7, there are the exact same items that the state register must contain:

> … the name and address of the registered student;
>
> … the name and address of each parent of the registered student;
>
> … the date that the authority was notified by the parent that the student is to be home schooled.

There are a lot of similarities between the registration process proposed in my amendment and the draft regulations. My question, therefore, to the minister is: why can these particular matters not be incorporated in legislation?

Ms KOSKY — I am going to refer to John to give a dissertation on the difference between regulations and legislation.

Before I do that, you are right, there are a lot of similarities, and what I should have said before is that in the consultation, obviously when the legislation was being debated in the lower house, we took notice of a range of the amendments and attempted to incorporate the intent of those amendments, where they actually fitted within the legislation that we were wanting to put through, in the regulations.

It is no surprise that there is a fair similarity between some of your amendments and what is in the regulations, because we did take note of what The Nationals put forward as amendments, as well as those from the opposition and one of the Independents.

My understanding is that regulations further define the legislation; the legislation is a very broad framework, and the regulations provide that clear definition. I will ask John; I am not an expert on the distinction between legislation and regulations, so I will ask John to comment on that.

Mr LIVI — As the minister has already indicated, it is a question of how much detail you put in a bill — we already have a bill of 430 pages — and what you leave for the regulations. This is a matter which, the decision was

made, could be dealt with in the regulations, and it is as simple as that — trying to decide what goes in the bill and what goes into regulations.

The CHAIR — Minister, my understanding is that the regulations are required to be regularly updated. They need to be regularly reviewed and reissued, whereas legislation is only changed at the whim of Parliament?

Ms MIKAKOS — Subject to the sunset clause.

Ms KOSKY — Regulations are reviewed, as I understand, every 10 years.

Hon. P. R. HALL — It was a view of parliamentary counsel that these particular matters could have been well incorporated into the legislation without any undue complications. And that is why, on the advice of parliamentary counsel, these were incorporated into my amendments. That is for the advice of the committee.

Ms KOSKY — Can I just respond to that: that is possibly true. I have actually had a whole lot of the other organisations, in relation to many other aspects in this bill, wanting the sorts of issues that you have raised, but which relate to their areas, incorporated into the bill as well.

Once I actually do it for one group, we will be talking about a much thicker document. One of the intentions of having this Education and Training Reform Bill in its current form is that it was a more compact piece of work, it was more consistent and it did not go into absolute detail. Whilst I know that most people would not sit down and read this, I think it is more able to be read than if it was a thousand pages. It certainly was not deliberate that they were not included; it is just that if I do it for home-schooling, I will actually have to do it for all other areas, and then it would become a much thicker and more detailed bill.

The CHAIR — In calling on this issue of home-schooling, I remind the committee that we have dealt with this for an hour and a half, and allowed ourselves 45 minutes to deal with other substantial issues in the bill.

Hon. W. A. LOVELL — I would like to move on to the establishment of the new Victorian Registration and Qualifications Authority, if that is all right — —

Hon. P. R. HALL — I will sum up simply by explaining the intent of my other amendments. That will not take me long, and then I will be happy for the committee to vote on these particular matters.

As I said before, amendments 1, 2, 4, 5, 6 and 7 are all related to home-education. The first one, as I also previously said, sets out the preferred process of The Nationals — that is, to establish a registration system by way of notification and not by a regulation system. Amendment 2, which is an amendment to clause 2.1.1, ensures that there is a process and a requirement for those registering their children for home-education, in that they give a commitment to give:

> … regular and efficient instruction in the learning areas set out in Schedule 1…

I am saying to the committee through you, Chair, that this particular clause ensures that people who register for home-education give that commitment to provide regular and efficient instruction to their children. It is not just a vague term; it is actually locking those who register for home-schooling in to providing that particular service.

Amendment 4 relates to the power of the authority, being the Victorian Registration and Qualifications Authority:

> to ensure that minimum standards are maintained by providers and organisations it has registered …

If the committee wishes to, it can have a look at clause 4.2.2, but essentially what this amendment does is restrict that power to ensure minimum standards are maintained to providers and organisations it has registered and not to home-schoolers. Essentially it is a consequential amendment of the principle espoused in amendment 1.

The CHAIR — Mr Hall, I advise you that I think we will handle your amendment 1 as a test of amendments 2 and 4, and then, when we come to clause 4.3.9, if you wish to still proceed with moving to omit the clause, you can vote against the adoption of that clause. If that clause were not adopted, then you will be able to move your amendment 7. When we come to adopting clause 4.3.9, I will allow the discussion on your amendment 7 because

essentially your amendment 5 — or voting to omit clause 4.3.9 — determines whether or not your amendment 7 can proceed. I do not think you need to go beyond your amendments 1, 2, and 4 for the purposes of summing up.

Hon. P. R. HALL — Okay. I have argued the case for the amendments, and I invite the committee to support those amendments.

Hon. ANDREW BRIDESON — Chair, can I just briefly state that Ms Lovell and I will not be able to support the amendment of The Nationals for the simple reason that we will be moving an amendment to delete all reference to home-schooling whatsoever, so we would see that as being quite contradictory to our position.

