

WORKING WITH CHILDREN (CRIMINAL RECORD CHECKING) AMENDMENT BILL 2022

Committee

Resumed from an earlier stage of the sitting. The Deputy Chair of Committees (Hon Dr Brian Walker) in the chair; Hon Sue Ellery (Leader of the House) in charge of the bill.

Clause 1: Short title —

Committee was interrupted after the clause had been partly considered.

Hon SUE ELLERY: I think I need to formally table a document that I referred to prior to the chamber going into question time. I understand that it has been circulated but I need to formally table it, so I do that now.

[See paper [1840](#).]

Hon NICK GOIRAN: This table is useful, but it perhaps hides the concern I had earlier. The Leader of the House will recall that one concern I have is about why we will allow the seven Western Australians who currently hold a working with children check card to continue to do so notwithstanding the passage of this bill and the fact that their offences, which were considered to be class 2 offences, will now be categorised as class 1 offences. Because of the lack of retrospectivity in this instance, they will be shielded and protected from the mandatory negative notice that would otherwise be issued in their case. The document that has been tabled helpfully sets out which of the offences are being shifted from, for example, class 2 to class 1. There are some other examples, including ones referred to as class 3 offences. If I take the very first example, with some degree of regret, it refers to carnal knowledge of an animal. Under the current Working with Children (Criminal Record Checking) Act 2004, this heinous offence is considered to be a class 2 offence. Thankfully, under the bill before us, it will be considered to be a class 1 offence. I imagine that there would be no dissent from any member that a person who has been convicted of carnal knowledge of an animal is entirely unsuited to be working with a child. Under the provisions of this bill, they will receive an automatic negative notice. I question why we would not apply that same standard to these seven people. Earlier I asked whether the opposition could be provided with a list of the offences committed by the seven people. From memory, the response was that it would require some time to manually review that information. Is the Leader of the House in a position to indicate, to satisfy the minds of members in the chamber at least, that none of the seven have transgressed section 181 of the Criminal Code?

Hon SUE ELLERY: I understand that the honourable member is going to work his way through the list, but as I have not had the opportunity to talk to the advisers because we had question time, can we park this line of questioning? I will check with the advisers whether I need to say anything different from what I have said before and I will see whether we can provide an answer that is more satisfactory. On the policy question, we might not agree, honourable member. I will check what I can provide. I suspect I will not be able to do that before we rise tonight, but I anticipate we will still be dealing with this bill tomorrow.

Hon NICK GOIRAN: That is an excellent suggestion by the Leader of the House. There is simply no prospect that we will complete the passage of this bill in the next hour and 10 minutes before we are interrupted for the taking of member's statements.

As I mentioned in my contribution to the second reading debate, this is a significant area of concern to me. I reiterate that the opposition supports the passage of the bill, but we remain concerned that these seven Western Australians will be shielded as a result of the transitional provisions. Although some explanation has been provided, I urge the government, as it considers this matter over the break, to either reconsider its position or at the very least for the Leader of the House to come back to the chamber tomorrow in a position to say that the minister understands the point being made but is nevertheless satisfied that there need not be any concern in the instance of each of these seven Western Australians. That is all we really want. We want somebody with authority to expressly turn their mind to these things. I would like to think that there would be no dispute if it were section 181 of the Criminal Code. I do not even understand why this person had a card approved in the first place, but it is, of course, just a hypothetical example, given the large list of matters. I thank the Leader of the House for taking that question on notice and we will resume that line of questioning tomorrow.

I return to the statutory review, which is one of the three elements that formed the genesis of the matter presently before us. Prior to the interruption for the taking of questions without notice, we were looking at recommendation 2 and in particular what are described as the “adequate mechanisms to monitor compliance”. A response was provided. Recommendation 2(b) reads —

Consideration is given to whether persons with reporting obligations under the Community Protection (Offender Reporting) Act 2004 should be precluded from accessing the parent volunteer exemption under the Act.

