WORKING WITH CHILDREN (CRIMINAL RECORD CHECKING) AMENDMENT BILL 2022

Committee

Resumed from 16 November. The Deputy Chair of Committees (Hon Dr Sally Talbot) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

Progress was reported after clause 5 had been agreed to.

Clause 6: Section 6 amended —

Hon MATTHEW SWINBOURN: Those watching at home may realise that I am not the Leader of the House—not anytime soon! I am stepping in for the Leader of the House who is away on urgent parliamentary business, and so I shall take up where she left off last night. A number of matters were taken on all notice for Hon Nick Goiran that I will try to address for him, the best that I can.

I will start with the issue that the member raised about the divergence between people who have reporting obligations under the Community Protection (Offender Reporting) Act, or CPOR as it is known to those who are familiar with it, and those persons who will be captured under what will be class 1 and class 2 offences. I think the member expressed the hope that there was no divergence and that all those matters have been covered and there is no gap, which in the case of class 1 offences, moving forward, people will automatically receive a negative notice. I think I paraphrased the member reasonably accurately there. The question, really, is: what type of person would, under a reporting obligation under the CPOR act, have committed a class 1 or class 2 offence under the bill?

Apart from two offences in the CPOR act, all other offences in the schedules of the CPOR act are captured as either class 1 or class 2 offences in the bill. These two offences in the CPOR act that are not captured as class 1 or class 2 offences —

[Interruption.]

The DEPUTY CHAIR: I have noted the interruption.

Hon MATTHEW SWINBOURN: Thank you, deputy chair. I believe it was a practice in the past for the Presiding Officer to confiscate said offending device, but anyway!

Let me start again with section 557K(6) of the Criminal Code, which is an offence of a child sex offender being in or near a place where children are regularly present, and section 17(1) of the Criminal Law (Unlawful Consorting and Prohibited Insignia) Act 2021, which is an offence of unlawful consorting if the offender has a conviction for a child sex offence as defined in that act, and has consorted with another person who has a conviction for a child sex offence in the course of committing the offence. The member will note that both those offences, which are not picked up from the CPOR act in this bill, are offences whereby the person concerned is already an offender, so the field is covered.

Hon Nick Goiran: The offence is not covered but the person is covered.

Hon MATTHEW SWINBOURN: They would be covered, in any event, because they are already an offender.

I turn now to the hot-button issue regarding the seven people who currently have a working with children card and have offences that are moving to schedule 1. The member asked: can the minister or someone in a position of authority say they are satisfied that for each of those seven, there is no concern to children? I have quite a bit to say here, so I will work my way through it.

Regarding the seven working with children card holders with a conviction for an offence committed when an adult, which will move from class 2 to class 1, the request was made yesterday by the honourable member that a list be made available of those offences, including sufficient detail for the house to be sure that the minister or other person in a position of authority is satisfied that they have been properly reviewed and they present no concern to children. I can advise that the offence descriptor for the seven persons captured by the transitional provisions is able to be identified; however, the Department of Communities is not able to provide the details of the offending behaviour or further information considered as part of the assessment process or the reasons for the decision to issue an assessment notice, known as a working with children card. It was this circumstance of information to which Minister Ellery was referring yesterday. It is not currently available and would be a difficult and time-consuming exercise for the Department of Communities to produce an appropriate report, especially since it was raised yesterday and we are dealing with it today. It is also important to be aware that we cannot divulge detailed information about the offences or other details, as that may lead to the identification of the individual card holders or the victims of the particular offences, which would be an offence of unlawful disclosure under the act.

Of those current seven working with children card holders, one, in fact, just recently expired in September, so there are now only six such persons. Four of these persons have been working with children over successive applications and reassessment periods. The member has requested confirmation that the minister or someone in a position of

authority is satisfied that for each of those seven persons that there is no concern for children. There will never be a case in which there is no concern regarding the safety of children. There will always be a level of risk inherent in granting a working with children card and allowing a person to work with one of the most vulnerable cohorts in our society. The appropriate test is determining whether a person is an acceptable risk of harm to children.

It is important to understand that the assessment of risk, or, more relevantly, establishing an unacceptable risk of harm to children when undertaking child-related work is a very complex and detailed assessment task, which is undertaken by trained, professional staff. Officers engaged in undertaking the assessment task are required to have qualifications in social work, psychology, criminology or similar fields. In addition to this, they need a proper understanding and experience in offender and sexual offence behaviour and the broad range of human behaviours, including the difference between what a person may be convicted of and that of the actual harm and sexual behaviours of that offending, when considering the risk to children when undertaking child-related work. The psychology of human behaviour and patterns are key elements to properly understand and determine unacceptable risk. These are key and necessary attributes to officers being engaged to understand this work. These specialist roles are established in the regulation and quality directorate of the Department of Communities.

In relation to the seven—now six—card holders, identified as having convictions for offences committed when an adult, who will be moved into class 1 by this bill, the minister accepts the advice that sufficient assessment was undertaken by these specialist officers in the determination of unacceptable risk. They have done that work, and the minister is satisfied that appropriate consideration has been given when considering all the information available to them, these officers did not establish that these seven people were an unacceptable risk of harm to children when undertaking child-related work.

The member also raised an issue about the suspension, disqualification or cancellation of teachers' registration under the relevant sections of the Teacher Registration Act, and adverse outcomes under which we intend to prescribe in the Working with Children (Criminal Record Checking) Amendment Bill to trigger a reassessment of their working with children card. I note that we currently intend to prescribe adverse outcomes, including the decisions of the disciplinary committee, wherein registration is suspended under 71(d), or the State Administrative Tribunal wherein a person who is no longer a teacher is disqualified for applying for registration under section 84(a)(ii), or an order is made suspending a teacher's registration under section 84(1)(b)(i) wherein the outcome is in accordance with section 71(d) and an order is made to cancel registration under section 84(1)(b)(ii).

The reportable conduct scheme to be administered by the Ombudsman will contemplate the reporting of both reportable allegations and reportable convictions. The kind of reportable conduct to be contemplated in this scheme are sexual offences against, with, or in the presence of, a child; sexual misconduct against, with, or in the presence of, a child; physical assault against, with, or in the presence of, a child; significant neglect of a child; and any behaviour that causes significant emotional or psychological harm to a child. Notably, sexual misconduct, under the reportable conduct scheme, captures a broad range of inappropriate behaviours of a sexual nature that are not necessarily criminal. Sexual misconduct may include, for example, descriptions of sexual acts without a legitimate reason to provide the descriptions; comments to a child that express a desire to act in a sexual manner towards the child or another child; inappropriate touching; inappropriate relationship attention or focus; grooming behaviour; sharing pornography; voyeurism; or crossing professional boundaries to the extent that the crossing of professional boundaries is sexual in nature but is not a sexual offence. In this light there is clearly a strong relationship between the kind of conduct that would be the subject of a referral to the Ombudsman by an employer under the reportable conduct scheme and the kind of conduct that would lead to a referral by the Teacher Registration Board of Western Australia to the State Administrative Tribunal seeking a high-level disciplinary outcome.

The DEPUTY CHAIR (Hon Dr Sally Talbot): The parliamentary secretary.

Hon MATTHEW SWINBOURN: I will pick up where I left off. Perhaps I will re-read the paragraph. In this light, there is clearly a strong relationship between the kinds of conduct that would be the subject of a referral to the Ombudsman by an employer under the reportable conduct scheme and the kinds of conduct that would lead to a referral by the Teacher Registration Board of Western Australia to the State Administrative Tribunal seeking a high-level disciplinary outcome, including the cancellation of the person's registration as a teacher or a disqualification from applying for registration for a period. It is important to note, though, that the obligation for an employer to report to the Ombudsman under the reportable conduct scheme relates only to current employees.

The Teacher Registration Board would have an interest in current and formerly registered teachers who may not be currently employed in instances when there is evidence supporting allegations of serious misconduct, including serious misconduct, the nature of which renders the teacher unfit to be registered. This would include evidence, for example, of grooming-type behaviour by a teacher. Similarly, there may be examples that demonstrate the teacher may not be of good character or does not satisfy a standard of behaviour generally expected of a teacher that, due to the circumstances of the case, may not fall squarely in the realm of the reportable conduct scheme. For example, information concerning a registered teacher who has been the subject of a high-level disciplinary outcome in another

jurisdiction may be brought to light. This may lead to a referral by the Teacher Registration Board to SAT. There may also be high-level examples of serious incompetence by a teacher that may not fall squarely in the realm of the reportable conduct scheme but may nevertheless lead the board to seek the cancellation of the teacher's registration or disqualification from applying for registration for a period of time.

I think that the final matter the member raised was on the interaction of the act with the privacy principles and whether or not any work had been done on that.

Hon Nick Goiran: We were told there had not been.

Hon MATTHEW SWINBOURN: No, and I can confirm that no work was done on that.

Hon NICK GOIRAN: At the outset, I thank the parliamentary secretary for standing in for the Leader of the House as we progress this matter, hopefully today. These are important reforms to the working with children check scheme. I thank him for the comprehensive response that has been provided to the matters taken on notice yesterday. Of those four matters that the parliamentary secretary addressed, I wish to pursue two a little further. One is the Teacher Registration Board, which I will deal with now, and the other is the matter of the seven—although, interestingly, now six—Western Australians who will have the protection of the old scheme, but I think that is perhaps best dealt with at clause 7.

