WORKING WITH CHILDREN (CRIMINAL RECORD CHECKING) AMENDMENT BILL 2022

Second Reading

Resumed from 21 September.

HON NICK GOIRAN (South Metropolitan) [2.08 pm]: I rise as the shadow Minister for Child Protection and lead speaker for the opposition on the Working with Children (Criminal Record Checking) Amendment Bill 2022. The Western Australian working with children check scheme began some 16 years ago in 2006. It is an important screening strategy to safeguard children in this state. It is imperative that checks and balances are in place to protect our children from predators. Children are vulnerable and trusting. They need the whole community to create a web of accountability. Those who are in positions that involve interaction and working with children should be held to the highest standard.

The background to the bill that is presently before the house came in three forms—the royal commission's recommendations, the recommendations that arose from a statutory review, and a number of issues that have been identified by the Auditor General. As I understand it, the bill seeks to address 12 of the 19 recommendations made by the royal commission. It also seeks to address eight of the 23 statutory review recommendations. Again, I understand that, of the 23 statutory review recommendations, 15 require legislative change. Of that subset of 15, eight are being addressed by this bill. The bill also seeks to address issues that have been identified in successive reports by the Office of the Auditor General.

The government has also advised the opposition that the bill will contribute to what it has described as phase 1 of planned reform to the Working with Children (Criminal Record Checking) Act, framework and administration. We are told that phase 2 will seek more complex reforms, including the portability of offences. However, we have been advised by the government that this will be dependent on other states, territories and, of course, the commonwealth. Pleasingly, the aspiration is for nationally consistent protections and information gathering.

My concern is that noncompliance is more frequent than it should be. I want to draw to the attention of members a few examples. In fact, on 1 November, the Department of Communities issued a media release titled "Geraldton man convicted of working with children without a Working with Children Card". In that media release, the department said the following —

> The court heard that despite having previously held a Working with Children Card, the offender continued to carry on child-related work without renewing his card, despite requests from his employer to do so.

That is just one example. Although the media release from the department was light on detail, some further information was provided in an article in the *Midwest Times* of 1 November this year. The article states —

> The court was told despite having previously held a Working with Children card, Crudeli continued to carry on child-related work without renewing his card, despite requests from his employer Geraldton PCYC to do so.

So, a little extra information has been provided in terms of the name of the offender and the relevant employer. The article goes on to say —

> Last year, Crudeli was acquitted of two counts of sexual penetration without consent by a District Court jury after he fought allegations at trial that he sexually abused a 16-year-old girl in his home hot tub in 2020.
>
> It's understood Crudeli met his accuser at Geraldton PCYC, where he used to run boxing classes.
>
> The teenage girl claims she was sexually assaulted by Crudeli while they were in his hot tub with her friend, also 16.
>
> After initially denying to police that sexual penetration had taken place, Crudeli admitted it did on the witness stand, but argued it was with consent.

Notwithstanding his acquittal last year before a District Court jury, the matter has now resulted in a conviction courtesy of, as I understand it, an investigation undertaken by the Department of Communities. In fact, this man was found guilty of the offence following a two-day trial in the Geraldton Magistrates Court and was fined $500 and ordered to pay $8 000 in costs to the Department of Communities. To be clear, what he was found guilty of was not the matter that he was acquitted of before a District Court jury; it was for continuing to carry on child-related work without having renewed his working with children check card. That is an example in Western Australia in which I would say that noncompliance has evidently occurred.

Meanwhile, if I turn to the situation in Victoria, the Victorian Ombudsman has identified serious flaws in its working with children scheme. This is not necessarily a problem that is isolated to Western Australia. On 14 September 2022, the Victorian Ombudsman was reported as saying —

> … Working with Children Check Victoria, was unable to consider relevant and highly concerning police and child protection intelligence to assess Alexander Jones's suitability to work with children.
>
> In February 2021, Jones was convicted of sexually assaulting a child known as 'Zack'. After his conviction, the media reported that Jones had misused credentials provided by his former employer, Melbourne City Mission, to access sensitive information about children, including Zack.

In this particular report, the Ombudsman goes on to say —

> The allegations also did not prevent Jones from obtaining a Working with Children clearance, which permitted him to work with vulnerable children and young people. In Victoria, information provided in police record checks obtained by Working with Children Check Victoria is generally limited to criminal charges laid by police. Even if Working with Children Check Victoria had received information about the prior investigations into Jones, this could not have formed a basis to refuse his application for a clearance.

Such is the state of affairs in Victoria. This was a parliamentary report by the Victorian Ombudsman in September this year.

Meanwhile, returning to Western Australia, another example was reported by the *Mandurah Coastal Times* in an article titled "Dawesville man in key role at local sports club fined $14k for false working with children documents". The article from 30 August this year includes the following summary —

> A Dawesville man has been ordered to pay $14,000 after being found guilty of giving fake documents during a Working with Children check.

The examples that I have given are extremely alarming. They indicate that noncompliance is more frequent than it should be. Indeed, amendments to the system are clearly in order.

I will deal momentarily at this time with the issue of the timing of these reforms. I note that on 17 August this year, just shy of a couple of weeks prior to the Dawesville article, the minister issued a media release titled "Landmark changes to strengthen working with children law". Amongst other things, the minister authorised this statement —

> High priority reforms part of a staged approach to address key recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse

I question the use of the term "high priority". Let us keep in mind that the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse was published in December 2017, almost five years ago. To give credit where credit is due, this matter that the Minister for Child Protection described as a high-priority reform is at least here, even though it has been five years since the final report came out. More than five years ago, her colleague the Attorney General, with the approval of the member for Rockingham, the Premier of Western Australia, indicated that the government would expedite reforms to address elder abuse in Western Australia, yet here we are on 16 November 2022, more than five and a half years later, and these things are nowhere to be seen. To give credit where credit is due, the Minister for Child Protection at least has a bill before the house. I question the use of the phrase "high priority", given that it has been five years since the final report of the Royal Commission into Institutional Responses to Child Sexual Abuse was produced; nevertheless, the bill is here now. I do not know whether the authors of the explanatory memorandum realised this when they drafted the introduction, but the explanatory memorandum that accompanies this bill includes this statement in the second paragraph —

> The WA Government in 2018 accepted or accepted in principle all recommendations of the Royal Commission relevant to WA and has annually restated its commitment to implementing these recommendations, to ensure a safer WA for all children and young people.

Can I just say to the authors of the explanatory memorandum that by stating and restating annually that the government is going to do something does not ensure a safer WA for all children and young people. What will ensure a safer WA for children and young people is actually doing something. As I said, to give credit where credit is due, we are at least here, five years later, addressing some of these reforms. Some issues were identified more than three years ago by the WA Office of the Auditor General in the *Working with children checks—Follow-up* report, dated October 2019.

It seems to me that there is something seriously wrong with the government's priorities when other legislation emerged and passed through both houses prior to the bill that is presently before the house. I remind members of the Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021. Members may recall that that bill tampered with our electoral laws. Premier McGowan repeatedly said prior to the election that that was not on the agenda. Something that was apparently not on the agenda in March 2021 not only emerged onto the agenda, but also passed through both houses of Parliament in lightning fashion, whereas this matter, which the Minister for Child Protection has been obviously working hard on for the last five years and considers a high priority, is only now before us in November 2022. Let us also not forget the Metropolitan Region Scheme (Beeliar Wetlands) Bill 2021. New observers of parliamentary practice and language might be interested to know that this bill effectively made

it more difficult to extend a road that the government had no intention of building. I invite the government to explain how that bill could have been considered a higher priority than the matter presently before us. As I said in my contribution to the second reading debate on that bill at the time, it was hardly a priority. Although the government was well within its rights to proceed with its course of action to not build the road, it certainly did not need to ram an urgent bill through Parliament to make it more difficult. I would describe those bills as being of questionable importance. Some members opposite will obviously disagree with that and say that they were of incredible importance, but, to me, they were of questionable importance. I would like to think that we could at least agree that they were not urgent, yet they were expedited and prioritised over important legislation that will protect the vulnerable in our society. Meanwhile, as the authors of the explanatory memorandum indicated, the government has been stating, and restating annually, its commitment to implementing these recommendations.

