Agreement in Principle

Ms LINDA BURNEY (Canterbury—Minister for Community Services) [10.06 a.m.]: I move:

That this bill be now agreed to in principle.

I am very proud to bring before the House the Children Legislation Amendment (Wood Inquiry Recommendations) Bill 2009. This legislation gives effect to recommendations of the Special Commission of Inquiry into Child Protection Services in New South Wales. As honourable members of the House would be aware, Justice Wood recently carried out a very thorough and comprehensive investigation of the State's child protection system and delivered a substantial report containing 111 recommendations. The commission's report has provided the Government with an invaluable blueprint for the next stage of child protection reform in this State. In response, the Government has developed its action plan—Keep Them Safe: a shared approach to child wellbeing. The action plan radically changes the way the Government and community address child safety and wellbeing, so that together we are able to build a stronger, more effective child protection system. The bill implements the actions that require changes to the Children and Young Persons (Care and Protection) Act 1998 and other relevant legislation.

The bill provides the necessary platform to roll out the reform agenda for child protection. While the action plan establishes the broader plan, I want to concentrate at this time on the legislative changes that were recommended. In summary, the three key objectives of the bill are: first, to improve the statutory child protection system by focusing on children and young people at greatest risk, making court processes more user friendly for children and families, concentrating the efforts of the specialist Children's Court on where it is imperative to have a judicial decision, and clarifying regulation of out-of-home care to focus the Department of Community Services on working with children and young people in need of care and protection; second, to share the responsibility for child protection by creating a new system for accessing information, facilitating better interagency cooperation, and obliging agencies to take steps to coordinate with other agencies; and, third, to streamline and improve oversight arrangements of the child protection system by making some minor miscellaneous amendments to the Children and Young Persons (Care and Protection) Act 1998 and related Acts.

I turn now to explaining these elements of the bill in more detail. The special commission found that New South Wales has one of the lowest thresholds for making a report on a child or young person suspected of being at risk of harm, and that too many of the reports that are made do not warrant the exercise of the Government's considerable statutory powers. For instance, last year there were over 300,000 reports—four times the number of reports received in 2000. In order to align New South Wales with other Australian States and Territories, this bill will raise the reporting threshold to risk of significant harm. This will allow the department to focus on its core responsibility—that is, those children who require statutory intervention.

However, children who require assistance but who are not at risk of significant harm will not be ignored. Their needs will be met through the other changes to the child protection system, such as expanding early intervention programs and the new referral structure in organisations such as Health, Police and Education introduced by this bill. These measures aim to improve outcomes for these children by referring them directly to the services they need. Commissioner Wood made an important and clear statement about something that has somehow become obscured in the debate about child welfare. In paragraph 10.4 he said:

Child protection is the collective responsibility of the whole of Government and of the community.

The bill sets up a new framework. The general public and some mandatory reporters such as a local general practitioner or a teacher at an independent school will continue to report any concerns through the Community Services Helpline. Mandatory reporters in the main human services and justice agencies will have an alternative in some situations. If they have concerns but are unsure whether the child is at risk of imminent significant harm, they may report through specialised Child Wellbeing Units. Referrals to the units will need to be made in accordance with processes and standards set out in a documented arrangement with the Department of Community Services.

Agencies entering into such arrangements include the Children's Hospital at Westmead, area health services, the New South Wales Police Force, Housing New South Wales and government departments such as the Department of Education and Training, Department of Juvenile Justice, and the Department of Ageing Disability and Home Care. Once the arrangements are in place individuals within these organisations will be able to refer matters to an assessment officer located in a Child Wellbeing Unit, who will appraise the matter to decide what action should be taken. Where concerns indicate a risk that an imminent response to significant harm is required, then these matters will go directly to the Helpline.

This new alternative mandatory reporting system will be able to more quickly and efficiently link families with the right services and will also improve the time taken to respond to children who do not require statutory

intervention. It will make better use of whole-of-government and community resources. If circumstances require it, any mandatory reporter will still be able to access the Helpline. The advantages of this new system, proposed in the report of the special commission, are outlined in paragraph 6.66:

Children at risk of significant harm [will] receive the attention of DoCS and its NGO partners while families in need of assistance are directed to services. Further, that those outside DoCS working in child protection, [will] be encouraged to improve the quality of their reports, [and] more frequently exercise their professional judgement.

In accordance with the commission's recommendations we have removed the statutory penalty regime for mandatory reporters. The commission found that these were counterproductive. What have not been removed are the disciplinary, professional or civil liability penalties, which arise from breaches of statutory duties. The mandatory nature of reporting in this State has therefore been retained. We have also retained the protection for persons who make reports, and have extended this to cover mandatory reporters who refer through the intra-agency structure facilitated by this bill.