Will this bill give effect to recommendation 2(b)?

Hon SUE ELLERY: I am advised no.

Hon NICK GOIRAN: In which case, if somebody were to receive a negative notice, would they continue to be able to access the parent volunteer exemption?

Hon SUE ELLERY: I think the honourable member has put recommendations 2(a) and (b) together. My answer was on recommendation 2(b). Recommendation 2(a) relates to parent volunteers and 2(b) is around the Community Protection (Offender Reporting) Act.

Hon NICK GOIRAN: I thank the Leader of the House for that correction; that is quite right. Why are we not dealing with recommendation 2(b) at this time?

Hon SUE ELLERY: I am advised that some work still needs to be done in the Western Australia Police Force on the Community Protection (Offender Reporting) Act 2004. I am advised that we are not in a position to progress until that work has been done. I do not have police advisers here so I am not sure that I can tell the honourable member much more than that. That is what I understand is the case.

Hon NICK GOIRAN: Would the type of person who would be under a reporting obligation under the Community Protection (Offender Reporting) Act 2004 have committed a class 1 or 2 offence?

Hon SUE ELLERY: The advisers are looking at that now. I am not sure, with the advisers I have here now, that I will be able to answer that question, and I do not have the Community Protection (Offender Reporting) Act 2004 in my file. We will take that on notice. If we can give the honourable member an answer, we will do it tomorrow.

Hon NICK GOIRAN: It will be interesting to see the extent to which there is a divergence between people who have reporting obligations under the Community Protection (Offender Reporting) Act 2004 and those persons who will be captured under what will now be class 1 and 2 offences. One would hope that there is no divergence, that all those matters have been covered and there is no gap. In which case, certainly in the case of class 1 offences, moving forward people will automatically receive a negative notice. That said, irrespective of the outcome on those with reporting obligations, I understand it will be the case moving forward that negative notice holders will be able to access the parent volunteer exemption.

Hon SUE ELLERY: Clause 6 proposes to amend section 6 of the Working with Children (Criminal Checking) Act so that the regulations may qualify that a particular class of persons cannot access certain exemptions from child-related work provided for in that act or the regulations. Initially, it is intended to prohibit persons with a current interim negative notice or negative notice from accessing the child volunteer exemption in the act or the parent volunteer exemptions in the regulations. Additional classes of persons may be considered for additional prescription over time.

Hon NICK GOIRAN: We might pick that up further at clause 6. Members might recall that one of the concerns I raised in my contribution to the second reading debate was about the handling of data. Indeed, the Leader of the House might have said that it is already the case that WA has been onboarded to the national scheme. That is the working with children national referencing system. What work has been done to ensure that the provisions in this bill are consistent with the commonwealth Privacy Act 1998, which regulates how personal information is handled by an organisation? The Privacy Act includes 13 Australian privacy principles, setting out the standards, rights and obligations for the handling, holding, use, accessing and collection of personal information. I hasten to add that I am not suggesting that the government is captured by the commonwealth Privacy Act 1998. Nevertheless, I am asking to what extent the bill is consistent with it.

Hon SUE ELLERY: I am advised that no analysis has been done to compare or measure whether there is consistency.

Hon NICK GOIRAN: I will make an observation at this point in time that this goes to the heart of the concern that was raised in the second reading debate—that is, whether the McGowan government is prepared for enhanced information-sharing. It was helpful to hear from the minister during the reply to the second reading debate that Western Australia is already contributing to and engaging with the working with children national referencing system, but are we prepared for that, particularly with respect to the recent spate of data integrity breaches and the like? If no analysis on that has been done, I respectfully suggest that that piece of work still needs to occur so that the government is adequately prepared in the event of a data breach.

Moving to the next line of questions, will children who are residing in care, for example, in a group home or in the care of an authorised foster carer, be subject to a working with children check once they turn 18 years of age in order to continue living with the other children?