To be crystal clear, the tightening of the working with children check system is absolutely crucial to the protection of children in our state. I am pleased that this bill is now on the table before us, albeit it is only phase 1. I mentioned earlier that part of the trifecta of the genesis of this bill were the issues identified by the Office of the Auditor General, which has not only investigated, but also expressed concerns and made recommendations on the working with children check system on numerous occasions. The question I have for the Leader of the House, whom I think has carriage of this bill on behalf of the Minister for Child Protection, is: was the Office of the Auditor General consulted on the bill that is before us? One would think that that would be an important step for the government to take, given that the issues identified by the Office of the Auditor General form one of three parts of the genesis of the bill before us, the other ones being the royal commission recommendations and the statutory review recommendations. I note in particular that three years ago, an audit was undertaken by the nineteenth and current Auditor General, Caroline Spencer. I will quote from that follow-up report, in which the Auditor General said, in part, at page 7 —

> In 2018–19, Communities took an average of 211 days to issue negative notices to 105 applicants to whom it had not previously issued an interim negative notice.

I will pause from quoting the Auditor General's report to note that at that time, the 2018–19 financial year, it took, on average, 211 days before 105 Western Australians who had not previously been issued an interim negative notice were issued a negative notice. Of course, the question for those who are concerned about the safety and wellbeing of Western Australian children is: what were those 105 applicants doing during that, on average, period of 211 days? That is just under two-thirds of a year. For two-thirds of a year, 105 Western Australians who had not previously received an interim negative notice but who ultimately received a negative notice were working with children. What was particularly concerning was the Auditor General's finding on page 8 of the report —

> Fifty-three of these took over 200 days. These 53 people, who were found to be unsuitable to work with children, were allowed to work with children for a cumulative total of 14,192 days while their applications were assessed.

I pause from quoting the Auditor General's report to note that a subset of those 105 Western Australians, approximately half—specifically, 53 people—did not receive an interim negative notice. They did get a negative notice in the end, but it took over 200 days. In the meantime, those 53 people were allowed to work with children for a combined 14 192 days. It is no wonder that the Auditor General felt it was necessary to report this matter to Parliament.

Page 8 of the Auditor General's report states —

> This means 80% of people who ultimately received a negative notice were able to work with children while their application was assessed.

On average, it took 267 days per person. The Department of Communities had not implemented risk-based monitoring and enforcement, and still had little assurance on employer compliance. In fact, this investigation, or audit, by the Office of the Auditor General found that the Department of Communities itself was not even compliant. According to the Auditor General in this 2019 report, internal information and reporting on the effectiveness of the working with children check was inadequate.

A year later, in July 2020, the Auditor General produced another report entitled *Working with children checks—Managing compliance*. This audit assessed whether the WA health system, the Department of Justice and the Department of Education were compliant with their working with children check obligations. It found that each entity had gaps in processes, errors in record keeping and shortcomings in performance monitoring. The gaps increased the risk that entities would not be able to ensure that everyone who needed a working with children card had one.

It is in that context that we have the bill before us, which the Minister for Child Protection has described as a high priority. We seem to have a major problem with compliance not only in the community but also within government. To the extent that the bill before us will improve that scheme, or regime, it is welcomed and supported by the opposition.

There are a number of key issues associated with the bill. The first issue is whether the bill's transitional provisions will shield some known offenders. I suspect that I will spend a little bit of time unpacking this issue during Committee of the Whole House. During the briefing the opposition received, a department representative indicated to us that existing working with children cardholders will not be impacted by the amendments to offence classifications whilst they continue to hold a valid working with children card or have a pending application unless they are newly charged or convicted of a class 1 or 2 offence or they have allowed their existing working with children card to expire, which will automatically trigger a reassessment.

Hon Sue Ellery: Honourable member, if you will take an interjection, that was actually flagged in the explanatory memorandum or the second reading speech. I cannot remember which, but there was a reference in one of those.

Hon NICK GOIRAN: That may well be the case, but it was certainly brought to our attention during the briefing pursuant to some questions asked. Opposition members were told that this currently involves seven individuals. It would be interesting to know whether that is still the case. It was certainly seven individuals at the time of the briefing. What is the justification for this bill, or this reform, shielding those seven individuals? Let us put to one side whether it is seven or another number for the purposes of the exercise; we were told it was seven, so let us run with that. If the government and the department know that these seven people have committed a class 1 or 2 offence, and if they were to apply under the new scheme, they would not be eligible for a working with children card, why would they not be automatically reassessed? We are very keen to hear a rational explanation from the government on that matter. As I said, the opposition will support this legislation. The reforms are welcomed. But unless persuaded otherwise, I am concerned that the bill will shield seven known offenders.

The second issue with the legislation is whether the McGowan government is prepared for enhanced information sharing. It is matter of public record that the government has a concerning history of data privacy breaches. Clause 29 of the bill before us will create a new section 34G in the act that sets out provisions for the disclosing of information for the purposes of inserting interim negative notices and negative notices on the Working with Children Checks National Referencing System. As I said, this government has a concerning history of data privacy breaches and, at times, an ambivalent approach to information access by public servants. This is evidenced and articulated by not only the opposition, but also the Office of the Auditor General's findings of ongoing limited communication around the use of personal information collected by government entities, including the SafeWA app, Transperth SmartRider and police G2G PASS border crossing data; and the Corruption and Crime Commission's report highlighting the Department of Transport's unlawful accessing of the transport executive and licensing information system.

The third key issue associated with the bill presently before us is whether the bill is skeletal in parts and will rely excessively on regulations. My view is that the bill will rely on regulations very heavily. Indeed, by my count, regulations will be introduced 49 times. I draw members' attention to clauses 6 and 7. There are a number of Henry VIII clauses in the bill. I note and thank the Standing Committee on Uniform Legislation and Statutes Review for its 139th report tabled yesterday.

I might pause at this moment to make this observation, particularly for any first-term members. It has been the ordinary custom and practice in this house that when a bill returns from a committee—in this case, the Standing Committee on Uniform Legislation and Statutes Review—it is not brought on for debate the next day. In fairness to the Leader of the House —

Hon Sue Ellery: Sorry, I missed that. Can you just repeat it?

Hon NICK GOIRAN: I was just saying that it has been the ordinary custom and practice of the house that when a bill returns from a committee, as this one did yesterday, it is not brought on for debate the next day. I was about to say that in fairness to the Leader of the House, we need business to do today and, as I understand it, this is the only bill that it is possible to debate presently. But I must say that it is most regrettable that an important reform like this, dealing with the matters that I have addressed, including whether we are shielding seven known offenders, is being rushed through. We need to make sure we get it right. We clearly have time this week. We have all of today and tomorrow. I am sure that this will be the one occasion perhaps in the history of my service in Parliament with the honourable Leader of the House on which she might even be pleased that I take a little bit of time to scrutinise this legislation, given the paucity of other legislation to deal with until we return next week.

In all seriousness, I would not commend this approach of expecting members to digest standing committee reports overnight while Parliament is sitting and, I might add, dealing with four other bills as some form of precedent. For those of us who serve on committees, as I was this morning at a public hearing with the Department of Treasury, there was very little time to get completely across this bill. Nevertheless, my brief examination of the report indicates that it is one that is yet again worthwhile and deals in particular with these Henry VIII clauses. I assume that as a consequence of that report, the government has given notice of four amendments that have found their way onto the supplementary notice paper, which we will deal with when we get to clause 7.

The fourth issue with the bill before the house is to ponder whether the bill tries to partially raise the age of criminal responsibility by stealth. I draw to member's attention clause 7. The explanatory memorandum states —

> An offence will fall within the ambit of the subsection if the victim of the offence is a child who has reached 14 years of age and the age difference between the victim and the offender does not exceed 5 years. The condition applies to certain sexual offences involving children and child exploitation related offences.

In my view, this requires further examination. As I have said many times before in not only opposition, but also government, this is a classic example of it being regrettable that we invest the time of four honourable members of this house in considering bills in their capacity as members of the Standing Committee on Uniform Legislation and Statutes Review, yet we get them to do that task with blinkers on because we allow them to consider issues pertaining only to parliamentary sovereignty and the uniform nature of the legislation. But—shock, horror—should they come across some other material matter, they are not permitted, under their terms of reference, to draw them to the attention of the house. As I say, had this bill gone to the Standing Committee on Legislation rather than the Standing Committee on Uniform Legislation and Statutes Review, this type of matter could have been properly scrutinised; instead, we will need to do that in Committee of the Whole House, which is suboptimal.

I move to the fifth issue associated with the bill before us, and ask: what is the currency of the consultation, given the age of the recommendations that were the genesis of the bill? The statutory review of the act is one of three historical matters that gave rise to the bill before us. That review is 10 years old and the royal commission recommendations are from 2017, as I recall—some five years ago. However, if my memory serves me correctly, the royal commission issued an interim report specifically dealing with working with children checks in 2015, so we could say that those recommendations are seven years old. We have a piece of work that was done 10 years ago, and another that was done seven years ago, and the question is: how recently was consultation undertaken with key stakeholders to ensure that the bill that is before us now, in 2022, has kept pace with the passage of time?