While we are on clause 6, with the parliamentary secretary's concurrence, I will wrap up this issue of the Teacher Registration Board to clarify the scenario that was put. It seems to me that the main element it turns on is whether a teacher is a current employee or a former employee. If the teacher is a current employee who has committed what is described as reportable conduct, it will be captured by the Ombudsman in any event. As I understand it, the government is indicating that the benefit of prescribing the Teacher Registration Board—I will get the language correct—as the conduct review authority, is that the Teacher Registration Board will still have the capacity to deal with a former teacher. Will that be a former teacher who applies for registration? Is that the scenario we are intending to capture here? I might just clarify that. In other words, we are not suggesting that the Teacher Registration Board has some disciplinary capacity over former teachers who are not employed, but it has a capacity over currently registered teachers and those who apply for registration, including former teachers.

Hon MATTHEW SWINBOURN: The member's characterisation at the end is correct, but the board may also raise historical matters. Obviously, if someone stopped being a teacher some time ago but the Teacher Registration Board retained information and records about the teacher, the board could use that information.

Hon NICK GOIRAN: I note that clause 6 was examined and scrutinised by the Standing Committee on Uniform Legislation and Statutes Review in its 139th report. Members who are interested in this bill will find the committee's analysis at pages 9 and 10. In essence, it has been confirmed that the provisions within the clause are Henry VIII clauses that erode the Western Australian Parliament's sovereignty and lawmaking powers and that at least one of the two provisions is a broader regulation-making power than presently exists. Nevertheless, the committee has indicated that proposed section 6(3) can be justified on the basis that protecting children's safety by identifying exemption preclusions requires a quick regulatory response.

I found it interesting that the committee, for reasons known only to it, has commented that proposed section 6(3) can be justified but the committee was silent on proposed section 6(4). At finding 4, the committee has said that proposed section 6(4) is a Henry VIII clause, but it has not said it is justified. Why does the government say that proposed section 6(4), which is found at clause 6, is justified, given it is a Henry VIII clause?

Hon MATTHEW SWINBOURN: The advice I have been given is that this provision is an existing provision in the act and that the bill does not propose in any way to expand it. That may not satisfy the member's direct question of why it is justified. I think it is a case of us just not disturbing it by what we are doing with this bill, other than that it is now incorporated into the drafting of proposed sections 6(3) and (4).

Hon NICK GOIRAN: When was the existing Henry VIII provision that is being retained introduced?

Hon MATTHEW SWINBOURN: I am told it was introduced in the original bill in 2004.

Hon NICK GOIRAN: I will make a political observation and then move on to my continuing analysis of the bill. I observe that Labor was on the Treasury bench and had carriage of these bills, as was the case with the original bill, and that the Labor Party seems to have form on the introduction of Henry VIII clauses. The Henry VIII clause passed at that time in 2004 and the damage is going to continue by leaving it in now. That, to me, is an unsatisfactory response to a matter that has been raised by the standing committee. The committee has said that this is a Henry VIII clause that erodes the Western Australian Parliament's sovereignty and lawmaking power. This committee went out of its way, at least for clause 6, to identify that one of those provisions is justified. That was good work by the committee and that is why these matters need to be considered by parliamentary committees, as I have said on multiple occasions. But it is not satisfactory for the government to simply hide behind the excuse that the Henry VIII clause is already in the act. That may well be the case, and apparently it is the case since 2004. If it has been identified

by that committee, a wholesome response needs to be provided, as was obviously provided to the satisfaction of the committee for proposed section 6(3). I note in passing, that the same cannot be said for the Henry VIII clauses found at clause 7, which we will look at in a moment. I note that the government has a number of proposed amendments to deal with those points.

Having made those observations, a few more questions arise about clause 6. The Standing Committee on Uniform Legislation and Statutes Review's report at page 9 paragraph 6.10 cites the explanatory memorandum that accompanied the bill —

> The regulation-making power will allow sufficient flexibility to further qualify access to exemptions from child-related work following consideration of the categories of child-related work and the appropriate exemptions from that work, which are aimed to address remaining WWCC Report and Statutory Review recommendations as part of a future phase or phases of reforms.

With all due respect to the authors of the explanatory memorandum, it takes the ordinary reader a few moments to properly comprehend what that sentence is trying to communicate. As I understand it, it says in part that once this bill passes, there will be situations in which people will be exempt from the child-related work regulatory regime because the government is yet to address the remaining recommendations. If my understanding is correct, what are those situations in which people will be exempt simply because the government has not yet addressed the remaining recommendations?

Hon MATTHEW SWINBOURN: Member, to be blunt, we do not know what they will be yet because the work is yet to be done. I want to be very straight with the member and not lead him down the garden path with an answer that is not reflective of where, at this time, the department and the government are at. Obviously, it is a facilitative arrangement so that when they do the work they will know what fits within those current scenarios.

Hon NICK GOIRAN: The explanatory memorandum says it is "aimed to address remaining WWCC Report and Statutory Review recommendations". I take that to mean that the government is aware that a certain number of report and review recommendations have not been addressed, but they will be addressed during a future phase and this regulation-making power will enable sufficient flexibility to incorporate those particular recommendations.

Hon Matthew Swinbourn: By way of interjection, you are correct, member.

Hon NICK GOIRAN: Okay. Is the parliamentary secretary able to identify the recommendations in the working with children check card report and statutory review that were referred to or are implied at this point?

Hon MATTHEW SWINBOURN: I am advised that it is recommendation 2(b) of the statutory review and recommendations 5, 8, 12, 13, 14(a) and (b), and 15 of the Royal Commission into Institutional Responses to Child Sexual Abuse.

Hon NICK GOIRAN: I understand that we have already addressed the matter with regard to statutory review recommendation 2(b). It was about the Community Protection (Offender Reporting) Act 2004. We have already identified that everything will be captured with the exception of the two offences that the parliamentary secretary referred to earlier. One was the consorting provision. I would have to look back at my notes for the other one. In any event, we identified that the offenders will be captured anyway. It is not immediately apparent what remains to be done with regard to recommendation 2(b).

Hon MATTHEW SWINBOURN: Perhaps it might help if I read out recommendation 2(b). It says —

> 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.

We are talking about the parent volunteer exemption.

Hon NICK GOIRAN: Under this bill, I understand it is the case that certain individuals will be precluded from accessing the parent volunteer exemption under the act.

Hon Matthew Swinbourn: Yes.

Hon NICK GOIRAN: Therefore, by virtue of which provision in the bill will those persons be precluded from accessing the parent volunteer exemption under the act?

Hon MATTHEW SWINBOURN: It will be the regulations that will be made under proposed section 6(4).

Hon NICK GOIRAN: That is the clause we are on presently. Clause 6(2) seeks to delete sections 6(3) and (4) and insert proposed sections 6(3), (4) and (5). The parliamentary secretary kindly and correctly has drawn to our attention proposed section 6(4), which states —

> Subsection (1) does not apply to work that is carried out in circumstances, or by a person of a class of persons, prescribed by the regulations.

By virtue of those regulations that are yet to be drafted—that will be done over the course of the next three to six months as I understand it—these people will be precluded from accessing the parent volunteer exemption under the act. Why is it that recommendation 2(b) in the statutory review will not be addressed when the regulations are made under proposed section 6(4)?

Hon MATTHEW SWINBOURN: I am advised that it is not practical at this time, and that is because work continues to be done between the Western Australia Police Force and the Department of Communities.

Hon NICK GOIRAN: I do not understand that, parliamentary secretary, because earlier I thought we identified that all these people are captured as an offender one way or another. There is either a gap in the system or there is not—that is what I want to understand. Have we sufficiently captured the spirit and intent of recommendation 2(b)? There may be no reference in the regulations or the act to the Community Protection (Offender Reporting) Act 2004. I am not too concerned about that. The intention of the authors of the statutory review at recommendation 2(b) was to refer to that class of persons that should be precluded from accessing the parent volunteer exemption under the act. My understanding from everything that I heard yesterday and today is that, one way or another, those people will be precluded from accessing the parent volunteer exemption under the act. It might not be because of specific reference to the Community Protection (Offender Reporting) Act 2004, but they will be captured.

Can I get confirmation that that is indeed the case? If it is not the case, what class of persons will continue to access parent volunteer exemptions under the act?

Hon MATTHEW SWINBOURN: I will do my best to address the issue raised by Hon Nick Goiran. The first thing to note is that the people who we are talking about are not doing child-related work under the act. In that regard, they do not have to apply for a working with children card. When we talk about an exemption applying to them, they do not make an application to be exempt; they are just exempt because of the way the act operates. They are a parent and a volunteer and, therefore, on that basis, they are not covered by the provisions of the act. The statutory review recommendation is about whether it places the onus on them to apply for a working with children card.