The CHAIR — In putting the question on the amendment, it is important that as Chair I briefly make a comment about my vote. I am particularly swayed by the arguments around education being a right that every child has and that the purpose of this legislation is to ensure that right for children. In our society there is a mix of rights and responsibilities, and I think, as the minister has said, that this is light touch in relation to the responsibilities that go with the right of each child to have an education. I will not be supporting the amendment moved by Mr Hall.

I say that because there are members of the committee here who have not seen me chair these meetings before. I think it is important that I try to chair the meeting but also make it clear to the members of the committee, particularly when I have had to use my deliberative and casting vote on a number of occasions, why I am voting in a particular way.

Committee divided on amendment:

Ayes, 1

Hall, Mr

Noes, 3

Hirsh, Ms Viney, Mr
Mikakos, Ms

Amendment negatived.

Committee divided on clause:

Ayes, 3

Hirsh, Ms Viney, Mr
Mikakos, Ms

Noes, 1

Hall, Mr

Clause agreed to; clauses 1.1.2 to 1.1.5 agreed to.

Clause 1.2.1

Hon. P. R. HALL — I want to ask a question about clause 1.2.1 on page 12 of the bill. We were told, I think in the second-reading speech, that regulations will be made to implement the principles set out in subclauses (a), (c), (e) and (f) of clause 1.2.1. I wonder if the minister is able to advise the committee on the time line for the development of those regulations and what process will be followed to compile them?

Ms KOSKY — Once the legislation has been given royal assent, we will then start work on the regulations, and I expect that that will take around six months.

Clause agreed to.

Clause 1.2.2

Hon. P. R. HALL — I have another quick question about this one. It relates to an issue that I think I have raised with the minister either by way of the adjournment debate or by way of letter recently. I have two young mums

returning to school at Cann River P–12 doing their VCE. It is admirable that they are actually returning to work and doing so well. The school does not receive any funding for those two mums, because they are over the age of 20. There is no TAFE institute they can reasonably attend, being residents of Cann River.

It seems to me that clause 1.2.2(b), where it talks about instruction in the learning areas and the student being under 20 years age, is one of the inhibiting factors in the school receiving funds for people over 20 years of age. Can the minister advise if there is any resolution to that particular problem, because I am sure we would all agree in principle that people such as the two I referred to are deserving of being supported, and the school deserves funding to support them?

Ms KOSKY — Can I just say, in relation to the commitment we have made to fund all young people up to the age of 20 to complete their year 12 or equivalent, that it is the first time any jurisdiction around Australia has given that commitment. Previously the commitment has been up to the age of 15, and obviously funding is provided to the end of year 12 if the young person attends a public school. If they attend any other educational institution they have access, as they have with TAFEs or ACE providers — adult education providers — to the funds that have been made available for adults. So we have still provided funding, but this is a guaranteed place that is provided up to the age of 20.

For the two women you are talking about, whilst that does not get picked up in the legislation, we do make exceptions to this rule where there are no other alternative educational settings in place. Although we are dealing with the legislation, I am happy to sort that issue out, because I agree that people who might be over the age of 20 should be able to access those facilities. It just will not be through the funding that is provided for young children; we will use adult education funding to fund those places.

Clause agreed to; clause 1.2.3 agreed to.

Clause 2.1.1

The CHAIR — Mr Hall, your amendment no. 2 to clause 2.1.1 was tested by the previous division.

Hon. P. R. HALL — Yes. I wanted to ask a question about clause 2.1.1, which is on page 15 and deals with attendance at school for a child under, now, 16 years of age — that is the compulsory school attendance age. Through you, Chair, I want to ask the minister what is going to happen in circumstances where a school finds a gainful employment place, maybe on a part-time basis, for somebody who is under 16 years of age? When I say 'gainful', there are many students, as the minister would realise, that sometimes are better off doing that than being in a normal mainstream school situation. Is there still going to be provision for that to occur, and will that be able to occur under the exemptions you are able to give under clause 2.1.5 of this bill?

Ms KOSKY — There are two possibilities under which that can occur. One is the exemption that is provided, and we acknowledge that for some children school may not be the best place for their education to take place or that they may need a break from education. We understand that. The other means by which it can occur is where a child is doing part-time education and part-time work, so they would be able to work as well. So there are two opportunities there.

Clause agreed to; clause 2.1.2 agreed to.

Clause 2.1.3

Hon. P. R. HALL — I would just like to ask the minister one question. Subclause (b) of clause 2.1.3 of the bill talks about a reasonable excuse for not attending school. It says:

(b) there is no Government school within a prescribed distance of the child's residence …

What is the prescribed distance at the moment, and are there any plans to alter that?

Ms KOSKY — I have just been advised, but I am happy for John to respond, that there is none at the moment. There was supposed to be a regulation, but there is none. I might ask John to comment.

Mr LIVI — That subclause (b) pretty much reflects what is in the current provisions. The current act does actually mention a distance.

The CHAIR — Sure.

Mr LIVI — It is not in the Education Act; it is in section 74C of the Community Services Act 1970. Subsection (3) says:

> It shall be a reasonable excuse as regards any child that —

and if we go down to paragraph (c) —

> there is no State school which the child can attend within a distance (measured according to the nearest practicable route) from the residence of the child —

and you have got 3 kilometres if the child is under 9 years of age and 5 kilometres if the child is at least 9 years of age, and it goes on to provide 'that the child is being educated by correspondence tuition'. What we are doing is simplifying that to require that a regulation could now specify what the relevant distances would be.