The sixth matter I draw to members' attention as we consider and scrutinise this bill is to ask whether the bill's powers are consistent with other like statutes; specifically, I consider clause 29. Will the increased and additional powers to authorise officers be no greater than those already exercised by departmental officers, and will they be subject to the identical oversight framework?

The seventh and last key issue associated with the legislation is to pose the question of whether we are once again creating a messy web of compliance. The opposition was told at the briefing that a public education campaign had been budgeted for. That is very good. However, I pause now and consider for a moment the document *Child protection law and regulation in WA—An overview* published in August two years ago by Penrhos College, which states —

> The legal and regulatory framework for child protection and for child safe organisations in WA is made up of a complex web of laws, regulations and guidance notes.

At the end of the document it states further —

> In order to comply with the requirements of the National Principles for Child Safe Organisations, the Registration Standards and Registration Standards Guide, as well as each of the six separate pieces of legislation noted above, Penrhos College has established this Child Protection Program which sets out our work systems, practices, policies and procedures designed to not only ensure compliance, but also to develop a safe and supportive College environment with a child safe culture.

Penrhos is to be commended for this, but it needs to be said that not every school or organisation has the same means to establish that level of substantive separate child protection program. More to the point, does the Department of Communities, particularly the child protection agency, evaluate how to streamline requirements for the end user, or does it just keep heaping more and more of these compliance obligations on those agencies? It is a delicate balance between making sure that sufficient protections are in place and there are sufficient resources to ensure they are being enforced and adhered to, while also not creating a messy web of compliance. As I stated at the beginning of my speech, the working with children check scheme in Western Australia is an important screening strategy to safeguard children, but it is not the only strategy. Numerous recommendations were made by the Royal Commission into Institutional Responses to Child Sexual Abuse. One was to make sure that children increase their knowledge of child sexual abuse and build practical skills to assist in strengthening self-protective skills and strategies. It is interesting that we dealt earlier this afternoon with the annual report hearings of the Standing Committee on Estimates and Financial Operations. That eighty-sixth report reported on the committee's considerations of the 2020–21 annual reports. One of the hearings was with the Department of Education on 31 March 2022, so it was this year that we considered that annual report. I recall it well, and perhaps the Leader of the House also recalls it well. I remember spending some time in that annual report hearing in a dialogue with the Minister for Education and Training about the protective behaviours program. The issue is not whether there is an aspiration, expectation or requirement for such a program to be undertaken, but to what extent the department audits that it is being done. As I understood the answers on that day in March this year, in effect, the response was that a survey was conducted.

The point I endeavoured to make on that day in March was that I did not think a self-reporting survey was sufficient. If somebody is asked whether they are undertaking a protective behaviours program, for example, and they tick "yes", the department ought to audit that to be satisfied that it is occurring and that it is occurring in a manner consistent with the department's expectations. In fairness to the Leader of the House; Minister for Education and Training, she was at pains to explain on that day that the Department of Education does not mandate how that is done. That is accepted and in fact it is supported.

It is one thing not to mandate how it will be done, it is another thing to order audits whether it is actually being done to a satisfactory standard. I absolutely accept that each school and every parent will have a different view on how this ought to be tackled and how it ought to be communicated, and those matters should rest at the local level with the parents, at first instance, and with the local school. We do not need big government coming along and telling everybody that it can only be done one particular way, but we need government to ensure that the expectations we all have are being adhered to. I am not presently convinced that it is much more than a box ticking exercise. I intend to pursue that when we next have an opportunity to examine things with the Department of Education.

I also note, as I said, that the working with children check scheme is only one strategy in which to safeguard children in Western Australia. Another is the education of children so that they have their own knowledge of abuse and they build their practical skills. I also note that the former Commissioner for Children and Young People, who issued the *Independent review into the Department of Communities' policies and practices in the placement of children with harmful sexual behaviours in residential care settings*, tabled a report on 15 September last year. That report made nine recommendations. When I recently asked about this, this was the response that I received. On 1 September this year I asked the Leader of the House representing the Minister for Child Protection question without notice 802. I said —

> I refer to the Commissioner for Children and Young People's *Independent review into the Department of Communities' policies and practices in the placement of children with harmful sexual behaviours in residential care settings*, tabled on 15 September 2021.
>
> (1) Which of the nine recommendations have been implemented in full?
>
> (2) Which have been implemented in part?
>
> (3) Which have not been implemented to any degree?

As I said, I asked this on 1 September this year. What are we asking about? The nine recommendations from the Commissioner for Children and Young People from an examination into how the Department of Communities is housing children with harmful sexual behaviours. I will not relitigate the reasons why that particular inquiry was needed in the first place. But, one year later, a fortnight shy of a year after that, this is the response from the government —

> The McGowan government has accepted or accepted in principle all recommendations from the Commissioner for Children and Young People's *Independent review into the Department of Communities' policies and practices in the placement of children with harmful sexual behaviours in residential care settings*.

I pause there. I take no issue with that, not to say that governments must always accept every single recommendation. They must weigh all these things up and provide a response. In this instance, that is what the McGowan government has done; it has chosen to accept all or accept all in principle. Then it says —

> Recommendation 4(a) has been completed in full and work is progressing on all other recommendations.

There were nine recommendations, and a year after the recommendations were made the response back from government was that part of one of the recommendations has been completed in full and work is progressing on all the others. How does that sit with the comment by the Minister for Child Protection that these type of reforms, these type of matters, are high priority? We certainly know in this forty-first Parliament that when the McGowan government wants to act, it can act with lightning speed. No-one can move as fast as the McGowan government when it wants to do something. Through both houses of Parliament, quick as lightning law reform can occur. When it comes to the issue of child protection, for some reason, things move at a far slower pace. If that is to get it right, it is welcomed, but I am not sure that it is getting the priority that it really should be getting, a year after the former Commissioner for Children and Young People issued one heck of a report, it has to be said. They did not hold back in this independent review into the department's policies and practices that a part of one of the nine recommendations has been completed in full.

I give notice to the department and the minister that I will continue to ask about the progress of those recommendations until such time that all nine recommendations have been implemented in full. Might I add a word of advice to the Minister for Child Protection? It would not be asking too much, in fact it would be a demonstration of goodwill that this is genuinely a high priority matter, if a ministerial statement was made from time to time updating the

house on the progress of these recommendations, and not a ministerial statement that is hidden in the other place, but rather treat the Legislative Council with the respect that it deserves and ensure that a statement is made in this place as to the progress of these nine recommendations. That is not asking too much. It does not need to be made every sitting day. It does not need to be made every sitting week. It does not even need to be made every sitting block, but from time to time an authentic update on the progress of those nine recommendations would be welcomed and, might I add, if that were done, it would result in fewer questions from the shadow Minister for Child Protection.

Let us just hope that the acceptance of these recommendations from the Commissioner for Children and Young People does not take five years or more and that we are not having a debate in the next Parliament as to the progress of those recommendations, as is evidently appearing with regard to these matters presently before us, which, as I said, have the history and recommendations of the royal commission, the statutory review and the multiple issues that have been identified by the Auditor General.

With those remarks, I close by indicating that the opposition supports the bill before the house. A number of matters require examination in Committee of the Whole. There are some 53 clauses in this bill, and as I identified earlier, the government has now conceded that the bill before the house is not yet ready for full passage but requires some amendments, particularly with regard to clause 7. I look forward to examining those more closely, momentarily.

HON SUE ELLERY (South Metropolitan — Leader of the House) [2.57 pm] — in reply: I thank Hon Nick Goiran for his support of the Working with Children (Criminal Record Checking) Amendment Bill 2022 and I thank him for his contribution. I am going to respond to the issues that he raised and I will start by making some comments about the report on the bill from the Standing Committee on Uniform Legislation and Statutes Review. I want to thank the committee members for their timely and thorough consideration of the bill. I thought the report was thoughtful and made some very positive comments about the bill before us and why, in certain cases, the committee could see that any government might need to act quickly on some elements given what we are dealing with relates to the safety of children.

The committee made a number of findings including that the bill's clause 2, in providing the commencement date on a date fixed by proclamation, erodes Parliament's sovereignty and lawmaking powers. I understand the committee's concerns about a lack of an express commencement date, but I reiterate the point that had been made in the debate in the other place that regulations will be required to be drafted and made prior to the commencement of these provisions. It is expected to take between three to six months to consult relevant government agencies, instruct Parliamentary Counsel and draft the amendment regulations with consideration of the Governor in Executive Council. Of course, regulations are a debatable instrument and will appear before us.