Hon SUE ELLERY: I am advised that as a matter of policy that is currently required. As to whether it is mandated, that is part of the work to be considered in phase 2 of all the recommendations that drove this legislation.

Hon NICK GOIRAN: Nevertheless, it is the current practice and there is no obvious intention to change that practice. As the minister says, the mandating is a matter for phase 2.

Once the act commences, will it apply to persons who have made an application for a working with children check and their application is still pending?

Hon SUE ELLERY: I am advised that pending applications will be captured under the provisions that were in place at the time that they made their application. The change will not happen. It will be for those applications that are captured under the transitional provisions. Anyone making a new application will be dealt with under the new provisions.

Hon NICK GOIRAN: A question then is: why are we doing that? I think the minister indicated in her second reading speech that some work needed to be done on regulations and that might take three to six months. Let us say this bill passes this week, it seems that there will be a three to six-month window of opportunity for people to put in their applications who would otherwise not be eligible. For example, a person who has committed what will soon be described as a class 1 offence will be able to—I will use the word—sneak their application in during this three to six-month window. Why we allowing that to happen?

Hon SUE ELLERY: I think we come back to part of the argument that I have used before. This is what I am advised. A person with a pending application on commencement day will have applied on the expectation that the assessment would be conducted on the old offence categorisations. Criminal record checks are completed automatically for every applicant. This means that the CEO will already be aware of the person's criminal record before commencing a risk assessment. A risk assessment may be well advanced or even close to finalisation at the time of commencement day. An applicant may have even been sent a proposal to issue a negative notice already, giving them the 21 days to provide a submission. If the CEO is aware before commencement day that the applicant has a conviction for an offence that would result in an automatic negative notice after commencement, but not before, it would be unreasonable for the person's application to turn on whether the CEO is able to complete the assessment before commencement date.

None of the rules will change until commencement day. I do not know whether expecting the CEO to go back and apply a new set of rules before they become legal is practical. I hear the argument that the member is putting, but, as we have done at every point during the development of this public policy, we have to do this thing in stages and we have to understand that along the way we are making some trade-offs with the ultimate view of trying to get to a better policy position that keeps kids safe.

Hon NICK GOIRAN: At the moment are there some offences for which a person would automatically receive a negative notice if they applied for one of these cards?

Hon Sue Ellery: Yes, class 1 adult.

Hon NICK GOIRAN: It is class 1 adult; that is right. It is not a new concept that the department automatically issues a negative notice on certain offences.

Hon Sue Ellery: That is not disputed, honourable member.

Hon NICK GOIRAN: No. If it is any other type of offence, whether a card will be issued becomes discretionary on the part of the department or the CEO. In what circumstances is it intended that the CEO will issue a card to a person who has committed one of these class 2 offences and is shortly going to be reclassified as a class 1? I accept that the discretion will still be there, but I am seeking clarification on the intention of the government and the CEO with respect to the application of that discretion. I would like to think, unless there is a persuasive argument otherwise, that henceforth—in fact the CEO ought to know full well that this bill is going to pass. It is no secret to the opposition that this bill is one of the government's priorities to be passed before the house rises for the summer recess, so the CEO understands the state of politics in Western Australia and will know that. That is next year's calendar.

Hon Sue Ellery: You want 1 December.

Hon NICK GOIRAN: It is 1 December. The Leader of the House is counting down the days. By 1 December, this bill will pass. That being the case, we would expect a competent, experienced CEO to factor that into the equation when considering the exercise of discretion. Is that happening? Has there been any discussion about that? Can we provide any confidence to the chamber that if somebody tries to sneak in an application, having been convicted of carnal knowledge of an animal, they will not get a working with children card in Western Australia?