Hon. P. R. HALL — Can I ask the minister, through you, Chair: is there any intention to alter those prescribed distances?

Ms KOSKY — I think there would be an intention. Obviously those distances were developed at a time when families did not have cars to the same extent, and probably when we were more used to smaller schools. If you take, for example, the situation in Bendigo, where they have the senior secondary college, the community has decided it wants large numbers so it can provide the breadth of offerings. The context has now changed, but we certainly understand the intention of making sure that children do not have to travel for long distances to get to school; and the younger they are, the less the distance or the time you want them to be travelling for. John, does that cover it?

Mr LIVI — Yes. Could I just add that I think those original distances may have been inserted back in the days of the horse and cart.

Hon. P. R. HALL — They would have been miles then, would they not, not kilometres?

The CHAIR — They might have been converted. I am tempted to be mischievous and point out that the closure of all those little country schools meant there were lots more reasons why children did not have to go to school — the closures by the previous government, I am referring to — but I will avoid that.

Ms KOSKY — I am not going there.

Clause agreed to; clauses 2.1.4 to 2.1.9 agreed to.

Clause 2.1.10

Hon. P. R. HALL — I move:

> 3. Clause 2.1.10, after line 8 insert —
>
> "( ) If a child is asked for his or her name and address under sub-section (1), a parent of the child may provide that name and address instead of the child.".

It seems commonsense to me that if a child is walking along with its parent and an authorised officer chooses to ask that child their name and address, it would be appropriate for the parent to answer that question of behalf of that child in those circumstances. That is simply the intent of that amendment.

Ms MIKAKOS — The way I read that amendment, it would require the attendance officer to only ask the parent, so if the child is on their own without a parent, presumably they are not in a position to ask the child why they are not in school. I strongly oppose this amendment. The Nationals, as I understand, are also supportive of

measures to reduce truancy, and we need to ensure we have got a system in place that gives these officers the legislative authority to ask minors why they are not in school.

Hon. P. R. HALL — We simply do not understand the objection of Ms Mikakos with respect to what happens if a child is walking along with a parent. Why is it not just as likely or just as convenient for a parent to respond on behalf of their child?

Ms KOSKY — I will defer to John.

Mr LIVI — As I understand it the concern was raised because of the offence in clause 2.1.11, which states that 'A person must not wilfully …'. I stop at the word 'wilfully', which is a very important word in that clause:

> A person must not wilfully obstruct, hinder or interfere with a school attendance officer in the performance or exercise of his or her duties under this Part.

As I understand it, the concern was that if a parent were walking along with the child and the child was asked by an attendance officer the child's name and address, the parent who offered and volunteered that name and address might face a charge of wilfully obstructing, hindering or interfering with the attendance officer's performance of their duties. We say there is no substance to that concern, because the parent who is genuinely trying to assist the attendance officer in providing the correct name and address of the child could not be considered to be wilfully obstructing, hindering or interfering. If, on the other hand, the parent gave a false name and address, that would be wilfully obstructing and hindering the attendance officer.

Hon. P. R. HALL — From my own point of view, through you, Chair, I do not see that there is any harm in putting the amendment forward. I think it simply clarifies the position so that people reading this legislation better understand that they are able to answer on behalf of their child, if they believe it is more appropriate.

Hon. C. D. HIRSH — Chair, in my view it clearly does not preclude it. If a child is asked a name and address, the current legislation does not preclude the parent from answering on behalf of the child, if it is so desired. It seems to be totally extraneous and unnecessary. A parent can always answer on behalf of a child.

Ms KOSKY — The advice I have had is that it is unnecessary to put that in place. Between now and when this goes before the upper house, can I have another look at it? We do not have an objection to the intention, it is just that the advice I have had is that it is unnecessary. Can I have a look at that?

Hon. P. R. HALL — Through you, Chair, I am happy for the minister to have a look at it. In that case should I withdraw the moving of this amendment, so that if the advice that comes back is that the government is prepared to accept it, I will move it in the committee stage in the house?

The CHAIR — If the minister is happy with that process.

Ms KOSKY — We do not disagree with the intent.

The CHAIR — You are just going to have a look at the — —

Ms KOSKY — I will take some further advice. The advice I have had is that it is unnecessary. We will have further discussions with Mr Hall and take that on notice. I think that is the best way of dealing with it.

The CHAIR — Mr Hall, you are withdrawing that amendment?

Hon. P. R. HALL — I will withdraw that amendment and keep it in reserve for the committee stage in the chamber.

Amendment withdrawn by leave.

Clause 2.1.10 agreed to.

The CHAIR — Could I have the attention of the committee, particularly opposition members. As you would know, normally in the house when we are operating as a committee of the whole, if a division is called all members

in the chamber are required to vote. I am ruling that the previous votes will stand, but I am raising the issue for the members of the opposition to be aware of. I know that under normal circumstances there would be a ringing of the bells and members would be able to leave, and that is why I am satisfied that the vote can stand.