This protection exists not just for those who report directly to the Department of Community Services; it is also for those who, in accordance with arrangements entered into with the department, refer matters to Child Wellbeing Units and others, such as teachers, who might first report to a school principal. In order to assist people who wish to make a report in relation to a particular child, this bill makes two important additions to the list of grounds that indicate a child is at risk of significant harm. The first is that the failure of parents or caregivers to make proper arrangements about their child receiving an education is expressly noted as an indicator that a child or young person is at risk of significant harm.

The second seeks to clarify a very difficult issue in child protection, which is neglect. The inquiry found that neglect is the second most common reason for reporting a child, after domestic violence. Neglect is also present as a secondary issue in many other cases. The bill has expressly included a provision that risk of significant harm may be constituted by a single incident or it may be constituted by a series of incidents which of themselves may seem inconsequential, but when seen as a whole establish a pattern of significant harm. A number of recommendations for improving the Children's Court systems and processes were made by the inquiry. As part of this, the following legislative reforms are being made.

First, to improve the quality of court documents, and to allow for closer inquiry on whether a case requires the intervention of the court, the timing for filing an application where there has been an emergency removal or assumption of care responsibility by the Department of Community Services is to be extended from less than 24 hours to no more than 72 hours. Second, to get information before the court in a way that can be readily understood by families, the initial care application will be accompanied by a report that summarises why the department considers that the child is in need of care and protection. This is instead of a formal affidavit setting out all of the information upon which the department might seek to rely. Third, to enable the court to receive the best information possible when making a decision about a child's long-term needs for care and protection, sections 78A and 83 of the Children and Young Persons (Care and Protection) Act 1998 will be amended to clarify that the details in a permanency plan should be sufficiently clear and specific so that everybody involved in the future care of the child will know what needs to be done once the plan has been approved by the court.

The court's role will be to examine whether the plan is what the child needs, not to examine the detail of how the plan is to be implemented. The latter is rightly the role of the designated agency supervising the placement. The intention of this change is to achieve a balance between the alignment of judicial and oversight functions. The Government has also adopted the recommendation to include in the legislation the substance of the judgement given by the Senior Children's Magistrate in Re Rhett and subsequent judgements on this point. To allow for greater participation in court decision making, and as a matter of equity, children and young people will be given the right to apply to the court to rescind or vary care orders.

The procedure for the court to seek expert evidence has also been clarified, by enabling the court to order additional expert evidence from the Children's Court Clinic or other court-appointed persons to supplement what might have been provided in an assessment report. The bill also allows for the future transfer of the Children's Court Clinic to another prescribed public sector agency. In relation to the court's powers to monitor and review a care order under section 82 of the Children and Young Persons (Care and Protection) Act 1998 the commission noted that there has been some uncertainty whether the court can, of its own motion, rescind or vary a care order. To put this matter beyond doubt, the bill will confer the power for the court to re-list the matter if it is not satisfied that proper arrangements have been made. However, it will be up to the parties to the proceedings to seek to vary the orders.

Consistent with the commission's recommendations, the court will not be both the applicant for new orders and the judge in the same proceedings. The commission said that the court should not use this, or other means, to extend its remit and assume an oversight role for the provision of out-of-home care. The bill provides that the power of review in section 82 allows for a single report, close in time to the making of final orders, which will be an aid to the court in expeditiously making final orders. A key area examined by the commission was whether child protection work would benefit from more extensive alternative dispute resolution. One area concerned long-term arrangements for children who have been removed from their families to have contact with significant

people in the child's life.

The report acknowledged that long-term arrangements for contact are difficult to resolve through court processes. This is because of the need for flexibility, with sometimes even daily changes, and because it is important to recognise that needs and circumstances especially those of the child change over time. The recommendation of the commission to remove the Children's Court powers to make long-term contact orders has been adopted. In making this recommendation, the commission affirmed the important role of the Children's Court in making contact orders during the period prior to the making of final orders, or where the court has found on the evidence that a child should be restored to the care of his or her parents.

The commission suggested that use might be made of guidelines on what are appropriate contact arrangements. It further recognised that disputes over the suitability of contact arrangements are still likely to occur and, where this happens, alternative dispute resolution processes best handle these. The Government believes that a dispute resolution process is fundamental to the proper working of any new contact arrangement. Consequently, these contact order provisions will not be proclaimed until these supporting mechanisms are in place. They will involve a flexible and accessible non-court dispute resolution process as envisaged by the inquiry. The Attorney General will seek advice from an expert reference panel to help guide decision-making about how these alternative dispute resolution models might work. The panel will look at international experience in this area. The Government recognises that resolving disputes quickly, efficiently and fairly is an essential element of making contact between children and their family's work.