Hon SUE ELLERY: The honourable member would appreciate the decision-making I have set out for the chamber, the list of things that need to be taken into account, in addition to whatever the charge or conviction is. The person has a conviction that is currently in schedule 2, but the CEO knows that when the bill passes and comes into effect, that conviction will be in schedule 1 and, once the new bill comes into effect, an automatic negative notice will be generated. However, it is still the case that the CEO will have to be able to defend the decision that was made at the time it was made under the rules that applied at that time in the event that the decision is appealed. The CEO must

be able to defend that all the rules that were in place that applied at the time were properly applied. Having said that, the discretion that exists in the list of other elements that I read out earlier, the things that need to be taken into account, can be taken into account now and may well have the effect in some circumstances of a negative notice being issued in any event. The agency must in good faith apply the rules that were in place at the time the application was submitted and the decision was made.

Hon NICK GOIRAN: The minister makes a good point, and the last thing we want to do is create a point of appeal when the applicant who receives a negative notice appeals on the basis that the CEO gave weight to a prospective law that was not in place at the time. I absolutely accept that, but I struggle with the concept that some of these offences are presently listed as class 2 offences and that it is theoretically possible that a person could then receive a working with children card. That has obviously been the case for a period across multiple governments; I acknowledge that. However, it seems to me—this probably goes back to my original point—that we are making things unnecessarily complicated. If Parliament is of the bipartisan view, and the executive would need to agree with that, that people who commit the offences of carnal knowledge of an animal, facilitating sexual offence against a child outside of WA, involving a child in child exploitation, aggravated indecent assault, indecent assault, sexual offences against a child of or over 16 by a person in authority, procuring child exploitation material, distributing child exploitation material, possession of child exploitation material, sexual offences against a child of or over 13 and under 16, sexual servitude, sexual offences against an incapable person, child pornography—the list goes on and on—do not get a working with children card in Western Australia, why do we not say that and ensure that now, rather than leaving this loophole? We are creating extra work for the CEO and there will be possible grounds of appeal, whereas if we say that it is automatic and they do not get a card, that is what will happen. I am still struggling to understand why the policy decision was made to leave this window of opportunity open.

Hon SUE ELLERY: We are probably going to circle around a little here. I understand the point the honourable member makes. However, I said in my second reading speech, or at some point in this debate, that I have been here from the beginning of these laws.

Hon Nick Goiran: It might have even been your bill.

Hon SUE ELLERY: I do not think it would have been in 2004; I did not become a minister until 2007. I might have been the parliamentary secretary though—I cannot remember. At each point in the process we have taken an incremental step. I completely accept the point the member makes: on face value, no, they should not be working with children. I understand that completely. However, at each point we have made a decision to make these changes in incremental stages. At each stage we have moved more and more to the point of there being no question that child safety should come first. In the first round of debate people were not arguing that child safety should not be first, but people were outraged at the imposition that was being put on them by the first version of the legislation—that if they wanted to work with children, they needed to have a check. People were outraged by that. That argument will not be put now because the community has come to accept that and has seen far too much revealed to contemplate going back to a time when we did not talk about these things. I completely get the point the member makes and I understand that it is not neat; it is not done in the simplest, cleanest way. I understand that completely, but it is consistent with how governments of both sides have approached this. That is, we will do it incrementally; we will not undo the legal conventions that say that the rules that applied at the time can be changed before the new set of rules come in. We are not going to overturn those legal conventions. I know the member has a genuine interest in making sure that these things are done in a way that best protects children, but doing that in incremental stages and in a way that does not throw out the door the legal conventions is the way we have handled it so far. It has stood us in good stead. It is not just a tick the box of what is the conviction; all the other factors are able to be taken into account in how the assessment is made.

Hon NICK GOIRAN: I thank the minister for the spirit in which she is taking the questions. With regard to the seven individuals, at some point their card will expire because it is valid for three years. When the expiry occurs, they will need to apply for a renewal if they wish. Will the renewal process take place under the new law or under the existing law?

Hon SUE ELLERY: If they are covered by that transitional arrangement, depending entirely on the timing, they could be captured under the old laws.