I am not sure how familiar Hon Nick Goiran is with the CPOR act and the disclosure restrictions placed on Western Australia police about who is covered, but one of the issues is that it would require an amendment to the CPOR act for what the member is talking about and the mischief that we are trying to deal with here so that the police can disclose the information to the Department of Communities, which would then trigger the requirement for them to get a working with children card to be a parent volunteer. It is a significant amount of work. This agency is obviously not responsible for the CPOR act; it is a Western Australia Police Force act. It is an important issue. I am told that work is being done in conjunction with that. That is where we are at and why further work needs to occur. I hope that addresses the member's issue. I appreciate his concern about people subject to the mandatory reporting requirements of the community protection offender register not having a working with children permit and being in contact with children. If they are on that register, I suspect that they would be strictly observed by the police. That is an element of which we can have some appreciation. Having said that, people who are on the register are on the register for life. It depends on the range of offences. Their reporting obligations under the act may have expired years and years ago. There is a balance of things to take into consideration.

Hon NICK GOIRAN: It is interesting that the parliamentary secretary said that a substantial amount—I am using the word "substantial" because that is the impression I am getting—of work needs to be done. The parliamentary secretary drew to our attention that the Department of Communities is not responsible for what is referred to as the CPOR act. For the benefit of *Hansard*, CPOR is otherwise known as the Community Protection (Offender Reporting) Act 2004. All of that is true—a lot of work still needs to be done.

When was statutory review recommendation 2(b) made?

Hon MATTHEW SWINBOURN: It was made in 2012.

Hon NICK GOIRAN: We see that this matter has been with us for more than 10 years. Of course, the partisan observer will note that that means that it has occurred across two types of government and that would be true. Here we are, 10 years later after a statutory review has made a recommendation about these persons with reporting obligations, and we are now told that a substantial amount of work still needs to be done. One wonders whether we will see it before all the honourable members of this chamber have retired. That said, returning to clause 6, what is the proposed class of children that will be prescribed by the regulations in proposed section 6(3)?

Hon MATTHEW SWINBOURN: I am advised that it is those children with an interim negative notice or a negative notice, both of which notices are current.

Hon NICK GOIRAN: Is it fair to describe the intention of proposed section 6(3) to be capturing persons who have an interim notice or a negative notice? I would describe that those are the two classes of persons, irrespective

of whether they are a child—no, proposed section 6(3) applies only to children. Is a child with an interim notice or a negative notice the type of person who is intended to be captured by proposed section 6(3)?

Hon MATTHEW SWINBOURN: Yes, member.

Hon NICK GOIRAN: To be clear, does the government still want the extra flexibility? Rather than putting this into the act now and saying that those are the two classes of person—those who have an interim negative notice or a negative notice, which will continue to be the scheme moving forward—does the government still want the flexibility to prescribe other classes of children?

Hon MATTHEW SWINBOURN: I am just trying to remember the precise terms of the member's question off the top of my head. He is now having trouble remembering it as well, is he not? I think it was about the flexibility that the government still wants to retain —

Hon Nick Goiran: Other than the interim negative notices and the negative notices.

Hon MATTHEW SWINBOURN: Yes. The answer to that is that the government wants to retain that flexibility in the event that future classes are identified.

Hon NICK GOIRAN: It will be certain unknown classes of person. Is proposed section 6(4) then, if you like, a near mirror of proposed section 6(3), insofar as while proposed section 6(3) intends to capture children, proposed section 6(4) intends to capture adults—that is, adults with an interim or negative notice?

Hon Matthew Swinbourn: Yes, member.

Hon NICK GOIRAN: Right. Again then, does the government want the flexibility to prescribe other classes by regulations and thereby potentially include these reportable offenders under the CPOR act or will that need to be dealt with by substantive changes to the act?

Hon Matthew Swinbourn: Potentially, yes.

Hon NICK GOIRAN: Okay, it is subject to amendments to that act dealt with by that particular agency. That said, to conclude my comments on clause 6, I again note that it has been subject to some examination by the Standing Committee on Uniform Legislation and Statutes Review. I thank it for its comprehensive work. It has noted that it is a provision with two Henry VIII clauses. It has said that it is justified on one occasion, but it is silent on the other. I made my observations earlier about the government's purported justification for the second one simply being that it already exists.

Clause put and passed.

Clause 7: Section 7 replaced —

Hon NICK GOIRAN: I am relaxed on how we propose to deal with the amendments to the clause. To kick things off, can the parliamentary secretary indicate the genesis of the amendments that are found on the supplementary notice paper? Particularly, are they intended to address any of the findings and recommendations made by the Standing Committee on Uniform Legislation and Statutes Review?

Hon MATTHEW SWINBOURN: I think that is correct. If I recall correctly, I do believe that the Leader of the House in her reply flagged the government's intentions to move amendments. The committee's report was concerned with the four Henry VIII clauses in clause 7 of the bill. 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 act. We acknowledge the committee's concerns on 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 currently in the act, as they allow for the prescription of WA class 1 and 2 offences, rather than just offences in other jurisdictions.

I advise that the government will support amendments to this clause to address the committee's concerns. The proposed amendments to clause 7 will remove from the bill the power to prescribe conditions for offences listed in schedule 1 or schedule 2 of the act, and the power to prescribe offences under a law of this state to be either a class 1 or class 2 offence under the act. For what it is worth, I also provide my thanks to the committee for its work, of course, and for providing the report in an expeditious fashion to assist the passage of the bill.

I refer to supplementary notice paper 81, issue 1. I move —

> Page 9, lines 10 and 11 — To delete "Schedule or prescribed by the regulations); or" and insert —
>
> Schedule); or

Hon NICK GOIRAN: I indicate on behalf of the opposition that we will be supporting the amendments, not only this one, but all four. I thank the government for moving them. I also thank the Standing Committee on Uniform

Legislation and Statutes Review for its excellent analysis of clause 7, which has provoked these amendments. I encourage all members to support all four amendments in quick sequence.

Amendment put and passed.

Hon MATTHEW SWINBOURN — by leave: I move —

Page 9, line 12 — To delete "this State or".

Page 9, lines 29 and 30 — To delete "Schedule or prescribed by the regulations); or" and insert —

Schedule); or

Page 10, line 1 — To delete "this State or".

Amendments put and passed.

Hon NICK GOIRAN: Thank you, deputy chair, for the expeditious chairing of those amendments.

Clause 7 deals with what is referred to as a class 1 offence and a class 2 offence. Yesterday, the Leader of the House helpfully tabled a document that provides a comparison between the existing act and the act as it will be once this bill passes, specifically with regard to class 1 offences—that is, to identify those offences that are not currently class 1 offences but will be once the bill has passed. At clause 7 we see the intention to replace the existing section 7 of the act with proposed section 7(1), which defines "Class 1 offence". This takes me to the concern that the opposition continues to have with what we understand to be seven Western Australians who have committed what will become class 1 offences. To be clear, we were told that those seven Western Australians have not committed existing class 1 offences, but have committed class 2 offences that will shortly be considered a class 1 offence. The parliamentary secretary has indicated that of those seven Western Australians, one person's working with children card check has expired. I do not necessarily need the precise date when the card expired, but can the parliamentary secretary give an indication of how recently that occurred?

Hon MATTHEW SWINBOURN: I can be precise. It was 22 September.

Hon NICK GOIRAN: Since 22 September, the cohort that is of particular concern to me is now a cohort of six. I refer to the one person whose card expired in September of this year. I take it that person does not presently have a card as their card has expired.

Hon Matthew Swinbourn: They do not have a card.

Hon NICK GOIRAN: They do not have a card at the moment. If that person were to apply tomorrow, they would be doing so under the existing scheme, because we know that even if this bill were to pass today and we rushed it off to the Governor tonight to get it signed, it is going nowhere, because we need another three to six months to prepare regulations. This person who has an expired card who we know has committed a class 2 offence that is shortly to be prescribed as a class 1 offence could apply any time in, let us say, the next three to six months and would have what I would describe as the protection or the luxury of the old scheme and not yet be subject to the new scheme, which would mean that the person would mandatorily receive a negative notice.

Hon MATTHEW SWINBOURN: That is correct, member. This person is entitled to apply under the law as it applies at the date of application. That is the rule of law in this country and in this state.

Hon NICK GOIRAN: I thank the parliamentary secretary for that response and confirmation. I wanted to identify that. I am going to continue to refer to the concerning cohort as seven people, because the fact that one of them does not currently have a card because it has expired does not change the concern. It is easier to continue to refer to the seven individuals for the purpose of our examination of the bill. Of course, I accept that at the present time, only six Western Australians in this category are authorised to work with children with a card that has been given to them by the department, because the seventh person's card has expired. Nevertheless, I refer to that cohort.

The parliamentary secretary indicated this earlier in his substantial response at the start of our consideration of clause 6 today. If I understand correctly—I do not have the benefit of the uncorrected *Hansard*—the offences that have been committed by those seven Western Australians are currently class 2 offences. We know that. We know that they will be classified as class 1 offences moving forward. We know that the department knows what those offences are but cannot presently provide that information to the chamber. I put aside the issues of identification and going into a great level of detail that would possibly identify people, because there are ways in which that could be addressed. However, as I understand it, precise information about the offences that were committed is not presently known. Would further work need to be done to ascertain that?