Beyond these changes, the Government will recognise the importance of the Children's Court by appointing a District Court judge as President of the Children's Court, replacing the role of the Senior Children's Magistrate. As with similar arrangements in other courts, the president will have tenure for one or more terms of up to five years. This change will enhance the standing of the Children's Court and will ensure that there is a pool of expertise in children's appeal matters in the District Court, of which the president will be part after the expiration of her or his tenure as President of the Children's Court.

The important role played by the Children's Court Registrars has been acknowledged by the acceptance that Children's Court Registrars need to be legally trained to have the appropriate skills for the functions they are to perform. The court will be put on a surer legal footing by clarifying the court's rule-making processes, and allowing the president to issue practice notes to govern the court's proceedings in relation to matters not covered by the rules. This will overcome any concerns raised in *KF v Parramatta Children's Court* about the power of the court to issue practice directions and notes.

The law reforms introduced by this bill will also enhance and strengthen the regulatory framework for the provision of out-of-home care. As we are all aware, the number of children and young people in out-of-home care is on the rise. Irrespective of the arrangements by which a child or young person enters care, this Government is committed to providing a first rate out-of-home care system. To this end, the bill strengthens the legislative framework for the provision of out-of-home care, by clarifying the legislative definitions and service classifications of statutory, supported and voluntary out-of-home care.

Unlike the existing arrangements, the bill focuses the work of the Department of Community Services on those children in out-of-home care as a result of court orders or who might otherwise be in need of care and protection. It allows children in private arrangements made by their families without the knowledge, involvement or support of the department to continue with as little State interference as possible. The only involvement of the department will be as a safety net to stop children in voluntary arrangements being forgotten and to ensure their futures are properly planned. The bill achieves these goals by creating schemes for those placements supported by the department and also for voluntary arrangements by families.

Statutory out-of-home care will consist of placements that are made following a court order where a family member no longer has parental responsibility. There are also placements which have been agreed to by family members but which are assisted by the department, because alternative approaches to court action are being taken to address the needs of the children for care and protection. These will be called supported out-of-home care. The support provided by the department could include a range of things such as the provision of services, arranging parenting courses or providing financial assistance.

Despite the different ways in which a child may enter supported out-of-home care, because the child is in need of care and protection, the commission recommended that these placements should also have the benefit of a care plan, which is to be prepared within 28 days of the department making the finding that the child is in need of care and protection; and a placement review upon a change of placement or, in any event, at least once in every 12 months. The reviews will focus on whether the support being provided is achieving its goal of the child no longer needing care and protection from the State and moving towards living with his or her family.

Another type of out-of-home care arrangement is a voluntary placement arranged by the family without State intervention. There are several points to make about these. Firstly, short-term care arrangements of less than three months duration will only be provided by agencies registered with the Office of Children's Guardian. Secondly, for placements over three months, care will be provided under the supervision of a designated agency

accredited by the Children's Guardian. This is the same requirement as for supported out-of-home care. Accreditation will be more rigorous than registration. Thirdly, every child who is in voluntary care for more than three months in any 12-month period must have a voluntary plan prepared and implemented by the designated agency. The plan will address how the needs of the child or young person will be met in the placement and must be prepared no later than six months after placement.

Staff of registered and designated agencies are mandatory reporters. Failure of their agencies to prepare care plans in time will engage the statutory child protection system because these children will then be considered to be at risk of significant harm. The benefits of this revised scheme are that it will give agencies that provide voluntary out of home care a framework and time frame for assessing the need for care services, and it will provide parents with clarity and certainty about expectations regarding voluntary care arrangements. But above all else, and most importantly, the changes ensure that children in voluntary placements are not forgotten within the system and will focus the agencies on addressing their needs. The commission clearly identified information sharing as a central issue for all agencies whose work involves caring for and protecting children and young people. The commission was very clear about the significance of information exchange, and I quote from paragraph 24.107:

> The key message of this report is the need for a strong interagency response to child protection, which includes both the government and non-government sectors. Therefore it is essential that the current problem in relation to the sharing of information between agencies be resolved.

The commission found that the complex relationship between privacy legislation, agency privacy codes of practice and access to information under the Children and Young Persons (Care and Protection) Act 1998, does not encourage information sharing.

