

WORKING WITH CHILDREN (CRIMINAL RECORD CHECKING) AMENDMENT BILL 2022

Committee

Resumed from an earlier stage of the sitting. The Chair of Committees (Hon Martin Aldridge) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Clause 14: Section 13A amended —

Committee was interrupted after the clause had been partly considered.

Hon NICK GOIRAN: I think, just prior to the interval for the taking of questions without notice, we had passed clause 13 and we are now considering clause 14. I note this in passing at this time. Does the parliamentary secretary have a copy of the blue bill handy?

Hon Matthew Swinbourn: Yes.

Hon NICK GOIRAN: There is a curiosity that I want to draw to the parliamentary secretary's attention. No doubt, the entity that is mentioned often but never present is responsible for this curiosity. But if the parliamentary secretary looks at page 22 of the blue bill, the start of division 2, we see section 12 of the Working with Children (Criminal Record Checking) Act 2004. This continues for a number of pages and includes that substantial table that we spent some time considering earlier this afternoon. The very next section, which appears at page 26, is 13A, and then the next section, on page 27, is proposed section 13. But then, just to confuse things a little bit more, if we turn to page 28, we have proposed section 13AA. I am not intending to do anything with that; I just draw it to the parliamentary secretary's attention. I genuinely do not know whether that is part of the ordinary drafting convention. I do know that it is a curiosity that when a section is added in, it is designated as "A" and is inserted before the section itself. I have previously discussed that at other times and find that a strange approach. One would think that section 13A would always come after section 13. Nevertheless, in this instance, we have a double curiosity. We have section 13A before proposed section 13, and proposed section 13AA afterwards. I do not necessarily expect a response, but I know that when we raise these matters, they are considered by the drafters. If that is something irregular, I am sure that they will attend to it. If it is just the way it is going to be henceforth, then I am sure we will see it again in the future. I must say, for the ordinary reader, it is actually unhelpful. I just make that observation; it is not a question at this time.

I turn to clause 14, which seeks to amend section 13A of the act. Prior to the interval for the taking of questions without notice, the parliamentary secretary was assisting the chamber with the use of the phrase "other person". That is defined, in a sense, in the explanatory memorandum, but I think the parliamentary secretary indicated prior to the break that it is not otherwise defined in the bill.

Hon Matthew Swinbourn: By way of interjection, it's not, no.

Hon NICK GOIRAN: Yes. Again, although the explanatory memorandum indicates that "other person" is intended to be a reference to the person who employs or proposes to employ the applicant in child-related employment, other than by reference to the explanatory memorandum, how are the users of this legislation supposed to know who the other person is?

Hon MATTHEW SWINBOURN: The term should be read to have just its ordinary plain meaning. It falls under the normal rules of statutory construction. There is probably an argument for having it defined within the bill. I am not sure why that did not transition from the explanatory memorandum to the bill. The EMs are always written after the bill. However, we think that the clause is not so complex that an ordinary reader could not glean its meaning from reading it. If they were not able to do that, they could go through the cascading series of external materials such as the EM, the parliamentary debates and the dictionary if that would be of any help—I do not think it would be in this particular instance—to get that particular meaning. That is probably not a satisfactory answer in the big scheme of things, but I do not think that this particular provision is so complex that an ordinary reader would not understand what it means. If they were concerned and they were before a court or anything like that, the EM would be at hand for most people.

Hon NICK GOIRAN: Clause 14(b) of the bill will amend section 13A(1)(b) and insert proposed subparagraph (i) —
if an assessment notice is issued — give details ... to the other person in the manner or form the CEO thinks fit ...

What is intended to be the "manner or form the CEO thinks fit" to communicate this to the other person?

Hon MATTHEW SWINBOURN: This comes back to the design of and movement to use of an electronic system. The system is not bedded down at all at this stage, so the wording "in the manner or form the CEO thinks fit" will enable the CEO to move to using that online system.

Hon NICK GOIRAN: Proposed subparagraph (ii) of section 13A(1)(b) also includes a capacity for the CEO to “give a copy of the negative notice to the other person”. Is that a substantial change from the current practice?

Hon Matthew Swinbourn: By way of interjection, no, member.

Hon NICK GOIRAN: That is the current practice. Will there be any restraint or restriction on the other person disseminating or distributing information, including, but not limited to, the negative notice?

Hon MATTHEW SWINBOURN: There will be no privity in this document, so a person who has received it would be free to disseminate it if they so choose.

Hon NICK GOIRAN: This proposed section refers to the issuing of assessment notices and negative notices. Will the provisions be the same for an interim negative notice?

Hon MATTHEW SWINBOURN: The answer is yes. The obligations of the CEO will be the same. The entitlement to disseminate as they see fit will also be available.

Hon NICK GOIRAN: I take it that the parliamentary secretary is referring to proposed section 13AA(4), which states —

If the CEO is aware that the person to whom an interim negative notice is issued is employed, or is proposed to be employed, in child-related employment by another person, the CEO must give a copy of the interim negative notice to the other person.

Hon Matthew Swinbourn: Yes.

Hon NICK GOIRAN: That particular delivery of the negative notice will be consistent with the delivery of the negative notice as set out in the proposed amendment to section 13A(1)(b)(ii), which will then read —

If a negative notice is issued — give a copy of the negative notice to the other person.

As I indicated earlier, we have the curiosity that when it comes to an assessment notice, the CEO may deliver the information in a manner or form that he or she thinks fit. Is there any particular reason why the manner or form discretion that will be provided to the CEO will not also apply to an interim negative notice and a negative notice?

The CHAIR: Members, noting the time, I am going to interrupt debate to report progress.

Progress reported and leave granted to sit again, pursuant to standing orders.