Hon MATTHEW SWINBOURN: We know what the offences are, but the context of the offending behaviour is not available to us. That is what I said.

Hon NICK GOIRAN: That is an important distinction; I thank the parliamentary secretary for making that. To be blunt, I am totally disinterested in the circumstances in which the offences occurred. The reason I am totally disinterested is that in approximately six months' time, when this law passes, for any other Western Australian who has committed one of these offences—for example, carnal knowledge of an animal; facilitating a sexual offence against a child outside of Western Australia; would you believe, murder—who applies for a working with children check card, the circumstances will be utterly irrelevant, because, mandatorily, they will receive a negative notice. That strengthening of the working with children check system is what has brought about the support of the opposition. We make no apologies for supporting the government's intention to strengthen the system at this time. We take objection to the fact that these seven Western Australians continue to be shielded by the old system.

If one of these seven Western Australians is a murderer, I do not care about the circumstances in which the matter occurred, and I am not going to spend any time interrogating the circumstances in which the department made the decision. The parliamentary secretary said earlier that Hon Simone McGurk, the Minister for Child Protection, is satisfied—I am paraphrasing—that the original decision was made adequately and appropriately. I am not disputing that. That is absolutely not the point of the opposition at this time. Our point is that the Minister for Child Protection needs to be satisfied that it is okay for a murderer in Western Australia to be able to continue to have contact with children. Evidently, the Minister for Child Protection and the member for Rockingham, every other cabinet member and every other member of this house does not think so, because we have all agreed to the passage of this bill at the second reading. There was no dispute whatsoever. We all said, "If you're a murderer in Western Australia, sorry, you don't get to work with children." We make no apologies for it. Yet the minister is not telling us in the house whether one of these seven people who will continue to be able to work with children is a murderer. She will not tell us that. She will not tell us whether the person has had carnal knowledge of an animal, or has facilitated a sexual offence against a child outside of Western Australia, or has been convicted of involving a child in child exploitation, or myriad other heinous offences.

I will park that to one side. I reviewed this list yesterday—I thank the Leader of the House for providing it—and I still find it unbelievable that some of these offences were not included in the original list, but that is another irrelevant point. What is within our control and the control of the government right now is to do something about those seven people. It may bring some satisfaction to those who are concerned about this point, not least of all me, if the parliamentary secretary were to give us the list of the offences committed by those seven people. It would not identify one person. It would be saying that this cohort of seven has offences for murder, possession of child-exploitation material or distributing child-exploitation material. Why could that group list not be provided at this time? It would not cause any problem by identifying an individual.

Hon MATTHEW SWINBOURN: I do not have that information. Obviously, people at the table have access to it, but I cannot give it to the member. My advice is that the list or the cohort is so small that identifying the offences presents a potential risk of identifying individuals and, therefore, identifying victims, so we are not in a position to provide that.

Hon NICK GOIRAN: I strenuously disagree with the parliamentary secretary on this point. I draw to the attention of the parliamentary secretary, the advisers and anyone else who is interested in this matter—hopefully, also the Minister for Child Protection—that it is a common practice of not just this government, but also many governments. I think it is an established principle for research that the relevant number is five. If information is given for a cohort of fewer than five, it is an established principle that one might risk identifying the individual.

In passing, I add that that principle is one that I have spoken against on many occasions because information can be provided in other ways without identifying an individual. I routinely ask questions in Parliament of the Minister for Child Protection, through her representative, about how many children in the care of the CEO have been reported as a missing person to police. Since the winter recess, the answer has typically come back that one child in the care of the state is missing. We should remember that about 5 000 children are in the care of the state. Usually, one is missing at any point in time and has been reported to police. On one occasion, two were missing and—thankfully, as we would hope—on one occasion when I asked the question, the response was zero. It would be wonderful if the answer were zero all the time. Interestingly, the other day, possibly Tuesday, during question time, the response was provided that it was five. We should remember that this is the same department—the Department of Communities. The department is quite happy to routinely tell me that one child in the care of the state is missing at the moment, and apparently that does not risk identifying the child. Incidentally, I agree with that, and I encourage the department to continue to provide this information. If there is a child whose personal circumstances at home were so bad that the state had to intervene, take them and become the stand-in parent, and the state has lost the child or the child has absconded and become a missing person, that information should be provided. If it is good enough for the community to know that little Cleo was missing, it is good enough for the community to know that a child in the care of the state is missing. I encourage the Department of Communities to continue to be transparent on this point, as it has been.

My point is that the same department cannot now say that it cannot tell us the list of offences of a larger cohort. Seven people in Western Australia are working with children at the moment—sorry, I will correct the record.

Six people working with children at the present time have committed a range of offences that were formerly or presently known as class 2 but will be, in due course, referred to as class 1. I see no good reason why that information cannot be provided, given what I have just said.

The department is happy to disclose that there is a child whose whereabouts are unknown and who is a missing person. When it does that, it does not say the name of the child, and nor should it—absolutely not. To be clear, I am not asking for the names of the six Western Australians; their names are not material at this present time. What is material is the type of offences they have committed, which we will be allowing. It is important, and I will continue to make the point for a little longer as we continue to examine clause 7, because it is within our power to do something about this. The government could put an amendment on the notice paper now to address this situation. Instead, we are rolling out the red carpet to these seven Western Australians, six who currently have a card and one who does not have a card yet but could quickly act to sneak into the old system.

We do not want to know who they are, but we want to know what kind of offences they have committed. Are they murderers? According to the schedule provided by the Leader of the House yesterday, murder is a class-2 offence at the moment. Strange and shocking as it might be for members of the chamber to hear, at the present time murder is not an automatic reason for a negative notice for the working with children check under Western Australian law. It will be once this bill passes, and we support that. Do we have seven murderers, six of whom are working with children, running around Western Australia? Are we not prepared to do anything about that at this moment in time? Will we just roll out the red carpet and say that is okay? Yesterday, when I was interrogating the Leader of the House about this matter, it was revealed that these persons have the potential to operate under the old scheme for a lifetime. Why? If they are clever enough to make sure that they renew—unlike the person who allowed theirs to lapse—they will be able to continue to do this in perpetuity. Why are we supporting this?

We are supporting the bill as a whole because it will massively improve and strengthen the system. We are supporting the bill because all these people—murderers, people who commit indecent assault or aggravated indecent assault, and people who have conducted a business involving sexual servitude and the like—will automatically no longer be eligible for a card. That is a good thing. Why is it okay for these seven Western Australians to not be in that cohort?

I accept that the parliamentary secretary is personally unaware of the information. I want to reiterate the comment I made at the start of today that I thank him for standing in for the Leader of the House. The parliamentary secretary is in a difficult situation. He not only is not in his ordinary portfolio, but also had to pick up this work halfway through its consideration by the chamber. I make no personal reflection whatsoever at this time. As a Legislative Council, we have it within our power to do something about this. Even though he does not personally know the offences that have been committed, I would like to think that one of the offences is not murder. Why can we not rule that out? Is it possible to do that at least? The information is available; people know the information, even if the parliamentary secretary does not have the information. Can we rule out whether the seven people have been convicted of murder?

Hon MATTHEW SWINBOURN: A couple of things: I do not accept that we are shielding those people or that the system is shielding those people, and we are not rolling out the red carpet. I know that is the member's rhetoric, and I share his concerns about the need to protect children. The member knows that I am a father, I have children, and the member is also a father and has children. Any risk to children in the community is of serious concern to me and to the government, but we are not shielding those people. They were assessed under the system, and I explained that when I made my opening remarks. It is not the case that they are simply being given a free pass; that is not the case at all. They fall under the existing system, which is the current lawful system. When the department did its work it did not—it is strange wording—establish that these seven people were an unacceptable risk of harm to the community when undertaking child-related work. Under the current system, they were eligible to get a working with children permit. That work has been done.

We propose, under the Working with Children (Criminal Record Checking) Amendment Bill 2022, to change the system to raise the bar appropriately. I cannot disclose to the member anything about the offences, including or excluding whether it is murder. I cannot do that. My instructions are that I cannot provide the member with any information on the offences; I do not have that information. I can say that the most recent offence dates back to 2004, and that most of the offending happened in the 1990s. That is the extent to which I can carry this matter. The member has a very strong view on this matter, and I think that view is reasonably and faithfully held, but I am not going to be able to take it a lot further. The member will want to make a number of points, but I am in a position in which I cannot take this matter any further to provide him with the details he is seeking.

Hon NICK GOIRAN: I accept that the parliamentary secretary has indicated that he does not know what the offences are, but he has kindly drawn to our attention that the most recent of the offences committed by these seven Western Australians was in 2004, and that in large part the other offences occurred in the 1990s. I accept that the parliamentary secretary does not know what specific offences they were convicted of. Does the Minister for Child Protection know?

Hon MATTHEW SWINBOURN: The minister knows the offences, but she does not know any of the circumstances of the offending.

Hon NICK GOIRAN: Will the minister know whether one of the seven is a murderer?

Hon MATTHEW SWINBOURN: This is a reductive process that the member is going through.

Hon Nick Goiran: I give an undertaking that I'm not intending to go through every single one of the offences; I'm just trying to establish this point clearly.