The Standing Committee on Uniform Legislation and Statutes Review's report also agreed with the statement made in the explanatory memorandum that proposed sections 6(3) and (4) are Henry VIII clauses. I welcome the committee's finding that proposed section 6(3) can be justified on the basis that protecting children's safety by identifying exemptions and preclusions requires a quick regulatory response.

The remainder of the committee's report was concerned with four Henry VIII clauses under clause 7 of the Working with Children (Criminal Record Checking) Amendment Bill 2022. Henry VIII clauses have been found by the Standing Committee on Uniform Legislation and Statutes Review and by this chamber since forever; I would like to say since Henry VIII himself was on the throne, but we have not been going that long! They have been identified as being problematic because they go to Parliament's sovereignty by enabling subordinate legislation or executive action to have the effect of amending a piece of legislation.

Proposed sections 7(1)(a) and 7(2)(a) include new regulation-making powers that allow for the prescription of conditions to be imposed on offences listed in schedules 1 and 2 of the legislation. I acknowledge the committee's concern about the express need for these regulation-making powers. I also acknowledge the committee's concern that proposed sections 7(1)(b) and 7(2)(b) are broader regulation-making powers than those in the current act, as they allow for the prescription of WA offences as class 1 and class 2, rather than just offences in other jurisdictions. I advise that the government has prepared for circulation on the supplementary notice paper a series of amendments linked to clause 7 to address the committee's concerns. Those proposed amendments to clause 7 will remove from the legislation the power to prescribe conditions for offences listed in either schedule 1 or 2 of the legislation, and the power to prescribe offences under a law of the state to be either a class 1 or class 2 offence under the legislation. Again, I welcome the findings of the committee and note that any regulations will be subject to scrutiny by the Standing Committee on Uniform Legislation and Statutes Review and to disallowance in the Parliament.

Hon Nick Goiran raised matters concerning the policy of the bill and compliance powers, and he referenced a case in Geraldton. The Working with Children (Criminal Record Checking) Amendment Bill 2022 will provide for significantly increased compliance powers to strengthen the ability to ensure compliance with the legislation. The contemporary compliance and investigation powers in the bill will reduce the time taken for an investigation to be completed by enabling the compelling of people to provide certain information; or, when appropriate, necessary

and to the satisfaction of a magistrate, application for an execution of entry warrants on premises when the CEO is of the belief that evidence exists to establish that an offence has been committed. In introducing these powers, the bill will allow compliance and investigation actions to be undertaken for the better and quicker gathering of necessary evidence, using the available resources, leading to better protection of children. The provisions under part 3B will support officers who are designated as authorised officers with the use of powers under division 3 during a compliance check or investigation. The powers will be utilised only when required and when there is a lack of consent or willingness to comply by an employer or individual.

A question was asked about whether the Auditor General, having issued her report, was consulted on the provisions of the bill. By convention, the Auditor General does not comment on government policy; her role is to assess whether government policy has been effectively implemented, and she did that in the report. That was useful to government, and we have acted on the things she identified as needing attention. She was not consulted on the drafting of the bill or the final version of the bill, but as a normal courtesy, after the bill was read in to the Legislative Assembly on 8 September, she was provided with a courtesy letter and explanatory materials, and offered a briefing on the bill.

The honourable member asked a question about interim negative notices and the time it takes to finalise assessments when an interim negative notice has been issued. That is a significant issue, and this bill deals with it. One of the significant changes under the provisions of this bill is that the screening unit will be given the capacity to issue an interim negative notice once it is reasonably satisfied that it is warranted. That is distinct from the current system, under which a full investigation has to take place before an interim negative notice can be issued. That has posed some real issues because of not only the complexity of some of the charges or convictions, but also our reliance on information to be brought forward that could be outside our jurisdiction. At any point after an application is made, if the CEO is of the opinion that there is a reasonable likelihood that the circumstances will result in a negative notice being issued to the applicant, an interim negative notice can be issued. The assessment will remain ongoing and follow its natural course, including sourcing and considering all relevant information, sending a letter proposing to issue a negative notice and providing the applicant with 28 days to respond before a final decision is made.

Over the course of 2021–22, the time frame for the issuing of a negative notice without an interim negative notice was 96.9 days. For a negative notice with an interim negative notice, it was 18.1 days to the issuing of an interim negative notice, and 46.4 days from the issuing of an interim negative notice to a negative notice. The total average time for the issuing of a negative notice was 64.5 days.

The honourable member made reference to transitional provisions and individuals with a current working with children card who have a conviction for an offence, committed as an adult, that will be moved into schedule 1 as a result of the bill before us. There are seven such card holders. The amendments to the offence categorisation proposed by this bill will not be retrospective. The amendment schedules and the carve-out in proposed section 7 will not apply to anyone with a current working with children card while the transitional provisions apply to them. The new schedules and the amended section 7 will apply only if the transitional provisions cease to apply, and as a result of a relevant change to the criminal record, or the person allowing their card to lapse. At that point, the decision-maker will need to turn their mind to whether a carve-out under proposed section 7(3) is applicable to that person.

With regard to the seven individuals who already have a card and are covered by the bill's proposed transitional arrangements, a thorough and detailed assessment of the nature of the offences was completed by the screening unit at the time. Based on all the information properly before the decision-maker, a decision was made to issue those people with a working with children card. The transitional provisions will no longer apply to those seven if they have a new conviction or pending charge for a class 1 or class 2 offence recorded on their criminal record after the amendments commence, or if their card lapses and they reapply for a new card after the expiry of their old one.

With regard to provisions around information sharing and data safety as part of the national referencing system, the WA working with children screening unit is already "onboarded"—that is such a geek term!—to the national referencing system and is encompassing the information available on the system. The honourable member asked whether it is skeletal legislation. The Standing Committee on Uniform Legislation and Statutes Review took the view that it is not. The bill seeks to address a number of issues arising from the royal commission report, the national standards, reports from the Auditor General and the statutory review of the act. The release of successive key reviews and reports requiring legislative address means that the required reforms to the act are complex and far-reaching. The bill's provisions guide what can and cannot be done by the regulations. An amount of flexibility needs to be retained with regard to how the amendments will be administered, so there is reliance on regulations. This will also ensure that steps can be taken quickly for child protective purposes when this is necessary, and that is something that the committee commented on.

In respect of the rationale for the provisions that are carved out in proposed section 7(3), and why those provisions are necessary, the bill will move all sexual offences against a child, including child pornography-related offences, into schedule 1. If an applicant for a working with children card has a conviction for such an offence that was

committed as an adult, an automatic negative notice will be issued. This categorisation will not afford discretion in a scenario in which a person may have a conviction for such an offence in circumstances in which both parties are of a similar age cohort and both parties have made a conscious decision to engage in sexual behaviour. For example, an 18-year-old might have engaged in sexual intercourse with their 15-year-old girlfriend or boyfriend, with no evidence that threats or involved were involved. The house has considered similar scenarios in other pieces of not dissimilar legislation. Under the Western Australian criminal law, the 18-year-old could be charged with a child sex offence, because a child is required to be over the age of 16 before consent to sex can be given. Although any behaviour of a sexualised nature directed towards children warrants a close analysis of potential risk of harm, the behaviour in the example I have just given does not automatically suggest that the offender is an unacceptable risk to children. A need has therefore been identified for the decision-maker to be given discretion to consider the particular circumstances of such scenarios. That is the rationale behind proposed section 7(3). It will provide the discretion that is required in such scenarios. A carve-out is required for those sexual offences against children that are otherwise proposed to be class 1 offences. If the carve-out is met, the offence will be in class 2.

The member asked why a child victim must be aged over the age of 14. I think the expression used by the honourable member was: are we trying to increase the age of criminal responsibility by stealth? The Premier has already put on the record our position on the age of 14. The intention of the carve-out is to allow for the retention of discretion about whether a negative notice should be issued when a sexual offence that would otherwise be a class 1 offence was committed but involved two young people of a similar age cohort. The age difference of five years was adopted as a logical limitation on what could reasonably be considered to be a similar age cohort. The decision to limit the carve-out to offences committed against children aged 14 and over was made in consideration of potential national consistency. Although Western Australia has a number of sexual offences that refer to a child being under the age of 13, that is not the case for all jurisdictions. A number of other jurisdictions define sexual offences by the victim being under the age of 14. A jurisdiction that has defined sexual offences in that way could not reasonably consider a sexual offence committed against a 13-year-old as anything other than requiring an automatic negative notice. Although the Western Australian working with children scheme is independent from any binding national framework, the adoption of a carve-out that included child victims aged 13 could cause significant issues at a later point if any steps were taken towards having other jurisdictions recognise working with children decisions that are made in Western Australia.