Hon Nick Goiran: Does that mean if they apply for their renewal before this act becomes fully operational? Is that the window we are talking about, in the next three to six months, basically?

Hon SUE ELLERY: Interesting debate has been had at the table. I guess, in essence, it is part of what I have said before, but the answer to the question is that if one of those seven, for example, seeks to renew their card and their card was issued to them under the current arrangements, they will be able to continue to renew their card under the current arrangements each time they go to renew their card. To put that in context, the judgement we are making now is that we want to add to schedule 1 some offences that back then our view was should not be an automatic tick box, but now our view as a society is that it should be an automatic tick box. The policy consideration was

that of the 400 000-odd people who have a working with children card, there are seven—it would be better if there were zero—who have a conviction that previously was not considered automatic, though a whole bunch of other things were considered automatic, but now would be considered an automatic “no, you can’t get a working with children check”. If the honourable member thinks that is outrageous, I put it to the test so that someone in 2040 is still being judged by the standard back then.

Hon Nick Goiran: From 2004.

Hon SUE ELLERY: Correct. The policy thinking behind that is a couple of things: what I have already said about retrospectivity and what I have already said about the list of things taken into account. It is not just the conviction, it is a list of all those other things, and also that person has been working with children for that period and has not —

Hon Nick Goiran: No new offence.

Hon SUE ELLERY: Correct. And now, in fact, not only is it no new offence that they will be judged by, it is no reportable conduct. That will apply as well. Again, I find myself in a position in which I hear what the honourable member says at face value and I go, “Yes, that is outrageous”, and I am testing it. I think, ultimately, we combine all those things: the fact that we do not turf out the legal conventions about how we cannot make a decision on a new set of rules until they come in et cetera and that we have to protect the decision-making in the event it is tested. When we combine all those things, that is where we land on the policy position.

Hon NICK GOIRAN: I thank the Leader of the House for taking the time to get to the bottom of it. We will not be able to take anything further. I accept the response that has been provided. I think the Leader of the House will appreciate that I am not enthusiastic or excited about it. I am not convinced, but that said, I am at least heartened by the fact that earlier the Leader of the House indicated that the government was going to take on notice that general issue with regard to those seven people, particularly what type of offences they have committed and possibly, even just considering this general issue, that it is a matter for the minister. We will see what happens tomorrow. I remain unconvinced. Perhaps tomorrow the, hopefully, low-level class 2 offences that these seven people have committed will be revealed to us and we will be able to reluctantly accept that that justifies them continuing to work in the system. Let us see what happens tomorrow.

Hon SUE ELLERY: Honourable member, before you move from that point, I just want to put some caveats around that. I have given an undertaking that I am going to see what is possible to achieve, but I also make this point: it is not just going to be a judgement about what has moved from schedule 2 to schedule 1, and whether or not that is acceptable, because the other thing that happened was that an assessment was made, and was able to be made, based on all the other factors that I have listed. Although someone who has committed offence X is currently in schedule 2 but will be moved to schedule 1, maybe after the examination of all those other things, it will be revealed that there were particular mitigating circumstances et cetera; we do not know. I want to put that caveat on it. Also, the undertaking I gave was to see what I could find; I cannot guarantee that I am going to be able to find anything.

Hon NICK GOIRAN: I accept that, and I accept that there is every possibility that we will resume tomorrow having progressed no further than we are now, but I am grateful that at least an effort will be made.

I do not have too many more questions on clause 1, but one is about the cohort of individuals who currently have a negative notice or an interim negative notice. Does anything materially change for them once the bill has been passed?

Hon SUE ELLERY: We have discussed interim negative notices before. If they put their application in under the current laws, they will be treated as though they remain under the current laws. In respect of negative notices, there will be no change if they are appealing or reviewing their decision. If they apply to cancel the negative notice, the assessment will be made under the new provisions, once they come in.