However, we have a slightly different problem under our sessional orders — that is, that a quorum requires that at a meeting three members of the committee will constitute a quorum and at least one government member and one opposition member. That is not a non-government member but one opposition member, under the sessional orders. If we look at *Odgers* we find it states:

> No decision is taken to have been reached by a division if a quorum of senators has not voted in the division …

Therefore, if the opposition did not vote we would not have had a quorum. I highlight it to point out that it is something the Standing Orders Committee might need to resolve. I am saying for the purposes of us proceeding through the bill I want to have the previous votes stand, but I am drawing it to members' attention that if there are future divisions on this bill, members are conscious of those requirements under the sessional orders and the interpretation in *Odgers*.

Ms KOSKY — In relation to the last matter that has been withdrawn, can I also indicate that we will also look at the possibility of a regulation with that. I did not quite understand what you said just then, so I do not know whether that had anything to do with that issue or not.

The CHAIR — If you knew how I was regarded in the Council, you would know that I was completely onto that very quickly, and I am just kind of expressing my advice to members.

Clauses 2.1.11 to 2.2.4 agreed to.

Clause 2.2.5

Hon. ANDREW BRIDESON — It is the view of the Liberal opposition that we oppose this particular aspect. We believe that people aged 20 years or over who want to finish year 12 or its equivalent should have the courtesy of the state paying those fees, so we oppose this clause 2.2.5. I will try to encapsulate them in one, if you like. It appears that the word 'may' is discretionary. I want to know, if it is discretionary, whether there is going to be a cost, and if so, what the cost proposed is. Will it be means tested if there is a cost? What is the rationale behind this clause 2.2.5? They are all the things we want to know about this aspect.

Ms KOSKY — My understanding about providing free instruction in all government schools up to the age of 20 is that certainly we have made that commitment under this legislation, which as I indicated before is the only jurisdiction around Australia to do that in an educational institution other than a school. I think that is important to mention because it is our commitment to make sure that we improve educational standards.

My understanding — and John Livi, who is the font of all wisdom on this, will correct me if I am wrong — is that it was actually the previous government that determined that people over the age of 20 could not study the VCE at a school setting unless there was no other educational institution within the near vicinity. That is, they had to therefore study either the VCE or a general certificate of education at a different educational environment, either at a TAFE or at an ACE facility, and they had to pay. The policy was actually established by the previous government about those over 20 not being able to study the VCE within a school setting.

This clause says 'may' because essentially we have made a commitment to all people who are under 20. It has cost the government additional funds to make that commitment because we are guaranteeing a place, and it is an immediate place rather than having to go into a queue and wait. It means if you are under the age of 20 and you want to study up to year 12 or its equivalent, you will be guaranteed a place at a public educational institution to do that. When the term starts or when the course starts, you will have an immediate place and there is a direct funding arrangement from government.

If you are over 20, then there are two or probably three mechanisms by which you can do that study. You can register and you may have to wait in a queue for a place. We provide, obviously, funding through both our TAFE institutes and adult education providers for a certain number of places, but there is no guarantee of funding for

every place. Many of those people get concessions for their courses and whilst they pay an amount — about $50 at the moment — —

The CHAIR — Per subject?

Ms KOSKY — No, per semester. They can do it in that way or they can be a full fee-paying student, in which case they would be able to get a place, probably still when there is a place available, but the guarantee we have given is that the young people under 20 get an automatic place and they get automatic funding — the institutes get automatic funding, rather than the way we fund TAFE institutes and adult education providers; we would give them funding for a certain number of places and then people may have to wait later.

The main reason we have made the commitment to all those under 20 years of age to complete year 12 or its equivalent is because many of the young people, if school was not the ideal setting for them, would go to another educational institution. If they had to wait for a long time, often they drop out rather than complete. Also what was happening was they were displacing adults from education because the institutions were providing those places.

We are making that commitment up to the age of 20 and for anyone over the age of 20 where there is no provision, as I mentioned before, in the nearby vicinity, we look at those case by case, but it is not automatic funding because it actually comes out of the adult education budget rather than out of the schooling budget, because we would not want to redirect funds from young people under 20.

Hon. ANDREW BRIDESON — So essentially it is a policy decision?

Ms KOSKY — It is a policy decision that has been in place for quite a long time. There are 77 476 students who received a concession in 2005, so a very significant number of people have received that concession.

Clause agreed to; clause 2.2.6 agreed to.

Clause 2.2.7

Hon. P. R. HALL — Clause 2.2.7 is related to voluntary financial contributions. This morning I received some comments from the Good Shepherd organisation in a letter addressed to you, Chair, on 13 April. I wondered whether the committee was going to have any discussion or look at the suggested amendments by this organisation with respect to voluntary financial contributions.

The CHAIR — Mr Hall, the committee has not been given the power to call witnesses or receive submissions, but any member of the committee is free to put before the committee views expressed by community organisations or individuals.

Ms MIKAKOS — We are able to raise issues in the context of going through the clauses. I had intended to raise this same correspondence, just to get a clarification from the minister. Perhaps it might be appropriate to do so at this point.