The honourable member also asked a question about consultation. The bill was subject to recent and extensive collaboration with the key government agencies that will be impacted by its information gathering and sharing and other administrative provisions. Successive drafts of the bill were released for comment between October 2021 and July 2022, and the provisions of the bill were adjusted to reflect that consultation. The relevant government agencies that were provided with copies of the bill for comment were the Commissioner for Children and Young People; the Department of Education; the Department of Health; the Department of Justice; the Department of Local Government, Sport and Cultural Industries; the Department of Mines, Industry Regulation and Safety; the Department of the Premier and Cabinet; the Department of Treasury; the Director of Public Prosecutions; the Ombudsman of Western Australia; the State Administrative Tribunal; the State Solicitor's Office; the Teacher Registration Board of Western Australia; and the WA Police Force.

Other government agencies that may be impacted by the bill purely in their capacity as large employers of persons in child-related work were not consulted. That is because the paramount consideration of the act is the best interests of children. Any impact on individual employers, or any individual person, in fact, must be considered subservient to that. The intention of the act is to prevent a person from engaging in, or removing a person, from child-related work when there is an unacceptable risk that the person may harm children.

In terms of non-government stakeholders, it is worth remembering the context of where this bill has come from. That includes all the public debate, discussion and consultation that occurred as a consequence of the Royal Commission into Institutional Responses to Child Sexual Abuse, the Auditor General's reports, which are public documents, and the statute review of the legislation. All those have captured those people who obviously have an interest in this particular legislation.

The government's phased approach to amending the act, and the proposed phase 1 reforms, was outlined in July—although I think I saw a note that said August—at a high level to key stakeholders who broadly represent people who will be required to comply with the act. Five briefing sessions were offered to 54 stakeholder entities. There were 41 attendees from 33 organisations across various peak bodies. Aboriginal stakeholders raised no objections to the proposals. They voiced support and welcomed the government's proposed broad and comprehensive education campaign in advance of the commencement of these changes.

It is worth considering that I have been around this chamber since the first bill came in in 2004. At every iteration and evolution of this framework of law, both sides of the house have done it in a staged and phased way. That is because we are asking people to make significant changes to how they conduct their business or run their sporting

organisation and those types of things. At every point since 2004, both sides of the house when in government have quite deliberately introduced changes to these laws in a staged and phased way.

Hon Nick Goiran: Was that the July or August consultation this year?

Hon SUE ELLERY: Yes.

Following the introduction of the bill, all of the 54 stakeholders who had been invited to the briefing sessions were sent a direct email notifying them of the introduction of the bill. That included links to the bill, the explanatory memorandum and the press release, attachments comprising an overview of bill, and a frequently-asked-questions document on the bill. An additional 114 non-government stakeholders identified as having a key role in assisting or advising persons and entities required to comply with the act across the categories of child-related work were also sent these explanatory materials and links by direct mail and invited to disseminate that information through their networks.

A broader proactive public education campaign was funded in the 2022–23 budget to occur following the passage of the bill and prior to the commencement of its substantive provisions. To ensure that all stakeholders properly understand the changes that will be made to the act, that will involve broad publicity, stakeholder communications and education sessions for regulated parties on the effect of the amendments to the act. The working with children screening unit will undertake that campaign with the general public and with persons and entities to be regulated under the amended act. The unit will offer a comprehensive suite of education and engagement opportunities. That will consist of a statewide delivery of workshops, regional road shows, online consultation opportunities, supporting resources, and checklists.

The member asked why there was no detailed public consultation process on the bill. I have already talked about the context of the bill. The member asked what consultation is occurring with other jurisdictions to progress the working with children card report recommendations, which have been deferred to future reforms. All states and territories and the commonwealth continue to collaborate to progress them.

In early 2020, a working with children interjurisdictional working group was superseded by an information-sharing working group formed under the *National strategy to prevent and respond to child sexual abuse 2021–2030*, which is an initiative of the Australian state and territory governments. The information-sharing working group is tasked with enhancing national arrangements for sharing child safety and wellbeing information, including relevant recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse's *Working with children checks report*. A work plan to reduce the burden of overlapping regulation, which was endorsed by national cabinet in December 2021, includes an item to improve the national consistency of working with children checks to make children safer and reduce the regulatory impact on business. The information-sharing working group is developing an options paper for further national cabinet consideration. It will propose reforms that focus on promoting national consistency of working with children checks, consistent with the royal commission's recommendations and the national standards. Western Australian officials are focused on using that opportunity to progress the remaining royal commission recommendations that require national collaboration to inform their design.

There was another issue the honourable member raised.

Hon Nick Goiran: Will the bill's powers be consistent with other like statutes?

Hon SUE ELLERY: We might have to talk about that in Committee of the Whole, because I do not have a note on that. That is all I have, but we can explore anything that I have missed when we get to the committee stage.

I thank the honourable member again for his contribution, and I thank the opposition for its support. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chair of Committees (Hon Jackie Jarvis) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

The DEPUTY CHAIR (Hon Jackie Jarvis): I draw members' attention to supplementary notice paper 81–1.

Hon NICK GOIRAN: I thank the Leader of the House for the comprehensive reply to the second reading debate; her reply dealt with many of the issues raised.

As we commence the consideration of clause 1, to assist the timely passage of this Working with Children (Criminal Record Checking) Amendment Bill 2022, I will indicate two matters that I remain concerned about. The

first is whether the transitional provisions will shield some known offenders, the seven individuals. We will unpack that in due course. The other is whether the age of criminal responsibility will be lifted in some fashion by virtue of clause 7. I know a comprehensive attempt was made to respond to those two matters, and I am grateful for that, but I would like to explore them a little further. I remain concerned about those two points.

The rest of the matters appear to have been addressed sufficiently, with the exception of one that I mentioned in a brief interjection—whether the bill's powers will be consistent with other like statutes. I will take that up, but we can deal with it in clause 29, which sets out some of the increased and additional powers for authorised officers.

We now dive into clause 1. During the minister's second reading reply, she outlined a large number of people who were consulted and some type of forum that quite a number of people were invited to attend. I thank the minister for that. My main concern was whether the consultation was current, given the lengthy passage of time since some of these matters were first recommended. The minister indicated that consultation happened in July or August this year, so it is quite current.

My question on consultation is: was the Commissioner for Children and Young People consulted?

Hon SUE ELLERY: Yes. I think I read out her title in that list.

Hon NICK GOIRAN: Did the Commissioner for Children and Young People raise any concerns with any element of the bill?

Hon SUE ELLERY: No.

Hon NICK GOIRAN: Albeit that all stakeholders are important, the other significant stakeholder I would like to address is the Office of the Auditor General. The minister provided some explanation in her reply, particularly about what would be referred to as the ordinary custom and practice of government and, perhaps more to the point, the ordinary custom and practice of the Auditor General when commenting on these matters. Nevertheless, as part of its genesis, this bill has had multiple reports from the Office of the Auditor General. I think that it would be worthwhile for government to satisfy itself that the Auditor General does not have ongoing concerns, notwithstanding the government's efforts by virtue of this reform. For example, it would seem to be an inefficient use of everyone's resources if, in a few months' time or next year, we got another report from the Auditor General saying that she is not happy with what the executive is doing. I see merits in some form of consultation. The minister indicated that some form of courtesy correspondence had been offered and provided to brief the Auditor General. Has the government had any further substantive interactions with the Auditor General?

Hon SUE ELLERY: I will make a point about normal government practice, which I referred to in my answer. The job of the Auditor General is to look at a point in time and to look back. Have we got our finances in order? What she does in her performance audits is look at how the implementation has been made. It is consistent with her role that we do not consult her about what we intend to do for legislation going forward. Nevertheless, she was offered a briefing. Members of her office attended in September. They were asked whether they had any issues, and they did not raise any issues or express any concerns.

Hon NICK GOIRAN: Minister, thank you for that. There is nothing more that the executive government can do than that. I am just making an observation. The government cannot do more than —

Hon Sue Ellery: You're saying something nice?

Hon NICK GOIRAN: Well, yes.

Hon Sue Ellery: Nearly.

Hon NICK GOIRAN: I congratulate the government —

Hon Sue Ellery: Oh my God.

Hon NICK GOIRAN: — on consulting the Office of the Auditor General and, more to the point, transparently providing to the house further information on those consultations. If only this would happen when the Attorney General undertakes consultation with the judiciary! But we will see what happens. I know that the government feels that it has a lot of time on its hands at the moment, but we need to press on.

The Auditor General, in the 2019 report that I referred to in my speech in the second reading debate, indicated that it took, on average, 211 days to issue negative notices to some 105 applicants. The minister indicated in her reply to the second reading debate that this bill is intended to address some of those issues. In response to a recent question without notice—so recent that it was, in fact, yesterday—when I asked how many negative notices had been issued in the most recent financial year, the answer was 198. In terms of the longest number of days that someone was able to work with a child prior to receiving a negative notice, the answer was 174. It must be acknowledged that that is an improvement on where things were in 2018–19, when for 53 people it took over 200 days; whereas, in the most recent financial year, the longest period was 174 days.

