

*Joint Standing Committee on the Commissioner for Children and Young People — Eighth Report —
“Report on the functions of the Commissioner for Children and Young People: Working with children checks”*

Resumed from 8 March.

Motion

Hon HELEN BULLOCK: I move —

That the report be noted.

I made a very brief, concise and very good comment after I tabled this report. I think that was sufficient and nothing has changed during the interval, so I have nothing to add.

Hon NICK GOIRAN: I rise to support the motion moved by Hon Helen Bullock; naturally, I agree that the report should be noted, and in doing so I will make a few brief remarks.

This is another important report from the Joint Standing Committee on the Commissioner for Children and Young People. This committee was looking into the issue of working with children checks because in the legislation this is a prospective function of the Commissioner for Children and Young People. Interestingly, you might be aware, Mr Chair, that it was not the intention of the Select Committee on Advocacy for Children (Appointment of a Commissioner for Children) or the Working with Children (Criminal Record Checking) Act 2004 for the Commissioner for Children and Young People to have responsibility for the day-to-day operation of working with children checks. Nevertheless, the Commissioner for Children and Young People Act 2006 was passed, and allows for the administration of the Working with Children (Criminal Record Checking) Act 2004 to be transferred to the children’s commissioner at a later date. That has not as yet happened, and I understand that there is some common ground that that should not take place. But the committee wanted to be sure of that because, of course, the legislation suggests that it be a function of the Commissioner for Children and Young People, and we needed to ascertain whether that should be the case.

To cut a very long story short, the outcome, after looking at various jurisdictions around the country, is that the commissioner should not have that particular function, which is not anything new. But what is of particular note and importance is that if one takes a very narrow interpretation of a committee’s terms of reference, it could be argued that that should be the conclusion of any comment from this committee, yet those who have read this report will have noted that this committee goes a little further and makes some commentary on a potential weakness in the working with children check system. As I say, it could be argued that that is slightly outside the remit of this particular committee. However, can I suggest that, as I have said before in this place, if the time of four members is invested in sitting around a table and looking at a particular issue and they happen to stumble across something of significance, why would we stop them and say, “No, sorry, we do not want to hear from you any further; don’t tell us what else you’ve found”? I think it is appropriate that this committee has drawn this matter to the attention of the house. Of course, being a joint standing committee, it has done so in the other place as well.

In the time I have, I note that the working with children act in Western Australia provides procedures for checking the criminal records of people who undertake and propose to undertake child-related work. That act, at the moment, falls within the portfolio of the Minister for Child Protection, and the Department for Child Protection is the responsible agency for administering working with children checks. It is the view of the committee that that should continue; there are no arguments about that. Of course, that is different from the situation in New South Wales where the NSW Commission for Children and Young People has overall responsibility for the working with children checking process; it is one of five agencies in New South Wales which carry out the working with children checks. Again, there is a slightly different situation in Queensland. The Commission for Children and Young People and Child Guardian is responsible for the working with children checks via its system known as the blue card system. In Victoria, the act is administered by the Department of Justice. The Victorian Office of the Child Safety Commissioner performs an oversight role for its working with children checking system. In the Northern Territory, the legislation pertaining to working with children checks falls under the authority of the Department of Children and Families but is administered by the Northern Territory Police. To conclude on this issue, the situation in the Australian Capital Territory is that a statutory screening unit is to be established within the Justice and Community Safety Directorate of the Office of Regulatory Services. It does not appear, on the best information that we have, that the Children and Young People Commissioner will have a role to play. That was at the time of the tabling of this report and the passing of that legislation in the ACT in October last year. That, in summary, provides the overview across the nation.

As I said, in Western Australia the Department for Child Protection handles this responsibility. If members have too much other reading to do with the volumes of material that we receive in this profession and want to cut to the chase, I suggest that they turn their minds to pages 19 and 20 of the report, which provide a summary of the issue. It started on 17 August last year when the committee had a hearing with the Commissioner for Children

and Young People in this state, Ms Michelle Scott. The commissioner's views were sought on whether she thought there was a conflict of interest in the sense that the Department for Child Protection has to undertake working with children checks on its own staff. The commissioner's view on page 19 of the report is —

I think wherever you place it, there is a potential conflict of interest. One of my concerns, if it was in my area of responsibility—I am a commissioner charged with acting in the best interests—is that there could be a conflict if something happens in relation to one of the checks.

The committee then met with Mr Terry Murphy, the Director General of the Department for Child Protection, in October of last year and ascertained his views. In summary, he basically echoed what the commissioner had to say. I quote again from page 19 of the report —

... [T]here is probably nowhere else for working with children to live that would not also require some of its staff being checked. The Department of the Attorney General was one option considered. Obviously all juvenile justice staff have to deal with kids in the courts, and so on and so forth.

Since my time is running out very rapidly, let me just say that there was general agreement that, yes, it needs to stay with the Department for Child Protection. However, the issue is that someone needs to provide the external oversight when the Department for Child Protection checks its own staff. It was suggested that should be done by the Auditor General. The Office of the Auditor General gave a remarkable—if I can call it that—response at appendix 6 of the report. It bears time reading. I will quote slabs of it —

Thank you for your letter of 17 November requesting my views on DCP's potential conflict of interest when conducting 'working with children checks' on its own staff and the value of my undertaking an independent audit of this process.

Preventing and addressing real or perceived conflicts of interest is a small but important role of my Office.