Hon MATTHEW SWINBOURN: Logically, if the minister is aware of the offences, she is going to know which offences they are not. In that instance, she has that information. Again, I am not going to keep narrowing this down—the member has indicated that he does not intend to do that—but I have indicated to the member that if the minister knows what the offences are but not the circumstances of the offending, then she will, by logical deduction, know the range of offences that they are not.

Hon NICK GOIRAN: I accept that we cannot take this any further with the limitations we have. I do not have the numbers in the chamber to change the effect here, and the parliamentary secretary does not presently have the authority to move any amendments on this point, not least because he is not privy to the particular offences. However, the minister who has overall responsibility for this matter is Hon Simone McGurk. It is now on the parliamentary record that she knows what the offences are and she knows whether these seven people have committed aggravated indecent assault; sexual offences against a child of or over 16 years of age by a person in authority; a sexual offence against a child of or over 13 and under 16 years of age; or, indeed, whether the person is a murderer, amongst other things. This is the person who has responsibility for this; it is not the parliamentary secretary who ordinarily represents the Attorney General in this place, it is the Minister for Child Protection, Hon Simone McGurk. In my view, she is rolling out the red carpet to these seven Western Australians to allow them to continue to work with children in perpetuity—not just for the next five minutes, or for as long as their working with children card is valid, which will be, at best, the next three years; no, she is rolling out the red carpet indefinitely. We know that from the response that was provided yesterday.

I accept what the parliamentary secretary said about being unable to take this matter any further at this time, but there are 95 members of Parliament, and only one can do something about this, and that is Hon Simone McGurk. She can make sure that these seven Western Australians, whether they are murderers or people who have had carnal knowledge of an animal —

A government member: Oh, for God's sake.

Hon NICK GOIRAN: It is uncomfortable, is it not?

Hon Lorna Harper: It is when you keep saying it.

Hon Sandra Carr: Especially when there are students in the room, or there were, earlier.

Hon NICK GOIRAN: I take the point made by honourable members. Since it is now on the parliamentary record, I indicate that I was unaware that there may have been some students in the chamber at that time. I think the members make a fair point. In actual fact, the irony is that they are underscoring the problem here. We have a Minister for Child Protection who is rolling out the red carpet with regard to these offences committed by these Western Australians. It is known to her what the offences are. If it is making people uncomfortable, it is making me uncomfortable, and that is why I keep raising the point. I reiterate at this point that the opposition supports the intent of the bill. The opposition supported the bill in the second reading debate, and if there are no further amendments, we will support it in the third reading. Why? It is because, on the whole, it is a good bill. It will ensure that any other murderers or any other person who has committed one of these offences will not be able to get a working with children check card.

The parliamentary secretary, when raising the government's defence on this point, drew to our attention that at the time the decision was made to allow these people—whether they were murderers or not—to have one of these cards, it was the view of the people who made the decision that they did not pose an unacceptable risk. That was the test that was applied. The actual test is: is there acceptable risk of harm to children? They said that it was a not unacceptable risk; that was the decision that was made. I accept that that was the decision that was made, whenever it was made, whether in the 1990s or in 2004. It must have been made after 2004, when the system began. I accept that that decision has been made by one or more persons at some time over the last 18 years, but we as a Parliament are presently saying that it is an unacceptable risk if the applicant is a murderer. That is what this bill is saying. The risk is so unacceptable that we do not want the decision-makers to spend a moment of time contemplating the circumstances around the offence; we are saying to them, as the Parliament, "You, the decision-maker, will as a matter of law automatically issue a negative notice", such is the strength of our feeling about the unacceptable risk. However, the Minister for Child Protection is giving a free pass to these seven Western Australians.

I understand the point made by the parliamentary secretary: the government does not accept that it is a free pass or that it is rolling out the red carpet, but I put it to the government that that is the effect of what is happening here. It might not be a description that the government is comfortable with, but that is what is occurring. As the parliamentary secretary said, we will not be able to take this matter any further while we are considering clause 7. These are matters that the Minister for Child Protection will have to defend in public. After this bill passes, she will need to explain to the people of Western Australia why is it okay that there are, potentially, seven murderers in Western Australia running around with the capacity to be able to work with children—six have a current card and one can slip in an application at any time in the next three to six months. She will need to explain that, and if she says that they are not murderers, she will have to explain what offence they committed that she is comfortable and satisfied with that justifies them continuing to have a card.

The reason I have made some effort to labour this point is that when it was first drawn to my attention, when the opposition received the briefing—an excellent briefing, it must be said, that was held by the government and the advisers—that this was a possibility, I was deeply concerned. I spent some time trying to understand what would be the rational basis for this. That was some time ago—remember the bill was introduced in August, as I recall. The briefing for the opposition would have been held, most probably, in that same month. Since that time, I have been unable to contemplate what would be the rational basis for it. There have been multiple opportunities for the government to respond to this point. I might add that this point was raised when this bill was considered in the other place. The response by the Minister for Child Protection was almost indicative of a minister who was not even across the point. At least the Leader of the House yesterday and the parliamentary secretary today have made some effort to try to explain why we will allow this to occur, but I must say that it is not persuasive, and I would welcome any members who feel that it is persuasive to go and communicate it to the people of Western Australia—that is, explain to them why it is that we will allow these seven Western Australians to be treated specially in this way.

We are saying to anyone else that if they are a murderer who is Western Australian, they pose an unacceptable risk and are an unacceptable risk to children, and so they will not be able to work with them—except for these seven. These seven will have a different scheme. For the duration of their lives, they will have that benefit as they managed to sneak into the system at an earlier stage.

I will conclude on this point before we continue our further examination of clause 7. This matter could easily be put to bed because if it is the case that these people do not pose an unacceptable risk and that their breach of the law—we are told mainly occurred in the 1990s—was what must be described, then, as of a minor nature, then just say what it is. It is obviously not going to be murder. I mean, it would be extraordinary to think that that would be the offence that one of these people committed in the 90s and then somebody said, "That is okay. They do not pose an unacceptable risk." It is obviously not going to be murder, so what is the offence that occurred?

The DEPUTY CHAIR: Hon Nick Goiran.

Hon NICK GOIRAN: What is the offence that has taken place so that we say, "Well, it is an acceptable risk of harm to children if you have committed one of those offences in the 90s." But if a person has committed it in 2022, that is not acceptable. I would be fascinated to know what that particular offence is. What is apparent is that it must be an offence that existed in the 90s and not one that has been in place since then, so it probably rules out any of the child exploitation matters because those offences, as I understand it, did not exist in the 90s. Child exploitation material was a concept that was introduced, as I recall, in the thirty-eighth Parliament, so that was not in the 90s. Nevertheless, as the parliamentary secretary says, we are not able to take it any further.

This will now need to rest with the Minister for Child Protection, Hon Simone McGurk, who will need to explain to the people of Western Australia why it is okay for, potentially, seven murderers to be able to work with children. If it is not murder, what is the offence that these people have committed? Was it facilitating a sexual offence against a child outside of Western Australia? One would assume not, because how then could a decision-maker make a decision to say that that person is not an unacceptable risk when they have been found guilty of a sexual offence against a child in another jurisdiction? It does not leave too many options, it must be said, as to what would be this class 2 offence, performed in the 90s, that would justify this moving forward.

This is a question that the Minister for Child Protection will need to respond to in the public domain given that there is an unpreparedness by government to shift on this, I think, overt mistake that has been made here—one that can be fixed. I accept that there is no malice on the part of the minister or any of the government members or any members of this place. I accept that there is no malicious intent in allowing these seven Western Australians to have a free kick here, but it is quite extraordinary that these seven Western Australians will have better rights than other Western Australians once this bill has passed. They will have first-class rights and everyone else will be, effectively, treated like a second-class citizen in comparison with these people who have committed these types of offences. I find that repugnant. I distance myself from it completely and will continue to prosecute this argument with the Minister for Child Protection outside the chamber.

I turn to clause 7—a very substantial clause that defines a class 1 and class 2 offence. The end of proposed section 7 states —

> (3) For the purposes of Schedules 1 and 2, an offence falls within the ambit of this subsection if —
>
> (a) the victim of the offence is a child who has reached 14 years of age; and —

There is a second qualifier here —

> (b) the age difference between the victim and the offender does not exceed 5 years.

The explanation, as I recall, that was provided by the Leader of the House in the reply to the second reading debate seemed to indicate that this was not the term that she was using—this was the impression that I got from the response—but that this was the way in which the government was trying to futureproof the bill in the event that we achieve some form of national consistency, because using 14 years as the minimum age of the victim would assist in the national consistency aspiration. That is my recollection of what the minister said yesterday.

We have said "murder" a few times today, so I will use that as the example. What happens if a murder victim is a 13-year-old child? Murder will be class 1 offence. Does that mean that the person who is applying for a working with children check will not automatically receive a negative notice?

Hon MATTHEW SWINBOURN: In answer to the member's question, I am advised—if I can get this correct—that it does not apply to murder in the sense that murder does not fall within the category of things that would be covered by this clause. I take the member to clause 45, "Schedule 1 — Class 1 offences". That refers to section 275, the offence for which is murder and the condition of which is that the victim is a child. I am told that if the victim is a child, the provision at proposed section 7(3) will not apply. Does that make sense?