Essentially the correspondence we have all received, as members of this committee, was from Marilyn Webster of the Good Shepherd Social Policy Unit. She wants to seek a reassurance that the way clause 2.3.6(1)(c) will be read is that it will not impose any additional ability on school councils to charge parents fees:

> … for goods, services or other things provided by the school to a child of the parent;

The point that is made by Good Shepherd is that clause 2.3.6(1)(c) is qualified by clause 2.2.4 which relates to students under the age of 20 but does not seem to be qualified by the provisions related to voluntary financial contributions in 2.2.7. As I understand it, the government's intention is to retain the voluntary nature of financial contributions to schools.

Perhaps it might be useful at this point, Minister, if you could clarify how those two clauses interact, and if there is going to be any new ability for school councils to charge fees not of a voluntary nature.

The CHAIR — In giving the minister a moment to respond to that, I am not sure whether the minister has had the courtesy of seeing that correspondence. I am wondering whether a member of the committee who has received

it might like to pass it forward. I will allow the minister and her advisers a moment to consider the complexity of those questions.

Ms KOSKY — I have seen the letter. It would be good to have a copy, because I do not have it with me. I have a very high regard for the Good Shepherd organisation, so I was absolutely surprised by the letter that was sent, because it is incorrect. They state in their letter — and I am responding to them — that for the first time we are introducing compulsory fees and charges for core curriculum subjects. That is absolutely wrong and incorrect, and I am surprised that in reading the legislation they could gain that understanding — or rather, misunderstanding.

For the very first time in the legislation we have stated very clearly what was previously a regulation — not even a regulation; I think a memorandum — that had gone from the minister to schools about voluntary levies. For the very first time in the legislation we make it absolutely clear what the voluntary levies can be applied to, the voluntary financial contributions. We indicate, in fact we update, what will be free — that is, the eight key learning areas — and we bring that into modern language. Previously it was in, I suppose, historical language, so we have brought into the modern day what must be provided as free instruction within the school. We identify what voluntary contributions can be asked for and that they must be voluntary. We are very clear about that.

The item that has been referred to, which is clause 2.3.6(c), relates to, as I understand it, and John can comment as well, any items that a school council might charge for when it provides a service or goods, such as a school uniform — a parent might be purchasing something from the school or the school council — and provides school councils with the power to charge for goods or a service, such as a fee for an excursion. It gives schools the power to charge for items that have been sold to the parents, otherwise the school would not be able to provide that service and it would have to be provided by a third party. That is my understanding of the item that has been referred to.

I am surprised that the Good Shepherd has not congratulated us for putting into legislation the conditions under which voluntary contributions can be applied, as a whole lot of other community organisations have. We are trying to make sure that all children have access to education, not that schools can charge for a whole lot of different aspects of the school in our government school system. John, did you want to add to what I said?

Mr LIVI — Yes, clause 2.3.6(1)(c) is to reflect what councils are currently doing in a number of subsets of little powers. The minister gave the example of school councils providing school uniforms to parents and obtaining payments for them. School councils can run tuckshops or school canteens, again to supply services and to receive payment for them. School councils can approve excursions and make arrangements for the bookings and various other matters. That clause is designed to cover what we call the contractual arrangements that parents and school councils can enter into voluntarily and so the school council can charge for the relevant services and goods that are being provided. In the explanatory memorandum we make a comment, which appears on page 22 of the bill. In the note to clause 2.3.6 we say:

> Subclause 1(c) is new. It refers to councils charging fees.
>
> …
>
> The fees may cover matters such as the costs of excursions or extra curriculum programs or facilities provided to students.

The CHAIR — Members, the minister has commitments very shortly after 4.00 p.m. as I warned the committee, and we have spent a lot of time on home-schooling. Can I ask your advice, Members, as to how much more of the minister's time you need and whether there are elements of this we can deal with directly?

Hon. ANDREW BRIDESON — I can be very brief on two issues.

Hon. P. R. HALL — I will be brief.

Hon. C. D. HIRSH — Can I have one very brief question, which may be covered by Mr Brideson?

The CHAIR — We will do our best. Can we get away with 5 past 4? Can we get away with that?

Ms KOSKY — Okay, but I have operated on the basis that we would be concluding there, and I have other commitments.

The CHAIR — I appreciate it, and I appreciate your preparedness to give us those extra couple of minutes.

Ms MIKAKOS — Minister, thank you for that clarification. The Good Shepherd is an organisation that I think we all respect.

Clause agreed to; clauses 2.2.8 to 2.3.26 agreed to.

Clause 2.3.27

Hon. P. R. HALL — This is a matter of a school council preparing a report, and it lists matters that will go in the annual report, including:

> … any other matters that are determined by the Minister.

I am just making a plea here that schools not be required to put in bald performance measures which might therefore become a league-table type situation between schools.

Ms KOSKY — What I am requiring government schools to do is to provide information to their own school community about school performance data, but that that would not be provided in a broader sense. They do provide that performance data to their own school. So for instance they would provide the AIM data to their own school community but not provide that in a broader sense.

Hon. P. R. HALL — Annual reports go further than just the school community, do they not?

Ms KOSKY — I am requiring that the annual reports with this information be sent home, for government schools, to the parents. That is not through the legislation but through a memorandum. Or is it through the legislation? Sorry, 'being sent home to parents' is separate to the legislation, but it can be provided to another person upon request.