Hon NICK GOIRAN: It is a little curious that under the system we are able to say to a person who has a negative notice, “Look, if you want to have it cancelled, you’re going to have to operate under the new regime.” I take that to mean that it will be harder under the new regime for them to have their negative notice cancelled.

Hon Sue Ellery: Honourable member, yes, because of the range of offences. Two things, just by interjection: one, they have already made an assessment that they shouldn’t get a working with children check. Secondly, offences have moved from schedule 2 to schedule 1, so if that was their issue before, it’s under the new laws. It’s harder for them.

Hon NICK GOIRAN: It has become harder for them, yet we do not take that approach to the seven individuals. I find it strange that there is almost a preparedness to be retrospective in one sense, but not completely. If they have a current negative notice, guess what? Life is going to become harder for them. I do not have a problem with that at all—far from it. But why is it going to become harder? Because we—the government and the Parliament—have decided that we are going to, in effect, apply these provisions retrospectively. That is not really technically correct, because it is still being applied prospectively, but the new law will apply to them. It may happen that they

have survived the process to date without having had a negative notice—maybe the department was under-resourced or they have been a bit slow in moving from an interim notice to a negative notice—in which case, they are in luck. That will be their good fortune, because they will be able to continue to apply under the existing regime. That is just strange. For my part, I hope that over the next three to six months, of the people who have applied and have one of these class 2 offences—which will soon be class 1 offences—as many as possible get a negative notice, quick smart, from the department. I hope there will be some expediting of these applications, because there is no way in the world that a person who has involved a child in child exploitation or has facilitated a sexual offence against a child outside WA should be able to work with a child, and I will not be convinced otherwise. Although I accept what the Leader of the House has said—that apparently, once upon a time, debate was held in this house to suggest that that would be okay—I find it astonishing.

The Leader of the House will be pleased to hear that I have one last question on clause 1: when is phase 2 expected to be implemented?

Hon SUE ELLERY: Some of that work has already started; I think I referenced that in my reply to the second reading debate. Some of it is contingent upon agreement and arrangements with other jurisdictions and with the commonwealth government. With regard to the formal processing of phase 2, it is expected that the work on what the consultation might look like will formally start next year. There is no proposed time line for that because, as I said before, it is interconnected. Some elements of it are reliant upon reaching agreement with the commonwealth government and other jurisdictions, so it might take a little time. Some of it has started already, but it is anticipated that the bulk of what might be described as phase 2 will start next year. I am also told that there might be phase 3 and phase 4 as well.

Clause put and passed.

Clauses 2 to 4 put and passed.

Clause 5: Section 4 amended —

Hon NICK GOIRAN: There is reference under clause 5 to class 3 offences. We discussed earlier that some of the current class 2 offences will soon become class 1 offences. Interestingly, in the document the Leader of the House provided earlier, there is a number of current class 3 offences that are also going to be made class 1 offences. Again, a number of them are quite heinous offences, and it is somewhat surprising to review the list and see things listed as class 3 that are soon going to be class 1. We can take as an example section 306(2) and (4) of the Criminal Code, amongst other things. Nevertheless, I accept—I think it is a positive thing—that some of these offences are being uplifted from class 3 or class 2 to class 1. Is anything being introduced into class 3?

Hon SUE ELLERY: No, but the explanation is that class 3 has always been deemed anything that is not class 1 or class 2.

Hon NICK GOIRAN: That is fair. Also in this clause, there is a definition of “conduct review authority”. It means a person or body, or a person or body of a class, prescribed by the regulations for the purposes of this definition. Who is intended to be a conduct review authority?

Hon SUE ELLERY: The Teacher Registration Board of WA and the WA Ombudsman are currently intended to be prescribed as conduct review authorities.

Hon NICK GOIRAN: Can the minister explain why those two bodies are to be included as conduct review authorities?