This is the important paragraph. It is rather remarkable —

My Office does not have a good understanding of the arrangements that DCP currently has in place to give itself assurance about the rigorousness of the checks done on its own staff. In the absence of that sort of knowledge, our approach in assessing whether an audit is warranted is to apply standard audit practice, considering (a) the likelihood of something going wrong and (b) the consequence if it does. On that basis, I would expect DCP's processes to be particularly rigorous when checking their own staff because of the consequence if they get it wrong.

I am very disappointed by that response. This is a very serious issue. I note that today the Office of the Auditor General has tabled two reports. That is all well and good, but this is something that needs to be a priority. I am disappointed that it has not been done by the Office of the Auditor General. Nevertheless, I ask that the report be noted.

Hon LINDA SAVAGE: I would like to say a few words about the eighth report of the Joint Standing Committee on the Commissioner for Children and Young People, "Report on the functions of the Commissioner for Children and Young People: Working with children checks". I always take an interest in the reports of this committee. Again, this is an excellent report. In reading it, I found that it provides an overview of how the working with children checks came into being and is a very useful summary of what is happening in other states. I will not go over the ground that Hon Nick Goiran has gone over, except to say that the conclusion that was reached that this should not be the responsibility of the Commissioner for Children and Young People is borne out by the evidence and the committee's review of what is happening in other states. I also note recommendation 2 of the committee, which reads —

The Minister for Child Protection should immediately request the Auditor General, or other appropriate body, to conduct an independent audit of the working with children checks conducted by the Department for Child Protection on its own staff.

I look forward to that recommendation being considered by the Minister for Child Protection. Probably like other people in this place, I have had a working with children check done, which was to serve on the board of Wanslea Family Services. When one of my children was at university and taught children soccer, he had a working with children check done. Therefore, I am aware just how widely these checks are used. I do not know whether the report had the number of checks that are done each year, but I assume that it would be a very large number. It is a very significant task and something that the Commissioner for Children and Young People, understandably, would not wish to take on, and should not take on, given the other responsibilities that she has.

I am not sure whether there is any data available, but I would like to know the extent to which working with children checks have made a difference in protecting children. I expect that is not necessarily an easy thing to

find out, but that is the point of working with children checks and, obviously, it would be useful if a model of research or statistics could perhaps throw some light upon that.

I will take this opportunity to speak about why we have working with children checks; they are aimed at preventing the abuse of children. Working with children checks go specifically to whether someone has a record that would therefore make them ineligible to work with children. As we know, the vast majority of child abuse, particularly child sex abuse, is committed by a family member or someone known to a child, and certainly not someone who has intersected the justice system. The Katanning inquiry is currently being held and an inquiry has been instituted in Victoria into children who had been in Catholic institutions. What is stunning to me is that abuse was happening not only in the “olden days”. We tend to think that up until the 1960s or even the 1970s those things happened, but these are things that were happening in the 1980s and, from what I read, there is real concern that it continues to happen. I will refer to an article that I read last year. It was reported in ABC online news on 19 May 2011. The title is “Top cop says child abuse eating away at society”. The article commences —

The New South Wales police commissioner has described child sex abuse as a “monster” eating away at modern society and vowed to make a personal crusade against the issue.

Andrew Scipione says the number of people reporting abuse is rising, particularly the abuse that happens in the family home.

The article then provides some shocking figures about what is being reported. If members read into the article, the point is made, no doubt in a similar way to domestic violence, that these are very under-reported crimes, often because of the circumstances in which they take place—involving a child and either a family member or a family friend. The New South Wales Commissioner of Police at the time said that the statistics showed an ugly truth. He also said that 90 per cent of the offences in those cases were committed by someone the child knew and in some cases even by the father or stepfather. It is a very difficult subject to talk about. I am not suggesting that we are turning a blind eye to it, but it is very hard to confront and to imagine that type of abuse, which seems to fly in the face of everything that we assume as natural in a relationship between a parent and a child in particular, or even between a family friend and a child.

Similarly in England, there is increasing attention on this issue. Part of it is because more and more people are speaking out. To refer back to the Katanning inquiry, the bravery and the preparedness of the first person who spoke out really was the beginning of enabling others to speak out. I have a hope, notwithstanding these shocking figures—in the sense that such a small number have been reported—that even for children the attention will begin to percolate down and perhaps they will also feel a greater sense that they can speak out and that they will be listened to. The fact that someone is in a position of power or has received awards should not mean that the voice of a child would be discounted.

In England, there are articles along the same lines, that it is a hidden issue. I quote from an article published in *The Guardian* —

Ann Marie Carrie, chief executive of Barnardo’s, said child exploitation did not fit one model of behaviour or victim. “In a way the media has been guilty of promoting only one model, when there have been many,” she said.

“My concern is that the level of awareness about child sex exploitation is akin to domestic violence 20 years ago. There’s a sense that because the child is over 10 years old, that behaviourally and attitudinally there must have been consent—but it is abuse and they are still a child and cannot consent.”

She was referring to some particular incidents that had been happening in England involving the grooming of 13 and 14-year-old girls. It was quite an explosive issue last year because of the people involved and for a number of other reasons. I think her reference to the media may be that we have a great deal of emphasis on the stranger as the paedophile who will abduct and do something horrific to a child. Of course that happens, but I suppose the point I make is that the risk to children from this type of abuse is overwhelmingly from those closest to them. It is a topic that we all hope we will find a way to deal with more effectively.

Question put and passed.