This bill enacts the recommendations of the special commission with respect to information sharing and will provide clarity for all whose work involves child protection—including non-government organisations. Under the current provisions, the Department of Community Services effectively acts as a clearing house for all information concerning the safety, welfare and wellbeing of a child or young person. This bill inserts a new chapter into the Children and Young Persons (Care and Protection) Act 1998. New chapter 16A will enable greater exchange of information directly between agencies involved in the safety, welfare and wellbeing of those children or young people. This will balance issues of care and protection while at the same time guarding the confidentiality of that information.

The principles governing this new chapter make clear that, firstly, all agencies with responsibilities related to the safety, welfare and wellbeing of children and young people should be able to share information to promote that purpose and should work collaboratively with other agencies; and, secondly, in sharing information, the safety, welfare and wellbeing of the child or young person takes precedence over the protection of confidentiality or an individual's right to privacy.

Under the proposed amendments, information sought by an agency must relate directly to that agency's work in relation to the safety, welfare and wellbeing of a particular child or young person or class of children or young people. Where there are inconsistencies between these provisions and other legislation governing privacy, the new chapter 16A will take precedence. A prescribed agency will be required to comply with a request for information when it believes this will assist the requesting agency in providing for the safety, welfare and wellbeing of the child and/or young person to whom the information relates.

The bill places a number of limitations on the obligation to provide information: for example, an agency is not required to disclose information if the agency believes it would prejudice a criminal investigation or coronial inquest, endanger a person's life or is not in the public interest. Importantly, the amendments allow for the protection of those providing information where it is given in good faith. These changes have been discussed with the Privacy Commissioner and His Honour Justice Taylor has given them his support.

The bill amends the child-related employment provisions of the Commission for Children and Young People Act 1998 to broaden the classes of employees in high risk groups who must undergo background checks prior to commencing employment in child-related positions. It also brings greater clarity to the circumstances in which a working with children check should be undertaken. New positions requiring checks include: staff of the child wellbeing units; contractors engaged by prescribed agencies to undertake work which involves direct unsupervised contact with children; students working with the Department of Community Services having direct unsupervised contact with children; children's services licensees and authorised children's supervisors of prescribed children's services; the principal officers of designated agencies providing out-of-home care or adoption services, members of authorised carer or family day care families over the age of 18 years; and volunteers who mentor children who are disadvantaged or provide personal care to children with a disability.

The commission recognised the important role of community visitors. These are the independent witnesses and advocates for children and young people living in residential out-of-home care as well as children, young people and adults with a disability living in accommodation operated, funded or licensed by the Department of Ageing Disability and Home Care. Community visitors work with service providers to resolve issues of concern to

residents and where no adequate resolution is possible. Community visitors may also report the issue to the Ombudsman for further investigation and possible action.

The bill proposes to expand this role to enable community visitors to provide specified information to the Children's Guardian concerning residential out-of-home care agencies they visit in the course of their work, which may be of sufficient significance to be relevant to their accreditation. This additional information will better enable the Children's Guardian to monitor and accredit out-of-home care service providers. The commission confirmed that currently unproclaimed provisions are unworkable. These are based upon the proposition that the Children's Guardian could exercise the Minister's delegation of parental responsibility. Accordingly, these will be repealed by the bill.

The bill includes an amendment recommended by the special commission to assist law enforcement agencies in their investigations of a serious offence alleged to have been committed against a child or young person. The amendment allows for the disclosure of reporter details to a law enforcement agency in specified circumstances. The aim of this amendment is to achieve a balance between the need for reporters to have confidence when making reports about children at risk of significant harm, and the need for the police to have access to all necessary information for investigating serious crimes against children.

As is the case with a number of the bill's provisions, the amendment strengthens the primacy of the best interests of a child or young person. That is because it limits the disclosure of a reporter's identity to cases where this is necessary for the purposes of safeguarding or protecting a child or young person's safety, welfare and wellbeing. The amendment will also strengthen the partnership between Community Services, Health and Police as they work collaboratively on serious child protection offences. The bill builds in protections so that the provision is not misused to jeopardise the confidentiality of reporters and thereby harm the flow of information in the first place. Reporters will have to be notified of a disclosure unless this is not reasonably practicable or it would prejudice an investigation.

I have no doubt that the reforms introduced by this bill and set out in the Government's Keep Them Safe action plan will lead the way for fundamental change in the protection of children in New South Wales. I thank all the officers who were involved in the development and construction of the bill. The Government trusts and hopes that this bill will receive the full support of all members of Parliament. I commend this bill to the House.