What is our aspiration here? Where are we going with the reforms that are presently before us? The response that came back yesterday indicated that the proposed reforms seek to improve the timeliness of interim negative notices. Is there a KPI that we are trying to achieve here?

Hon SUE ELLERY: Honourable member, no; there is no KPI. What we are trying to balance here has to be appreciated. There has to be some opportunity for natural justice to take place, for facts to be checked and for someone to raise issues or provide information or make sure that the actual name, date of birth and all those things are correct. Therefore, we have to find that balance. Of course, primarily, the objective is the protection of children and to allow for due process and some natural justice to occur as part of that. From my point of view, on behalf of the government, we should be continually striving to reduce that number, but I do not think it will ever be possible to get to zero because the process itself requires accuracy.

Hon NICK GOIRAN: The minister said that it was a primary objective. In fact, the best interest of the child is a paramount consideration, as the minister indicated earlier. To have a situation in which somebody could work with a child for 174 days in the last financial year without having received a negative notice is not in the best interests of children. I agree with the minister that natural justice is required before someone is given a negative notice, but that is why we have a thing called interim negative notices. I accept that, as the minister indicated in her response in question time yesterday, the bill presently before us seeks to decouple the interim negative notice process from the negative notice process.

Is it intended that an interim negative notice will be issued at the same time as a letter to the applicant starting the natural justice process for the potential final negative notice? Will that happen concurrently?

Hon SUE ELLERY: As I am advised, the short answer is no. We are not proposing to decouple because there still needs to be some time to collect information. What will change in the act is the—what is the correct word that I should use?—lowering of the threshold to issue an interim notice so that it can be on a reasonable likelihood. What we should see as a result of that is more and quicker interim notices. Therefore, it addresses the issue that the honourable member raised, but we are not at the point right now of completely decoupling and doing the two things concurrently, if that assists the member.

Hon NICK GOIRAN: I must say that that response is a little confusing because only yesterday, in question time, the final portion of the minister's answer ends with —

> This would decouple the interim negative notice process from the negative notice process.

This is in the context of talking about the proposed amendments that are before us. Yesterday we were told that the proposed amendments are to decouple, but now the indication is not to decouple.

Hon SUE ELLERY: Honourable member, let us see whether this helps you, because I find myself in the same position as you.

This is the answer to the frequently asked question: what will this change mean in practice? Currently, the act requires that an interim negative notice can be issued only after the CEO has completed an assessment of all available information and formed the position that the person would pose an unacceptable risk of causing harm to children if they were to be committed to carry out child-related work. The person must be issued with a letter proposing to issue a negative notice and the subject of the assessment must be invited to make a submission. The bill proposes to allow the issue of an interim negative notice independently of a proposal to issue a negative notice at any stage of conducting the assessment or reassessment, if a decision is made that there is a reasonable likelihood that a negative notice will be issued to the person.

This will remove the current legislative impediment that a risk assessment of all the available information must be completed and a negative notice is proposed to be issued before an interim negative notice can be issued to the person. By allowing the issue of an interim negative notice independently of a proposal to issue a negative notice, the threshold for when an interim negative notice may be issued will be adjusted to better align with the royal commission's recommendation and the paramount consideration, which is—the point the member made—the best interests of the children.

Hon NICK GOIRAN: Thanks, minister. That helps because it indicates that the change will be twofold, so that is welcome. At the moment, when an interim negative notice is issued, is a letter sent to the applicant seeking their response as to why they should not receive a negative notice?

Hon SUE ELLERY: The act currently provides that an interim negative notice may only be issued together with a proposal to issue a negative notice and an invitation to the applicant to make a submission. What is before us now in the bill will allow the CEO to issue an interim negative notice at any point in the application process.

Hon NICK GOIRAN: That is clearly understood. Just for crystal clarity, the current process is that interim negative notices can be issued. However, as was indicated in question time yesterday, this can be done only after an initial assessment has been undertaken; let us call that part A. Part B is that a letter inviting a submission is sent

to an applicant to whom a negative notice is proposed to be given. In other words, at the moment, those two things need to be done before an interim negative notice can be issued. My question is: does that happen concurrently? It might be a difference of a minute or a microsecond; the letter might be posted in the postbox and then, straight after that, the second one—the interim negative notice—might be sent. I do not mind. To me, that is concurrent.

Hon Sue Ellery: Yes.

Hon NICK GOIRAN: Is it done concurrently?

Hon Sue Ellery: By interjection, it is done together, honourable member; they are sent in the one envelope.

Hon NICK GOIRAN: Very good. Moving forward, that will not be necessary. However, will the practice continue to be that when an interim negative notice is issued, the applicant will be invited to make a submission?

Hon SUE ELLERY: No.

Hon NICK GOIRAN: The question of natural justice then kicks in. Why would that be the case? As the Leader of the House said earlier, we need to make sure that there is natural justice for this person. We will hit the pause button and say that they have an interim negative notice, but we will not be asking them for their opinion. Why will we not consult them at that time?

Hon SUE ELLERY: The policy point of this is to make sure that, with the administration and bureaucracy of this process, the perfect does not become the enemy of the good. We want to ensure that the safety of the child is paramount in our processes. The trade-off for that, quite unashamedly, is that the person who receives the interim notice will not, as a matter of mandate, have the opportunity to go through the whole of that submission process as to why a final proposal should or should not be made.

Hon NICK GOIRAN: Once an interim negative notice is issued, we will achieve the goal of making sure that, to the best extent possible, the working with children check system can ensure the safety of children, understanding that it is not a perfect system and it is not intended to be; it is only part of an overall system. Once an interim negative notice has been issued, the system will have done what it can. We would not be endangering children by issuing a letter to the applicant asking for a submission; we would just be starting the natural justice process. I appreciate that it is not mandated under the bill, but it is not clear to me why we would not do that as a matter of course and practice. Is there a reason for choosing not to do that?

Hon SUE ELLERY: The views of and any information that can be provided by the person who will be subject to an interim negative notice will be just part of what will need to be considered in making a final decision about whether to issue a negative notice. A whole lot of other information will need to be checked. Mandating an opportunity for them to provide their views about the interim notice will not necessarily influence the decision about whether to propose that a full negative notice should be issued. A pile of other information will have to be sourced from elsewhere. The policy for this bill has been written in this way in the interests of ensuring that we protect children from a potential risk from someone who has ticked one of the boxes.

Hon NICK GOIRAN: The thing that is curious is that I am not sure what will be lost. What disadvantage would occur if we asked the applicant for a submission at that time? I do not think anything would be lost. What might happen is that the applicant might draw to the attention of the department that it has made a mistake and the reasons that they should not have been issued an interim negative notice, and perhaps even request that it be withdrawn. That would be a good thing. Keep in mind that we have already established that this is the existing practice. At the moment, they are sent concurrently. I agree with the policy decision that it should not be mandatory. In fact, it specifically says at the moment that the interim negative notice can be sent only after the letter is sent to the applicant. I am glad that we are removing that particular barrier. Ordinarily, I would say that there might be an exceptional case, but I would have thought that we might as well continue to do that in the vast majority of circumstances. I do not see what will be lost. Is that a firm decision? Is that just going to be the practice that we will not do that, or is that still subject to further discussion, decision or consultation?

Hon SUE ELLERY: It is a firm policy decision based on the notion that in order to issue an interim notice in the first instance, an assessment will have been done of whatever information has been brought to the attention of the agency. It will not be a random process in which the agency does not like the look of someone so issues them with an interim notice; some assessment will have been done. As I said before, it is a shift to make sure that the perfect does not become the enemy of the good. Nothing will stop a person from contacting the agency and saying that they have received an interim notice and that they need to tell the agency something, but we will not invite them to do that as a matter of course or mandate that they be given that opportunity. This process will not begin with the issuing of an interim notice; some work will have been done before that.

Hon NICK GOIRAN: Let us say that in the opinion of the applicant at least an interim notice has been issued in error. What remedies will be available to the applicant in that situation? The Leader of the House mentioned that

they could pick up the phone and speak to the department. Will a range of remedies be available to the applicant to ensure that an interim notice issued in error is retracted?