Hon SUE ELLERY: I can start with the Teacher Registration Board because I know about that. It already receives complaints about conduct that is not necessarily to do with a conviction, so it already deals with that. For the Ombudsman —

Hon Nick Goiran: Is that because they have that new reportable conduct —

Hon SUE ELLERY: Yes, it is a result of the new reportable conduct legislation that was passed a little while ago.

Hon NICK GOIRAN: The conduct review authority, which at this stage will include the Ombudsman and the Teacher Registration Board, will make a conduct review finding or outcome. Curiously, a finding will be a finding of a kind prescribed by the regulations and an outcome will be an outcome of a kind prescribed by the regulations. What are intended to be conduct review findings and outcomes?

Hon SUE ELLERY: Only findings or outcomes that result from transparent processes, which are called procedural fairness and a right of review for the person the subject of the finding or outcome, are intended to be prescribed. If the member casts his mind back to the debate we had about reportable conduct, he will recall that it was about organisations having to put in place processes to deal with that. Some of the aspects that will be considered to assist in determining which bodies and which outcomes are appropriate for prescription include whether there are robust frameworks—they could be statutory frameworks for regulatory or licensing authorities—and appropriate decision-making processes or a reportable conduct scheme, and a formal process of investigation that captures

natural justice principles; that is, prior to making the adverse decision, a person is advised of the grounds and the facts and is given the opportunity to make a submission. Other aspects that will be considered include an adverse finding or outcome only following the completion of an investigation, and access to an external review or appeal process to review the decision. An example of an adverse outcome under the Teacher Registration Act 2012 to be prescribed is the suspension or cancellation of a teacher's registration. This may be a decision of a disciplinary committee or the State Administrative Tribunal.

What types of reportable conduct will be prescribed? The intention is to prescribe a finding of reportable conduct—that is, a sexual offence committed against, with or in the presence of a child; sexual misconduct committed against, with or in the presence of a child; or physical assault committed against, with or in the presence of a child. Consideration would also be given to any offences that might be prescribed as reportable conduct and to capturing those offences as a conduct review finding or outcome as appropriate. If it is helpful to the honourable member, I am further advised that Western Australia is taking an approach that is similar to that of New South Wales in relation to the relevant reportable conduct that can trigger an assessment under the working with children scheme.

Hon NICK GOIRAN: Is it the case that if conduct by a teacher meets the reportable conduct threshold, that will need to be brought to the attention of the Ombudsman?

Hon Sue Ellery: No. A teacher goes through the Teacher Registration Board.

Hon NICK GOIRAN: If there has been reportable conduct by a teacher, all reportable conduct needs to be brought to the attention of the Ombudsman. That being the case, why are we including the Teacher Registration Board as one of the conduct review authorities?

Hon SUE ELLERY: I am advised that it is possible to have different outcomes under the Teacher Registration Act from those under the reportable conduct scheme. In respect of what will be reported to the Ombudsman, it is intended to prescribe findings of reportable conduct based on those three things that I just read out, such as a sexual offence committed against, with or in the presence of a child. The findings will be from the Ombudsman and the outcomes will be from the Teacher Registration Board. The Teacher Registration Board has the process to deal with something that has been reported. Under a disciplinary committee, registration can be suspended. Under the State Administrative Tribunal, a person who is no longer a teacher can be disqualified from applying for registration. Under specific provisions of the Teacher Registration Act, an order can be made to suspend a teacher's registration or an order can be made to cancel registration. The findings will be from the Ombudsman and the outcomes will be from the Teacher Registration Board.

Hon NICK GOIRAN: In terms of the outcome of a matter dealt with by the Teacher Registration Board, might a teacher be suspended or have their registration cancelled for some type of conduct not involving a child?

Hon SUE ELLERY: I think I am probably the only one at this table who can answer that question.

Hon Nick Goiran: I don't know; maybe they've been found stealing.

Hon SUE ELLERY: Yes. There is a provision in the Teacher Registration Act; I cannot remember the words, but it goes to being not suitable to be a teacher, and it is kind of a catch-all that could incorporate all manner of things. I probably cannot provide the member with more advice on that now. I could seek to get some further advice if that is something the member wants to pursue, but I probably cannot get it at the table now.