It is a dilemma in trying to make sure that the information that comes through the AIM data is not provided for league tables, but it is important that school communities have access to that. If someone did want to establish league tables they would have to apply to every school for a copy of their school reports and have every one sent through to them. I have tried to look at the balance to make sure that the parents can be informed of what is happening in their own child's school and get that balance right with, I suppose, the danger that someone might want to write to every school across the state to get a copy of the annual report.

It is also the danger we have in place with the VCE data. Unfortunately there is someone who pulls that information together and provides a league table of sorts.

Hon. P. R. HALL — I understand.

Clause agreed to; clauses 2.3.28 to 2.6.2 agreed to.

Clause 2.6.3

Hon. P. R. HALL — I have left out my next one and move to this clause. This is just about the registration and re-registration of teachers with VIT. I want to know the circumstances by which VIT considers someone for re-registration. For example, I have a teaching qualification: is there a requirement that I have to be a practising teacher in the last two or three or four years or whatever to maintain registration?

Mr LIVI — If I could have the opportunity to reconfirm what I am about to say, I would appreciate it.

Hon. P. R. HALL — A true lawyer.

Mr LIVI — Yes. For practising registration, when you seek to renew it you must have had relevant practical experience in the past five years, as I understand it. What this bill will do is update the relevant provisions at the request of the VIT to enable certain teachers who are on various types of leave to maintain their registration and to be able to renew their registration, notwithstanding that they have not had the practical experience because they are out of the school situation. The bill actually accommodates that new position.

Ms KOSKY — If not, you would re-register — —

Mr LIVI — The difficulty is that to re-register normally you would have to have your experience over the period prior to your registration. But with these new provisions — I am sorry, it is a question without notice which goes into quite a bit of detail, and that is why I said — —

Hon. P. R. HALL — I am happy to leave it on notice, through you, Chair — and would you, Mr Livi, in terms of a response on notice, consider the circumstance whereby somebody may continue to be a teacher but be not employed by a school? I can think of, for example, VicRoads which employs education officers but they are not employed by a school as such. In terms of a response, you could tell me whether a person who is still teaching but not in paid employment by a school can still fit the criteria for re-registration.

The CHAIR — We will take that as a question on notice for the minister.

Clause agreed to; clauses 2.6.4 to 4.2.1 agreed to.

Clause 4.2.2

Hon. P. R. HALL — I would like to ask the minister, through you, Chair, about the Victorian Registration and Qualifications Authority. Part of its functions is to make sure that minimum standards are maintained. In what areas are standards to be set and what is the process for setting the standards? I look at page 255 and 261 of the bill and see a couple of different categories where I think they are going to set standards. What are the standards and what is the process for setting the standards? Related to that, what about the physical standards of schools themselves? Are there going to be any minimum standards in respect of the physical infrastructure of schools?

Ms KOSKY — The VRQA does need to, obviously once it is established, advise me on the regulations that should apply. But clause 4.3.1(6)(b) provides the areas that are expected in terms of the regulation — that is:

> the prescribed minimum standards for registration.

So they include those areas — —

Hon. P. R. HALL — 'Student learning outcomes' et cetera?

Ms KOSKY — Yes. What has previously happened is we have not had regulations established for government schools. It has just been the government system that has monitored, in a sense, government schools. For the non-government schools — both the Catholic schools and private independent schools — we have had the registered schools board, and I had a review probably more than two years ago of the registered schools board. At the time the recommendations that came through still dealt with registered schools as being quite different, as a completely distinct system from government schools.

It certainly seemed to me and to the government that we had what was probably a unique opportunity to, for the very first time, set up a regulatory mechanism for government schools as well. We are insisting on a set of minimum standards that were updated as well, because the previous requirements through the registered schools board were about minimum numbers — heights of toilet seats and some of the physical facilities — but they did not really address the issue of outcomes. They had to demonstrate a curriculum program, but there was no commitment to standards.

What we have been able to do through this legislation is to set, I suppose, a set of aspirational standards. Some will be requirements in terms of registration of non-government schools but, for the ongoing registration of schools, some of them are aspirational standards and some of them are set requirements. For instance, if, once an independent school has been established, the numbers drop below what was required initially, we do not go in and close it. Obviously they are encouraged to build them up. Some are requirements in terms of initial registration and others are standards that are expected to be maintained in an ongoing way. We are also going to establish a process for quality assurance.

Again, it is a new approach where we are trying to focus more on the outcomes and quality assurance. We are having discussions with the Catholic Education Office and the AISV. I am also having discussions with the

department about the mechanisms that we will have for the quality assurance. We have a process in place for government schools. I have had initial discussions with the AISV about how we might do that for the independent schools and the same for the Catholic Education Office.

Clause agreed to; clause 4.2.3 agreed to.

Clause 4.2.4

Hon. W. A. LOVELL — The VRQA replaces the registered schools board and the Victorian qualifications authority, which currently have representation on them from the Catholic and independent schools. Under the legislation there is no requirement for you to actually appoint from the Catholic or independent schools. Will you ensure that there are appointments from the Catholic and independent schools to the VRQA? Will the VRQA be consulting with the non-government sector and also with home-schoolers?