Hon SUE ELLERY: The current act provides that an interim negative notice is cancelled when either a working with children card or a negative notice is issued. That will not change, honourable member. If someone were to ring up or send an email to the department—or whatever—saying, "You've made a mistake here", inquiries would need to be made to clarify whether in fact an error had occurred. For example, if a person were to say that their criminal record did not include a particular conviction, inquiries would be made with the relevant agencies—police or whomever—to ensure that the correct criminal record was returned. As I said, there is no power under the act now to cancel a negative notice without the issue of a working with children card or a negative notice, and there is no intention to change that. A final decision would need to be made to issue either a working with children card or a negative notice, meaning the decision-maker must assess all the information and materials to determine whether there is an unacceptable risk that the person could cause harm. Although there may be an error in the information relied upon to issue the interim negative order, there may still be a trigger for assessment and other information on which the CEO may still be satisfied that a negative notice be issued to the person.

Hon NICK GOIRAN: How long does the department have to make the final decision to give a negative notice or issue a card once an interim negative notice has been issued?

Hon SUE ELLERY: The short answer is no; there are no mandated time frames for processing applications and there is no intention for there to be. That is because it will literally depend on the particular circumstances on the criminal record, other history of the applicant as well as the complexity of the application in terms of the searches required to ensure that the applicant does not present as an unacceptable risk. It will also depend on how quickly information can be sourced from external stakeholders.

The annual report includes information about the screening unit's performance against key performance indicators. For example, in 2020–21, the screening unit met its target, with 98 per cent of cards issued within 30 days when the applicant has no criminal record. There is other information there.

Hon NICK GOIRAN: There being no time frame, a Western Australian could be left hanging indefinitely in the interim negative notice phase. Technically, that is possible. The Leader of the House mentioned that one remedy might be for that person to effectively complain—that is my choice of words—to the department. Will any other remedies be available to have an interim negative notice either removed or, alternatively, a substantive final decision made?

Hon SUE ELLERY: If the honourable member is asking whether it will be appealable or reviewable anywhere, the answer is no. Again, I make the point that we are striking a balance between the paramount objective, being the safety of children, and natural justice, leaning on the side of protecting children.

Hon NICK GOIRAN: The Leader of the House said "leaning", but then in this particular instance there would be no natural justice. At the moment, natural justice is guaranteed because when a person gets an interim negative notice, they will also get in the post a letter proposing to issue a negative notice and inviting a submission. This is being decoupled, to use the word used yesterday and today. I do not have a problem with that but it seems inappropriate, unfair, unreasonable and really over the top to have a situation in which a person with an interim negative notice on which no final decision has been made will have no remedy to get a final decision made. Remember, there is no danger to the safety of children in this situation because the person has an interim negative notice and they cannot work. They have identified an error and brought it to the attention of the department. The department says that it is not interested, or it might fail to even respond. It seems unfair, unreasonable and over the top for the person to have no other avenue available to them at that point. Will there be no avenues to the State Administrative Tribunal or the Supreme Court?

Hon SUE ELLERY: That is correct. The honourable member may characterise the two-step process we have been talking about as being over the top; that is not the position the government takes. The member can characterise it that way; the government says that erring on the side of protecting children is the best way to proceed. I cannot respond to the proposition that an agency would not respond. In my experience, agencies generally conduct themselves professionally, but I think the policy point needs to be made. I understand entirely what the honourable member is saying. He characterises it as over the top; I characterise it as the best way to err on the side of protecting children. Ultimately, the capacity to put forward information and challenge decisions occurs in the second part of the process, which is when a proposal to issue a negative notice commences.

Hon NICK GOIRAN: Will the bill remove the right to judicial review in the Supreme Court?

Hon SUE ELLERY: No.

Hon NICK GOIRAN: Therefore, a person could exercise that right as a remedy in the event that they were issued an interim negative notice.

Hon SUE ELLERY: Yes. I am advised that they could go there with regard to an interim negative notice.

Hon NICK GOIRAN: To complete this line of questioning, if a person receives an interim negative notice, they will have two remedies available to them. One is to issue what I have described as a complaint. What I mean by that is that they should communicate with the department, and have the department voluntarily reconsider its decision and give further information. If they are dissatisfied with that, they should apply to the Supreme Court.

Hon SUE ELLERY: Yes.

Hon NICK GOIRAN: It seems that one of the benefits of reforming interim negative notices is that we will see, as the Leader of the House described it, "more and quicker" interim negative notices. Does the Leader of the House have any data on the typical time frame from the issuing of a negative notice? We can then in due course verify whether we are doing them quicker or not.

Hon SUE ELLERY: I probably need to correct my language. I used shorthand to refer to "quicker". In reality, the process will start earlier, so the length and time will be influenced by that, but it will not necessarily be quicker. Can the member remind me of the numbers he was looking for?

Hon Nick Goiran: How quickly are interim negative notices being issued at the moment?

Hon SUE ELLERY: I am advised that the average time frame for the issuing of interim negative notices and negative notices is as follows: negative notice with an interim negative notice in 2019–20 was 34 days to the issuing of the interim negative notice, then 47.3 days from the interim negative notice to the negative notice. The total time for the issuing of the negative notice was 81.4 days. In 2020–21, negative notice with an interim negative notice was 18.2 days to the issuing of the interim negative notice, and 43.9 days from the interim negative notice to the negative notice, so the average time there was 62.1 days. In 2021–22, negative notice with an interim negative notice was 18.1 days to the issuing of the interim negative notice, then 46.4 days from the interim negative notice to the negative notice, so the total average time for the issuing in that year was 64.5 days.

Hon NICK GOIRAN: That is useful and interesting data. In the first year, 2019–20, on average the time it took to issue an interim negative notice was 34 days. We then see a significant reduction in the following two years when it is approximately 18 days in both circumstances. Does anything in particular explain that significant drop? It is a positive thing, but I am trying to understand why that would occur; maybe it is an issue of resourcing.

Hon SUE ELLERY: As a result of the Auditor General's report there was a change in some of the practices and I am advised that there was some additional resourcing as well.

Hon NICK GOIRAN: Speaking of resourcing, is it intended that any resourcing will accompany the bill?

Hon SUE ELLERY: A dollar figure is not being allocated to it. Government is certainly aware that additional funds will be required and it has directed, if you like, the agency to work with Treasury on what that should look like once the bill passes.

Hon NICK GOIRAN: There is an acknowledgement that extra resources will be required.

Hon SUE ELLERY: I will give the honourable member more information. An amount of $4.2 million has already been provided to support the early work that is required to implement the bill. Out of that, $2.4 million was allocated on design, development and rollout of new IT systems, but more money than that will be required. As I said, Communities and Treasury are working together on what that would look like.

Hon NICK GOIRAN: Is it intended that some of those resources be directed to those responsible for issuing interim negative notices, given the comment earlier that it is expected that we will see more of them?

Hon SUE ELLERY: I will put the caveat on this: the dollar amount and a precise model have not been locked down. It is anticipated that much of the additional funds that will be sought and allocated in due course will be on the assessment end, but some will be needed to lift capacity in compliance as well. However, it is anticipated that to address time lines, the bulk of those additional funds will be at the assessment end.

Hon NICK GOIRAN: That is taking me where I wanted to go; it is about the time lines. At the end of the day, the bill before us will not attract more applications. Western Australians will not say, "The Parliament has just passed this bill so I am definitely going to apply for a card." It will unashamedly make it more difficult for a cohort of Western Australians to access a card, but we do not expect more applications as such, so the resourcing that is going into the assessment process is primarily intended to address what we would probably both describe as the timeliness of the issuing of cards, notices and negative notices.

Hon SUE ELLERY: The member is quite right: we do not anticipate more people seeking a working with children card. The member probably has questions around prescribed conduct review findings. It is anticipated that there will be an increased number of assessments and reassessments because the eligibility to be captured by the provisions of a working with children check—the pool of potential inappropriate conduct—will be expanded, so we anticipate there would be more assessments and reassessments, and perhaps also an anticipated increase in the complexity of those assessments.

Hon NICK GOIRAN: This is probably a timely point, speaking of reassessments, to consider the seven Western Australians who currently hold a card who if they did not currently have a card, would be captured by this bill; however, at the end of the day they have one at the moment. As the minister indicated in her reply to the second reading debate, it is not the intention of government that these provisions apply retrospectively. I ask the minister to help me understand: why is it that we know that these seven Western Australians have committed a class 1 or class 2 offence and we as a community are not prepared, and the government is not prepared, to expressly reassess their eligibility for a card?

It seems to me that we have made a decision as a community that if people have committed a class 1 or class 2 offence, they may not necessarily automatically not get a card, but at the very least it will trigger an assessment, a review, and a process—and rightly so. If that is the case for every other Western Australian, why are we not doing that for those seven?

Hon SUE ELLERY: There are a couple of things here. First is the question of retrospectively applying something as a general principle—there is that.