Hon NICK GOIRAN: I am just trying to reconcile in my mind what gap has occurred here that would warrant the Teacher Registration Board of Western Australia being drawn in as a conduct review authority. If the intention is to be concerned about children, and we have teachers who, evidently, are working with children all the time and we have the Teacher Registration Board that may from time to time make some finding or determination that a person is no longer suitable, then I can understand that, if it were not for the reportable conduct scheme. As soon as it meets that threshold, it must be reported to the Ombudsman anyway. I am just trying to identify what the Ombudsman would not know about something that is child safety-related that only the Teacher Registration Board would know and would justify its inclusion.

Hon SUE ELLERY: There are a couple of things. First, the reportable conduct regime is relatively new, and we might find that there is a degree of overlap. We do not know; we will have to see what that is like. The other explanation, as I understand it, is that although everything is reportable to the Ombudsman, the TRB is already set up to do the investigations and examine the allegations and the detail of what is being reported. Therefore, rather than burden the Ombudsman with investigations into however many teachers are registered, the TRB is already in place to do that. Therefore, an assessment may be made by the Ombudsman, such as, "We do not need to investigate that; it has already been investigated." But we need to know the outcome of its investigation.

Hon NICK GOIRAN: What about the Australian Health Practitioner Regulation Agency? If AHPRA makes a finding that a medical practitioner is no longer suitable to hold registration because there has been some type of misconduct pertaining to a child, why would we not include it as a conduct review authority?

Hon SUE ELLERY: The member raises a good point. The advice that I have provided so far is that we intend to capture the Ombudsman and the Teacher Registration Board in the legislation. As with everything that has been done in this area of the law, it may well be that AHPRA and other bodies will be captured in the future. The intention, as I understand it, is that the policy is to start with where we are at with teachers and the Ombudsman and see how that goes, bed that down, and figure out the things that need to be tweaked. It may well be that other bodies will be added to those categories as well.

Hon NICK GOIRAN: Minister, is the reportable conduct scheme, in which reportable conduct must be reported to the Ombudsman, presently operational?

Hon SUE ELLERY: No.

Hon NICK GOIRAN: If the intention is to include the Ombudsman and the Teacher Registration Board as conduct review authorities, why are they not listed in the bill in clause 5 and that is instead left to be prescribed by regulation? I can certainly understand that the government will say that it would like the opportunity to be able to add, by way of regulation, AHPRA and the like, but if the decision has already been made to include them, why do we not do it now?

Hon SUE ELLERY: I am advised that this is linked to the provision in proposed section 17A about designated conduct review authorities. The policy consideration is that we do not want a prescribed list in the bill because we do not want bodies that are not responsible for being designated conduct review authorities acting outside the scope—I guess that is a layperson’s way of describing it. The member’s question was: if the government knows it wants the Teacher Registration Board, why does it not just list the Teacher Registration Board? I suppose the best advice that I can offer the member is that in terms of drafting the bill, structuring it this way was considered the most sensible way to proceed.

Hon NICK GOIRAN: I will note that for future reference, minister, the next time I see a bill presented with a few items listed and then at the end it says “and any other matters prescribed by regulation.”

I will move right along, in the limited time that we have left, to my last question on clause 5. The minister will see that there is a definition of “WWC purpose” on page 6 of the bill, and it runs over to page 7. Why do we need to insert a definition of “WWC purpose”?

Hon SUE ELLERY: Essentially, it is because we are adding to this bill a broad range of information-gathering and sharing provisions that have not previously been in the legislation, so we need to make it clear what the purpose is.

Hon Nick Goiran: For the information-sharing?

Hon SUE ELLERY: Correct.

Clause put and passed.

Progress reported and leave granted to sit again, on motion by Hon Sue Ellery (Leader of the House).