Ms KOSKY — Absolutely; what we are not doing is having representatives. I am not having any of the different organisations voting and nominating their own people. I will absolutely make sure that there is expertise from the different sectors, but it is not a representative body in part because if you are establishing a quality assurance mechanism, it actually needs to be somewhat separate from the deliverers. If you had representatives, it would be very difficult to separate the responsibilities of those who deliver the education from those who are actually doing the quality assurance.

We have used the model of the Australian Universities Quality Assurance Agency and also what we have had with the VQA to make sure that we can separate those functions. In that way we ensure not only their service delivery but the quality assurance mechanism is independent from that.

Certainly we are going to have expertise, but it is one of the difficulties that we have had with the registered schools board, where there has been representation. It is very difficult for people who, on a daily basis, work within a particular school or within a particular sector to raise concerns around quality of groups or within their sector or, indeed, maybe their own schools. We need to separate those functions. That is what we do within the training sector, it is what we do within the university sector at a national level, and I think it is important to apply those rules of transparency and independence. We now have a consistent approach right across the sectors of education as well as the systems of education.

Hon. ANDREW BRIDESON — Also following your logic, there would not be a representative from the government sector on that authority either?

Ms KOSKY — There will be expertise, but they will be ministerial appointments — but not a representative.

Hon. ANDREW BRIDESON — I am making a differentiation between representatives.

Ms KOSKY — Absolutely.

Hon. ANDREW BRIDESON — I am happy with that.

Ms KOSKY — If you notice, in most of my statutory authorities, apart from the VIT, which was set up under different legislation, I find it better not to appoint representatives but to actually appoint people with expertise.

Hon. ANDREW BRIDESON — Thank you.

Hon. P. R. HALL — Is that expertise in home-education?

Ms KOSKY — Yes, certainly.

Clause agreed to.

The CHAIR — Members of the committee, the minister has gone beyond her allocated time. There is nothing to prevent us concluding this bill without the minister being here, but perhaps you might wish to consider whether there is any question you wish to put to the minister, in the view of my flexible chairing, to enable the minister to give the information you are seeking, then allow her to leave and we will then conclude the legislation.

Hon. ANDREW BRIDESON — I have one issue.

Hon. P. R. HALL — I have two quick ones.

Ms KOSKY — I am really struggling for time.

The CHAIR — Can it be very quick?

Hon. ANDREW BRIDESON — It will be extremely quick. Minister, you have already mentioned your ongoing discussions with the Catholic Education Commission and the AISV in relation to quality assurance, self-regulation and all of those issues.

Ms KOSKY — With self-regulation, we are looking at a mechanism. I do not want the VRQA to do the quality assurance. What I want the VRQA to do is to ensure that there are mechanisms across the schools for quality assurance to take place, in exactly the same way as we do with universities. I will be having discussions with the Catholic Education Office and the AISV. The AISV is a little bit different because it is a membership body. I will also be talking to the Australian Council for Private Education and Training to look at the mechanisms by which they can essentially do the quality assurance, but then the VRQA will actually monitor the mechanisms they have got in place for that.

Hon. ANDREW BRIDESON — I might be reading something into the white paper, but the indication was that those systems, those three groups, could be licensed to carry out the quality assurance.

Ms KOSKY — That is correct. The discussions I have had with the AISV have been that they would set up a separate independent body, because we need to make sure the issues of independence are addressed, given that the AISV is a membership body whereas the Catholic Education Office is a system. We need to make sure those issues of independence are addressed. But we have been having those discussions.

Hon. P. R. HALL — Under schedule 5 of the bill, can education maintenance allowances be applied for by students who are registered to receive home-education?

Ms KOSKY — No, because it goes to the issue of the cost of education, and we do not pay the parents to do home-schooling. If we were to do that, we would then be going down the road of registration with VIT and all of that, and I do not think that is where we want to go with home-schooling.

The CHAIR — Thank you, Minister. I know you have to go, but if one of the advisers wants to stay to give me any advice if a question happens to come up, I would be happy to have that happen. I think we have had ample time. We would be happy to do that, but it is your decision. We will go through and proceed to adopt the clauses of the legislation.

Ms KOSKY — I would prefer it if the advisers were not put in a position where they were having to answer without me.

The CHAIR — That is fine.

Ms KOSKY — Can I just thank the committee for the wonderful opportunity to talk about the legislation.

The CHAIR — I want to thank you, Minister, and your advisers, particularly for your preparedness to go beyond the time we agreed.

Ms KOSKY — If you would like to move an amendment so that the fount of all knowledge, John Livi, remains in Education and Training, I would certainly quite happily support it!

Witnesses withdrew.

Sitting suspended 4.16 p.m. to 4.21 p.m.

Clauses 4.2.5 to 4.3.8 agreed to.

Clause 4.3.9

Hon. P. R. HALL — I move to omit this clause. I draw the committee's attention to a replacement clause for that, which is my amendment 7, so I will talk about those two together. Clause 4.3.9 is about the registration of students for home-schooling, and it sets out the circumstances in which registration can take place and the circumstances in which registration can be cancelled. What my new clause seeks to do is put in place a new registration system. It also addresses the circumstances in which the cancellation of registration could take place. In terms of the new clause to replace clause 4.3.9, it simply says:

(1) The Authority must register a student for home schooling on being notified in writing by a parent of the student that the student is to be home schooled.