Hon Nick Goiran: That is what we are leaning towards.

Hon SUE ELLERY: I know we are. When the original assessment was done, it was not just ticking the box, "Do you have that conviction?" Depending on the particular circumstance, a range of other factors are taken into account. The criminal record is the trigger, but it is not the only thing taken into account. Once that trigger is pulled, the decision-maker must consider any and all relevant information and is not confined to the circumstances of the applicant's criminal record.

A judgement was made given the assessment and the provisions that applied at the time that took into account historical convictions, spent convictions, non-conviction charges, information relating to disciplinary proceedings despite the outcome, uncharged allegations and disreputable conduct, submissions put forward by the applicant, child protection records, correctional service records, medical and psychological reports, counselling, and other treatment. That information is considered as a whole in addressing the ultimate question of whether there is an acceptable risk that the applicant may cause harm to children. It is not just what conviction applied to those at the time; a broader range of factors are taken into consideration and in this case it was that combination of factors that determined that we should go down the path we are going down now, that an assessment was done at the time that would have canvassed all those options and deemed the person did not pose an unacceptable risk to the child.

Hon NICK GOIRAN: I understand that an assessment was done and that is why a card was issued, and for a time, who knows, it might well be years, these seven Western Australians have been working with children. I understand that the assessment process will have included more than just the criminal record. Moving forward, if someone has committed what is referred to as a class 1 offence—correct me if I am wrong—it will be an automatic negative notice.

Hon Sue Ellery: Correct.

Hon NICK GOIRAN: There will be a very small range of exceptions, such as if the class 1 offence was committed when they were a child rather than as an adult or they managed to obtain a pardon or some other carve-out, it will not necessarily be automatic. Other than in those very limited circumstances, if someone has committed a class 1 offence, they are not getting a working with children check card in Western Australia and we make no apology for it. Have any of the seven committed a class 1 offence?

Hon SUE ELLERY: I think the heart of where the honourable member wants to go is this: at the time the offences that triggered them being considered were not class 1 offences.

Hon Nick Goiran: Yes, I accept that.

Hon SUE ELLERY: If this carve-out was not happening, they would be captured if they were to apply the day after this bill comes into effect. They would be captured because the classification of offence will move from schedule 2 to schedule 1. I understand the point that the honourable member is making about it that on its face, it is contradictory, or however I might characterise the member's comments.

Hon Nick Goiran: Inconsistent, perhaps.

Hon SUE ELLERY: I understand that, but it is a combination of things, such as the proposition about how to deal with retrospectivity and the assessment that was done at the time, which was about not just the class or the nature of the offence, but also all those other things—a combination of those things. That puts us in a position in which a decision has been made and this is how we are going to proceed.

Hon NICK GOIRAN: Let us park the seven for a moment. Let us deal with this first, and I am happy to take this by interjection. How long is a card valid for?

Hon Sue Ellery: Three years.

Hon NICK GOIRAN: If, during that three-year period, the department receives information that concerns it, is it able to use that information, notwithstanding the fact it issued a card to conduct some kind of reassessment?

Hon SUE ELLERY: Two things—currently, the only thing that triggers a reassessment is a new charge or a new conviction. It is not the case that it can be triggered by me ringing up saying, "I think that person's dodgy." It is triggered by a charge or conviction. Under the new legislation, in addition to a new charge, a new conviction and a range of other factors, there will be reportable conduct as well. If, as a result of it putting in place its reportable conduct provisions, an organisation finds something about one of its workers or volunteers, and they do something to offend those provisions, that can trigger a reassessment of the working with children card.

Hon Nick Goiran: Reportable conduct in that situation is considered to be something a little less than a conviction or a charge. It is serious?

Hon SUE ELLERY: Correct.

Hon NICK GOIRAN: The problem then, regarding the seven Western Australians who have got a card at least for part of the next three years, is that under the system we cannot use the old information. We do not want to wait; we do not want them to commit any further offences.

Back to the original question. Of the seven, has any one of them committed an offence that would be considered a class 1 offence once this bill passes?

Hon SUE ELLERY: The answer to the question, "Do they currently have a class 1 offence" is no. I made the point earlier that this legislation will move some offences that under the current act were class 2 into class 1. The member's question, "Have any of these seven committed a class 1 offence" —

Hon Nick Goiran: Once it has moved categories —

Hon SUE ELLERY: Correct. I am advised, no. Hang on; maybe I am not being advised that. We are back at what I said before, honourable member, so scrap what I just said.

Hon Nick Goiran: I don't think there's any deletion opportunities for *Hansard*!

Hon SUE ELLERY: No, but the member knows what I mean. Anyone reading this in future will think, "Goodness me, she's so eloquent in the way she describes this"!

Hon Nick Goiran: It always looks good in *Hansard*, anyway!

Hon SUE ELLERY: Yes, Hansard are fantastic—and I bet that will go in *Hansard*!

The point I was making before I distracted myself was that the convictions are moving from schedule 2 to schedule 1. Those seven people have committed offences that are currently in schedule 2, so we are back where we were a little while ago. The Working with Children (Criminal Record Checking) Amendment Bill 2022 will move those offences into schedule 1.

Hon NICK GOIRAN: Is that the case in respect of all seven of those applicants? To facilitate this moving forward, are we able to get a list of the offences that these seven people have been convicted of?

Hon SUE ELLERY: No, I cannot give the member that. I can tell him that one of the people may fall into the carve-out because the offence that they committed will remain under class 2.

Hon NICK GOIRAN: Can the offences of the seven individuals not be provided because they are not readily available, or is there just not a preparedness to provide them, even in a de-identified fashion, such as "person 1" through to "person 7"?

Hon SUE ELLERY: I am advised that we do not have that information here. To get it would require having to go back in manually and check all the information that is held on criminal convictions, and there is not a preparedness to do that in respect of the amount of time and resources it would take. Obviously some analysis was done to come up with the original number of seven, but to go back and pull all that out is not practical.

Hon NICK GOIRAN: I strenuously disagree with the department's view and government's view on that. I do not think picking up those seven files is asking too much. I actually think that this is an important matter. If I were the Minister for Child Protection, I would want to be personally satisfied that these seven people continue to have working with children checks. Regardless of what decisions have been made in the past, I would want to make sure of that and be briefed on it. That is why I am so troubled about this matter.

Proposed schedule 1 is found under clause 45; in fact, schedules 1 and 2 are to be found there. Schedule 1 runs from page 86 through to page 91. The first class 1 offence under schedule 1 is "Carnal knowledge of an animal", which is a particularly heinous crime. The final one, also heinous, is "Agreement for prostitution of child". A large number of class 1 offences are not being shifted; they are already class 1 offences and they are staying there. Can the Leader of

the House identify for the chamber which of the offences found under clause 45 are what I would describe as new class 1 offences—that is, they are the ones we are referring to as being shifted from class 2 to class 1?

Hon SUE ELLERY: Rather than reading out a list, maybe I will table a document headed "Class 1 offences: Comparison between the *Working with Children (Criminal Record Checking) Act 2004* and the Working with Children (Criminal Record Checking) Amendment Bill 2022".

Hon NICK GOIRAN: That definitely would assist our progression of this matter, so if that could be provided at the next available opportunity, it would be appreciated.

Noting we have only a few minutes before we are interrupted for the taking of questions without notice, I have a couple of questions about the statutory review. The Leader of the House will recall that that is one of the three items that form the genesis of the bill before us. Recommendation 2(a) of the statutory review states —

> Consideration is given to prohibiting Negative Notice holders from accessing the parent-volunteer exemption only if adequate mechanisms to monitor compliance and strengthen the promotion of broad child safeguarding strategies can be identified.

What are these adequate mechanisms to monitor compliance and strengthen the promotion of broad child safeguarding strategies?

Hon SUE ELLERY: I might not get through all of this before we finish for question time, but I will give it my best shot.

With regard to mechanisms to monitor compliance, the bill proposes contemporary new powers for monitoring and investigating in proposed part 3B. Child safe standards were set out in the royal commission's 2017 final report and were then developed into the national principles for child safe organisations. The national principles provide a framework for all organisations to embed a child safe culture across their activities. Western Australia is currently focused on capacity building to assist organisations to embed those principles while options for legally requiring implementation are being developed. The Commissioner for Children and Young People promotes and supports the implementation of child safe principles and practices in organisations and has developed a range of child safe resources that align with the national principles. The department is working with other government agencies, the community services sector, peak bodies and other jurisdictions to drive the implementation of the national principles. The Department of the Premier and Cabinet is leading the policy work to develop an independent oversight system that includes the monitoring and enforcement of the national principles.

Committee interrupted, pursuant to standing orders.

[Continued on page 5392.]