Hon Nick Goiran: Not really.

Hon MATTHEW SWINBOURN: Is that correct? Sorry, I am jet lagged. Perhaps the member can repeat his question and I can answer it with a simple yes or no, if it is a yes or no answer. I do not want to say no when I mean yes and yes when I mean no because of the way the member phrased the question.

Hon NICK GOIRAN: Why do we not deal with it this way, parliamentary secretary: we can go to clause 45, "Schedule 1 — Class 1 offences", which the parliamentary secretary has kindly drawn to our attention. I agree with the parliamentary secretary that at page 87 of the bill we can see that one of the schedule 1, class 1 offences is section 279 of the Criminal Code, which is the offence of murder. I agree that the condition put on that is that the murder victim must be a child. Are we to read proposed section 7(3) as a limitation on what is in schedule 1 so that for section 279, the offence for which is murder and the victim is a child, we could say that the victim was a child of at least 14 years of age?

Hon MATTHEW SWINBOURN: No.

Hon NICK GOIRAN: I will return to proposed section 7(3), which says —

> For the purposes of Schedules 1 and 2, an offence falls within the ambit of this subsection if —
>
> (a) the victim of the offence is a child who has reached 14 years of age …

A 13-year-old victim would not fall within the ambit of that proposed subsection, according to the bill. I do not know how else it could be read. It states that the victim of the offence is a child who has reached 14 years of age. Therefore, a 13-year-old, a 12-year-old, a 10-year-old or a five-year-old child who is murdered would not fall within the ambit of the proposed section. Is that right?

Hon MATTHEW SWINBOURN: We have to read proposed section 7(3)(a) and (b) conjunctively.

Hon Nick Goiran: Yes, but the starting point is the age. You don't even get to the second point about the five-year age difference until you first of all establish the age of the victim, and the victim has to be at least 14 years of age.

Hon MATTHEW SWINBOURN: Right, and the age difference between the victim and the offender does not exceed five years. Let me just get some more advice. Because we are talking about murder, I am told that this provision will not apply because it is not a condition specified in here. If we look at the table at clause 45, we can see that above "murder" is a reference to section 220 of the Criminal Code, which is possession of child exploitation material. The condition is that "The offence does not fall within the ambit of section 7(3)". The bill makes a specific reference there, but proposed section 7(3) is not specified for the section 279 offence of murder, the condition for which is that the victim is a child. Does that make sense to the member?

Hon Nick Goiran: Sort of.

Hon MATTHEW SWINBOURN: It is not making much sense to me!

Hon NICK GOIRAN: I have to say that it is a rather convoluted way of drafting.

Hon Matthew Swinbourn: We will blame that agency we never name. It never appears.

Hon NICK GOIRAN: That is right. I think the parliamentary secretary is saying that the schedule on page 87 states that the condition is "The offence does not fall within the ambit of section 7(3)", and that phrase is defined as what we see here at proposed section 7(3); that is, 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 five years.

Hon Matthew Swinbourn: That's correct.

Hon NICK GOIRAN: I have to say that that is not readily apparent, with all due respect to the drafters. Why they have chosen to do it that way is curious. Nevertheless, at least we have clarified it now, which is part of our job. Some of the other offences in the schedule include procuring a person to be a prostitute; procuring a person to have unlawful carnal knowledge by threat, fraud or administering a drug; murder, which we have discussed; and an act intended to cause grievous bodily harm or prevent arrest. The condition for those offences is simply that the victim is a child. Why are we taking a different approach to those offences and not imposing this 14-year age minimum?

Hon MATTHEW SWINBOURN: I hope this helps the member; I think I might have had an epiphany. This is a very complicated way of dealing with peer-to-peer offending in relation to child pornography issues so that we are not treating peer-to-peer offending as seriously by classifying it as a class 1 offence when the victim and the offender have proximate ages. Offences like child murder will not apply because we clearly do not want to have different categories for those serious offences. Peer-to-peer offending in relation to child pornography is a modern problem because of mobile phones. Peer-to-peer offending is not, for example, necessarily considered to be paedophilia, as it might be when the victim is a 14-year-old child and the offender is 45 years. That is why we want to treat children and young people differently from the way we want to treat a mature adult and the young victim. Does that make sense to the member now?

Hon NICK GOIRAN: Yes. I can understand the intent. If the victim of the offence were a six-year-old, the offence would fall within the ambit of the subsection.

Hon Matthew Swinbourn: I am being told that if the victim were a six-year-old, that would not fall within the ambit.

Hon NICK GOIRAN: That is what I want to tease out here. We are concerned about all child victims. Let us say, for instance, that the child is as young as six, five, four or three years. Let us make sure that there will be no unintended consequences. If a six-year-old child is the victim, not the offender, and they have been involved in producing child exploitation material, as an example, or just involved in child exploitation and the offender is an adult—an adult has involved a six-year-old in producing child exploitation material—will the adult be captured by schedule 1 class 1 offences?

Hon MATTHEW SWINBOURN: Yes, they will be captured. It will remain a class 1 offence. There will be no modification.

Hon NICK GOIRAN: Is that because the offender in that situation with a six-year-old is more than five years older than the victim?

Hon MATTHEW SWINBOURN: Neither condition is satisfied. The victim of the offence is a child who has reached the age of 14 years. The member used the example of a six-year-old; they would not have satisfied that condition. It is conjunctive, and the age difference between the victim and the offender should not exceed five years. If the circumstance were that the age difference is five years—for example, if one contemplates a situation in which the victim is 10 years and the offender is 15—they would not be captured by either condition because they do not satisfy the first limb, which is that the victim has to be a child who has reached the age of 14 years. This provision is to deal with that cohort of peer-to-peer offenders who are 14 years to—if my sums are right—19 years. It is debatable when it is a 14-year-old and 19-year-old, but a line has to be drawn somewhere. Obviously, this department probably deals with a lot of children and young people who fall within that category because 18-year-olds and 19-year-olds are adults but they are still young people. It does not mean they will get a working with children permit; it will just move them from the category of class 1 offences for which, as we have already identified, they will not get the permit to a category for which a discretion can be used to determine whether they can obtain a permit.

Hon NICK GOIRAN: Is it intended that the word used in proposed section 7(3)(a) on page 10 line 17 of the bill is "victim" rather than "offender"? Why is the threshold used the age of the victim rather than the age of the offender? As I understand it, we are trying to carve out certain circumstances in which class 1 offences will not apply. When we are carving them out, we are intentionally trying to ensure that we do not capture peer-to-peer offences by young people. Should the section read: the offender is a child who has reached 14 years of age and the age difference between the victim and the offender does not exceed five years?

Hon MATTHEW SWINBOURN: I may not answer the member's question directly but this might help. The question was asked whether the carve out is relevant to child offenders. The carve out will be relevant only to class 1 offences committed by an adult. Stay with me here. Under section 12 of the current act, when the offender is under the age of 18, they are charged or convicted as a juvenile and an automatic negative notice is not triggered.

That provision deals with juvenile offenders. In this instance, we are talking about people aged 18 or 19 years. It is a reasonably small cohort. Why the word "victim" was used rather than "offender" and why it was not drafted differently to make it more apparent that it applies only to 18-year-olds or 19-year-olds is probably a mystery for the ages. I am trying to give the member a clear understanding of who this provision will actually apply to. The first is adult offenders who are either 18 or 19 years when the victim of the offence is a child who has reached 14 years—the maths of that. If the offender were 17 years, they would be dealt with under section 12 of the act, not this provision.

Sitting suspended from 1.00 to 2.00 pm

Visitors — Montessori School Kingsley

The DEPUTY CHAIR (Hon Peter Foster) Welcome back, everybody. I hope we are all refreshed and ready for the afternoon. I was going to acknowledge school students; however, they appear to have left. We did have some year five students from the Montessori School Kingsley here. I hope they enjoyed their very brief stay with us.

Committee Resumed

Hon MATTHEW SWINBOURN: Before we suspended for lunch, we were trying to unpack proposed section 7(3). As I indicated to the member behind the chair, I have something to hopefully make apparent what the proposed section will try to do and its limitations. Proposed section 7(3) has been included to cater for peer-to-peer sexual offending by young people. It will provide discretion to the CEO to conduct an assessment when offences that would otherwise trigger an automatic negative notice were committed in a peer-to-peer scenario. Proposed section 7(3) is only relevant to offences that have the appropriate specified condition in proposed schedule 1 or proposed schedule 2. These are sexual offences only. For example, proposed section 7(3) is not referenced as a condition for murder or any violence-related offending.

If the offence in proposed schedule 1 has a condition listed against it that does not fall within the ambit of proposed section 7(3), then if that condition is satisfied and proposed section 7(3) does not apply, the offence remains as a class 1. Is that clear to the member? I am just trying to make eye contact with him so I can get an understanding. If the offence in schedule 2 has a condition listed against it that does not fall within the ambit of proposed section 7(3), then if the condition is satisfied and proposed section 7(3) does apply, the offence is a class 2.