It is similar to the draft regulations proposed by the government, except that this just says 'notified in writing' rather than 'by statutory declaration'. It seems to me that there is an immaterial difference between those two sentiments. I think it is a better clause because it spells out exactly what details the authority requires when an application for home-schooling is made.

The third part of the new clause sets out the circumstances by which the authority can cancel the registration of a student for home-schooling — certainly on being notified in writing, and:

(b) if the Authority is otherwise satisfied that the student is no longer receiving home schooling.

In response to an earlier comment by Ms Mikakos with respect to that particular provision, in a discussion with parliamentary counsel it was decided to include that because it might be brought to attention, for example, in a way other than in writing, that the parents are no longer able to conduct home-education. It might be a court order, for instance; or, touch wood, it might be the death of a parent or some instance like that that would therefore require the provisions of subclause (3)(b) of this particular new clause. It was certainly not intended to be contradictory to my sentiment that VRQA should not be able to investigate standards of home-education. So that is the reason for (3)(b) — extraneous circumstances of the nature I have just outlined.

Also this amendment makes it clear that no fee is payable for the registration. Again, that was part of the proposed regulations by the government, so it simply gives the legislative guarantee of the zero cost. It gives a legislative guarantee of much of what is now proposed to be regulations. That is why I believe it is a better way in which to give some assurance to those involved in home-education. I have moved that clause 4.3.9 be omitted — which, as the committee understands, would essentially be replaced by a new clause, which is amendment 7.

The CHAIR — Actually, Mr Hall, the question will be whether clause 4.3.9 stand part of the bill, and you can vote against that question.

Ms MIKAKOS — In speaking in support of the clause as it currently stands, I think the discussion we had with the minister earlier was very helpful. It certainly has assisted me in my understanding of how the home-schooling provisions will operate. I think the minister made it very clear that there will not be an onerous obligation on parents, nor will there be audits or unsolicited checking of parents in this area. Complaints will be followed up, but essentially matters will only be investigated if a complaint has been raised. I think on that basis the amendments being proposed by Mr Hall are unnecessary. Whilst I accept the sentiment that he has expressed in relation to subclause (3)(b) of his new clause, reading that I still think it would give the authority some scope to investigate home-schooling perhaps in a way that Mr Hall had not intended. That is certainly how I would read subclause (3)(b) in that new clause.

Hon. P. R. HALL — If I can just respond to that, the previous amendments I have lost do not give the power to the authority to investigate whether minimum standards are being upheld.

The CHAIR — Thank you, Mr Hall. I will just indicate that I will be voting to keep the clause in the bill and therefore the proposed insertion of the new clause will not proceed. The reason is that, similar to Ms Mikakos, I am satisfied that the regulatory process which covers many of the issues you have raised is actually a more flexible one and, with sunset clauses, allows reconsideration of those issues in the future with appropriate safeguards about the consultation processes where ministers are desirous of setting regulations under the act. With that comment I will put the question. The question is:

That clause 4.3.9 stand part of the bill.

I think the ayes have it.

Hon. P. R. HALL — The noes have it.

The CHAIR — A division is required. The question is that clause 4.3.9 stand part of the bill. Those in favour please raise their hands: myself, Ms Mikakos and Ms Hirsh. Those against please raise their hands: Mr Hall — —

I need you to cast a vote, Mr Brideson and Ms Lovell.

Hon. ANDREW BRIDESON — Because of our stance on excluding all reference to home-education in the bill, it puts us in a very difficult situation. But we can vote under duress!

The CHAIR — I require you to vote, Mr Brideson. Can I start the division again so I have it clear.

Committee divided on clause:

Ayes, 5

Brideson, Mr	Mikakos, Ms
Hirsh, Ms	Viney, Mr
Lovell, Ms	

Noes, 1

Hall, Mr

Clause agreed to.

Clauses 4.3.10 to 5.8.4 agreed to.

Clause 5.8.5

Hon. P. R. HALL — The amendment seeks to omit this clause. In part it is conditional on my previous amendments, and because they have been beaten I do not expect there will be any support for this amendment either. But this clause simply says:

> The Authority must, on the request of a school attendance officer, provide the officer with any information relating to the registration of students for home schooling that the officer may reasonably require for carrying out the officer's functions and powers under Part 2.1.

Because I am advocating there be no regulatory regime for home-schoolers, there is no need for this particular clause and for such information to be transferred to attendance officers. I therefore move for the omission.

The CHAIR — I am going to put the question and in doing so just say that obviously we have a difference of view about the role of registration of home-schoolers. I will be voting to retain the clause.

Committee divided on clause:

Ayes, 3

Hirsh, Ms	Viney, Mr
Mikakos, Ms	

Noes, 3

Brideson, Mr	Lovell, Ms
Hall, Mr	

The CHAIR — There being an equality of votes, I exercise my casting vote in favour of the question.

Clause agreed to.

Clauses 5.8.6 to 6.1.3 agreed to; schedules 1 to 8 agreed to.

The CHAIR — That concludes the consideration of the bill.

Committee adjourned 4.31 p.m.