Proposed section 7(3) applies only when the child victim is 14 years or older. Fourteen years was chosen partly for national consistency, as previously identified, but also because any sexualised offending, whether peer-to-peer or not, with a child younger than 14 years should be considered to be automatically unacceptable. Proposed section 7(3) applies only when the two parties are of a similar age cohort of no more than five-year age difference. Five years was chosen as a logical cut-out for two people to be considered peers. I have to make a slight correction to what I have said before in saying that it applies only to 18 and 19-year-olds. Although that is correct, it is not entirely correct. Due to the five-year gap, we can think about it this way: if the victim was aged 14 years, the upper limit would be 19 years; if the victim was 15, it would be 20; if the victim was 16, it would be 21; and if the victim was 17, the upper limit would be 22. Obviously, a 22-year-old offender committing an offence relating to any child below the age of 16 years would not receive the benefit of the CEO having a discretion.

Hon Nick Goiran: They would automatically receive the negative notice.

Hon MATTHEW SWINBOURN: That is correct, yes. If either of the elements of proposed paragraphs (a) or (b) are not met, proposed section 7(3) will not apply and the offence will not fall within the ambit of proposed section 7(3), and the offence will remain as a class 1. I think this is an important protective element here: if proposed section 7(3) does apply, and the offence is therefore a class 2, an assessment would be conducted and a working with children card could be issued only if the CEO found exceptional circumstances that indicated that a negative notice should not be issued. I think it would be fair to say that the provision that we are trying to create here is to avoid an unjust outcome in a particular circumstance. I cannot imagine that we are talking about a large cohort of offenders who would benefit from this provision. However, I do think that we should always be trying to mash everything with a big sledgehammer. Having discretion and the exceptional circumstances test are reasonable, and they will still provide an exceptionally high level of protection to children, and not allow a gateway for inappropriate people to attain a working with children card.

Hon NICK GOIRAN: I thank the parliamentary secretary and those assisting him for the explanation. He mentioned a type of element that we find here in proposed section 7(3). When we look at proposed schedule 1, I think the parliamentary secretary said it is intended to apply to sexual offences, and that it is not intended to apply to what we would describe as other violent crimes like murder.

Hon Matthew Swinbourn: Yes. Correct.

Hon NICK GOIRAN: I note on page 88 of the bill, in clause 45, consistent with what the parliamentary secretary has said, a number of what I would describe as sexual offences are listed. It reads relating to provisions of the Criminal Code —

s. 321	Sexual offences against child of or over 13 and under 16	…
s. 321A(4)	Persistent sexual conduct with child under 16	…
s. 323	Indecent assault	…
s. 324	Aggravated indecent assault	…
s. 325	Sexual penetration without consent	…
s. 326	Aggravated sexual penetration without consent	…

When turning to page 89, the first item is sexual coercion. Why does that not have the condition relevant to proposed section 7(3)?

Hon MATTHEW SWINBOURN: The advice was that when considering the elements of the offence for that particular one, it was not considered appropriate to include that particular provision.

Hon NICK GOIRAN: I can understand that, parliamentary secretary. In other words, when we are talking about this group of offences, which have been referred to this afternoon as peer-to-peer offences—it is really a reference to what could be described as older young people—we are trying to carve out a situation in which it will not be a mandatory negative notice, but there will still be a discretion to give a negative notice —

Hon Matthew Swinbourn: With the exceptional circumstances.

Hon NICK GOIRAN: — with the exceptional circumstances. But we are saying that in the case of sexual coercion, there is nothing to discuss; there will be no exceptional circumstances. If someone is guilty of sexual coercion, that is it; they are not working with children.

Hon Matthew Swinbourn: Yes.

Hon NICK GOIRAN: When the victim is a child, it has to be said.

Hon Matthew Swinbourn: Yes, that is right.

Hon NICK GOIRAN: Help us understand why we will be allowing aggravated sexual penetration without consent to have the benefit, shall I say, of this peer-to-peer exception?

Hon MATTHEW SWINBOURN: We do not have the definition of "aggravated" before us. My understanding is that it is defined in the Criminal Code. The general explanation of why this was included is that when elements of that offence were looked at, circumstances were contemplated that could justify, even if that offending had occurred, the CEO having discretion. I cannot give the member details, but that is the general thrust of it. As the member can see, there is a long shopping list of offences here, but that is the explanation. I know it is hard to imagine, but it was thought it would be appropriate for the CEO to still have a discretion with exceptional circumstances, noting that it is a presumption against rather than for the issuing of a working with children card.

I think there was a line drawn with these offences in that they must—I am sure the advisers can tell me otherwise—give consideration to whether it falls into the exception camp or not, and there would have been ones that were a yes, a no or a maybe. At the margins, we are going to find that reasonable minds will disagree about whether they should be exceptions. We will always come back to the point that this does not open the gate for a working with children card because of the other protections provided in the act, which are the presumption that they would receive a negative notice and it would be only in exceptional circumstances that it could be issued. Again, as I said, I can see why the member is asking, because it seems on the face of it to be a very serious offence, but we are talking about actions between two children who might be very close in age and, not knowing the circumstances of the aggravation, I think it is appropriate to err on the side of providing a discretion rather than a flat out no. We are talking about, as the member identified, older children or I presume the member meant young adults. The consequences for them not receiving a working with children card could be lifelong and so, obviously, retaining the discretion in those circumstances is appropriate as opposed to a much older person who has the benefit of maturity and experience, and less impulsive decision-making. If a person is 55 years old and they have engaged in behaviour like that, I have no problem whatsoever with there being no discretion in that regard. There is a balance. If the member wants to push this issue more, he can, and we can try to get a more precise answer, but that is the general view at the moment. It will just take a little time to formulate the exact reasons why that particular offence was included on the discretion side.

Hon NICK GOIRAN: Yes, parliamentary secretary, I think we should pursue this a little longer because the victim of the cohort that we are considering is at least 14 years of age. We have established that if the victim is less than 14 years of age, we do not need to concern ourselves with regard to what I describe as a carve-out provision, in the sense of shifting it from a mandatory negative notice to a discretionary negative notice. I take the point that the parliamentary secretary made, that it is not that there will be no protections. I would probably disagree with him about whether the gate is open. I think the gate will be opened as a result of this, but I accept that there will be a gatekeeper.

The gate will be completely shut in the circumstance of, for example, sexual coercion or aggravated sexual coercion. We are saying that as soon as the victim is a child of any age, it does not matter whether it is 10 or 15 years, the fact that there has been sexual coercion or aggravated sexual coercion means that they would be immediately ineligible for a working with children card. When it comes to sexual penetration without consent, irrespective of whether it is aggravated or not, in sections 325 and 326 of the Criminal Code, as found on page 88 of the bill, I note that one of the other qualifiers is that the victim is a child. That is one and the same qualifier as exists with sexual coercion and aggravated sexual coercion. We are always talking about a person who is applying for a working with children check. They are applying for that and they have been guilty of a crime against a child. That is consistent, irrespective of these provisions.

The distinction, however, is that if the child is older than 14 and it is sexual coercion or aggravated sexual coercion, too bad—mandatory negative notice. But if it is sexual penetration without consent or aggravated sexual penetration without consent, we will be opening the gate, albeit with a gatekeeper. An offender applying for a card, also an applicant in this situation—we could use the terms interchangeably at this time, but I will refer to them as an offender because that probably heightens the concerns I have here—could be 20 years of age and their victim 16 years of age. That is a child, albeit a child who is able under the laws of Western Australia to consent. In this particular instance, notwithstanding the fact they are qualified under our law to give consent, they have not given consent under section 325 and 326 of the code.

Let us not be concerned at this point in time whether there were circumstances of aggravation. The point is that the victim is 16 years of age and they have not consented to sexual penetration by a 20-year-old. As I understand it, it will be possible for that person to obtain a card, but if the 20-year-old sexually coerced the 16-year-old, they would not be able to.

Hon MATTHEW SWINBOURN: That is correct. I want to add to that. I had the advice but I must have missed the context. It does not change the points the member has made but it qualifies what I said previously. If the victim of an act of aggravated sexual penetration without consent is below the age of 16, they cannot give lawful consent. There are circumstances in which there is willing sexual conduct. It may involve acts of aggravation but it may also be willing between peers—if I can use that term. However, under the law consent cannot be given. We have to make the distinction between "consensual" as a legal concept and "willing" as the act between two people. In that scenario, we are talking about 14 and 15-year-olds because they are unable to give lawful consent to sexual activity, but the example that the member gave in which the person was 16 years old and the offender was 20 years old does not fall within that category because the 16-year-old can give lawful consent but refused to in that scenario. I think those circumstances would be considered much more serious when the chief executive officer makes the assessment. I will use this example because it helps my argument and it is probably realistic. Even without aggravation, it is an offence for a 15-year-old and a 16 or 17-year-old to engage in willing sexual behaviour. It may involve aggravation but there is still no ability for them to provide consent so that scenario will occur without consent because consent is a lawful concept rather than a state-of-mind concept.

I think the Department of Communities kept that in mind when it was making the distinction between these two offences because of the field that is covered. Those who engage in non-consensual sex with a person who is 16 years or over get the benefit of that. Again, I come back to that point. I do not want to labour the analogy but the member said that the gate is open. I agree that there is a gatekeeper but I would say that the gate is closed and the gatekeeper has to open it. In the other scenario, there is no gate because there is no possibility. I do not want to labour the metaphor but there is no gate in those instances. In this instance, the gate is there and it is closed, and it is going to take a lot of convincing for it to be opened on the victim's behalf.

Hon NICK GOIRAN: I will conclude my questions on clause 7. Once this bill is passed, we will see a number of applications that will be mandatorily refused. That refusal will be expressed in the form of a negative notice. Has there been any modelling on or is there an expectation of how many applications will require the CEO to assess the risk and exercise discretion? This goes to the issue of resourcing because that is obviously more intensive work than simply checking a person's criminal record to find out whether they have actually contravened one of these particular provisions and saying, "This is a mandatory provision; here is a negative notice." Is there any data or modelling that can shed light on that?

Hon MATTHEW SWINBOURN: No modelling has been done on that but the department has thought conceptually about how this will impact on its work. I believe an answer was provided yesterday that mentioned that the Department of Communities will go to Treasury for more resources to deal with the reportable conduct scheme. I do not have a recollection of that contribution; the member was here but perhaps I was not. The department assesses 146 000 applications a year. Only a small portion of those applications require assessment. Obviously, a range of those that might have previously required assessment will now be mandatorily rejected, which will free up some resources, but the impact of discretionary costs is something it will monitor to see how it goes. As the member knows, when new legislation is introduced there is a bedding-in period so that we can see where changes sit on these

particular things. As I say, the bill will certainly make it a lot simpler to deal with those who commit a class 1 offence—what is the word I am looking for?—very directly.

Hon NICK GOIRAN: This is my final question on clause 7. By virtue of the amendments that have been moved, because we now have clause 7 before us in an amended form, do any provisions remain in clause 7 that can be modified in any way by regulation?

Hon MATTHEW SWINBOURN: Proposed sections 7(1)(b) and 7(2)(b) state —

> an offence under a law of this State —

The amended bill will not include "this State or" because that was removed. The amended clause provides for —

> An offence under a law of … another jurisdiction prescribed by the regulations …

When other jurisdictions change their laws, this will essentially allow the legislation to be prescribed under our regulations, if appropriate. Does that answer the question?

Hon Nick Goiran: Yes.

Hon MATTHEW SWINBOURN: I do not have the amended clause in front of me but we removed the words "this State or" so the new sections are restricted to legislation from other jurisdictions.

Clause, as amended, put and passed.

Clause 8 put and passed.

Clause 9: Section 9A amended —

Hon NICK GOIRAN: Clause 9 inserts proposed section 9A(2)(a) that states —

> … does not apply and the approved form may include provision for information about the student's education provider …

Was consultation undertaken with education providers specifically about this provision?

Hon MATTHEW SWINBOURN: No. Education providers were not consulted because this provision is more facilitative for their existing role by allowing it to be done online. The member might argue otherwise, but in this instance I think that education providers will be happier with the more streamlined process that will be available to them.

Hon NICK GOIRAN: What process is currently undertaken for students in child-related employment, and how will that change as a result of this provision?

Hon MATTHEW SWINBOURN: It is currently a paper-based system. This bill will facilitate the development of an online system. I am advised that the paper-based system will still be available to those who are not online—it is hard to imagine—so that they will still be able to access their certifications.

Hon NICK GOIRAN: Is the online application system ready to go or is this one of those things that needs to be worked on over the next three to six months?

Hon MATTHEW SWINBOURN: It is still being developed but it is anticipated that it will be ready to come online when these provisions come into force.

Clause put and passed.

Clause 10: Section 9 amended —

Hon NICK GOIRAN: Clause 10, amongst other things, inserts proposed section 9(3A), which reads —

> The approved form may require the provision of any other information the CEO thinks fit.

What type of information are we talking about here?

Hon MATTHEW SWINBOURN: My advisers are not sure at this point in time, but it will be limited to the information relevant to the purposes of the act. I am sure that that will give the member great comfort.

Hon NICK GOIRAN: To the extent that there is any fetter on the discretion of the CEO to require this information, it is limited to whether the information is relevant for the purposes of the act. If there were a disagreement between the CEO and the applicant in respect of this requirement to provide any information, what remedies would be available to resolve the impasse?

Hon MATTHEW SWINBOURN: I am pretty sure that the member knows the answer to this already, but I know that he is asking the question for the purposes of *Hansard*. In the first instance, if somebody were to say that this is outside the ambit of the act, they could go back to the department and try to have that argument. However, the

member is contemplating circumstances in which the department or the CEO says, "No, that is want I want." In that instance, like with all administrative action, and it is probably a big hurdle, a person could go to the Supreme Court to seek a prohibitive writ of either mandamus or certiorari, whichever is required. It is not my particular area of expertise, but those prerogative writs will remain available. As I say, from a legal perspective it is a big hurdle to jump. Of course, under these circumstances if they wanted to, they could also—this has not come from the advisers but I know that it is a matter of fact—seek the assistance of the Ombudsman because this is an administrative act and the Ombudsman might be in a position to engage on the matter and form a view, and that might resolve the matter. Those are the kinds of avenues that will be available to someone.

Hon NICK GOIRAN: Are any special measures in place to ensure that the information that will be required by the CEO and then provided by the applicant is safely stored and used only for the purposes for which it was originally provided?

Hon MATTHEW SWINBOURN: I do not know whether we can call the measures special, as such, but they are used throughout government to ensure that people's information is kept as securely as is practical in a modern world in which criminals spend a great deal of time trying to access people's personal and private information.

Hon Nick Goiran: You're not with Medibank by any chance, are you?

Hon MATTHEW SWINBOURN: No, I am not, fortunately, but my sympathies to anybody who is. The Office of Digital Government is the agency that has overarching responsibility. This provision has been designed in conjunction with that office to ensure, to the extent that we can, that that information is held safely and securely. If anyone misuses the information, it is an offence under section 39 of the existing act with a penalty of $24 000 and imprisonment for up to two years. If someone misuses that information, for that kind of offence, there are—I would not say harsh—significant penalties.

Hon NICK GOIRAN: I presume that if the CEO were aware of this misuse then, amongst other things, they would report the matter to the Corruption and Crime Commission.

Hon Matthew Swinbourn: If it is misconduct, they are obliged to do so.

Hon NICK GOIRAN: For misconduct of that sort, they may even directly report the matter to the police.

I see here in new section 9(3)(b) that the approved form must include the provision for —

> information about the person who employs, or proposes to employ, the applicant in child-related employment.

Is that consistent with the existing provision or is that a change to the existing provision?

Hon MATTHEW SWINBOURN: It is a change, but I think it will make sense to the member when I explain it. The reason for the change is that currently the hard-copy form provides information for the employer to be —

Hon Nick Goiran: Certified.

Hon MATTHEW SWINBOURN: Yes. It is put down and then the employer certifies that form. This provision is to facilitate moving online. When a person completes the form and provides it to the CEO, they are able to go to the employer to seek the employer's verification of that information online.

Hon NICK GOIRAN: I thank the parliamentary secretary for that explanation. My last question about clause 10 refers to the intention to insert new section 9(5) —

> The regulations may prescribe other requirements that apply in relation to an application or the consideration of an application.

What types of requirements are intended to be prescribed?

Hon MATTHEW SWINBOURN: At the moment, nothing is being proposed. It is a facilitative provision in the event that it will be required.

Hon NICK GOIRAN: Can the parliamentary secretary explain the rationale behind including proposed sections 9(3A) and 9(5)?

Hon MATTHEW SWINBOURN: The online application process is still being designed, so it is not known whether any further administrative steps or addendums to the application will be required to satisfy the administrative requirements for processing applications online. As I say, the online application process is still being designed, and it is not known whether the applicant will be required to provide any further information to the CEO for the application process. This provision will act as a safeguard in case any additional requirements for applications are determined. As I said previously, the provision will facilitate asking for extra information for the application process, but it will be limited to what is relevant for the purposes of the act. Essentially, it is a mechanism to deal with unknowns, because we will be moving to a new process.

Hon NICK GOIRAN: I understand that, but is proposed section 9(5) not a duplication or unnecessary in light of 9(3A)? If the CEO will be able to require whatever information he or she thinks fit, why do we need to have this extra regulation-making power?

Hon MATTHEW SWINBOURN: Proposed section 9(3A) is about the application process and obtaining that information, whereas new section 9(5) relates to further administrative steps, so there is a difference. One is about the application from the applicant and the information required in the application; the other, 9(5), is about the administrative steps required.

Hon NICK GOIRAN: At the moment, does the CEO not have any discretion to require the provision of such information and do they not have a general regulation-making power in respect of administrative steps?

Hon MATTHEW SWINBOURN: These will be new powers that do not currently exist. In the current provisions, which the member might have before him, section 9(4) says that the "CEO may ask the applicant" but that is only after the application has already been received, rather than being prescribed from the outset in the actual form. The word "may" means the information cannot be required. If someone does not provide information to the CEO, their application would still be dealt with according to the law, but the CEO might say that they have not provided sufficient information if it is important. It does not give that up-front requirement. What we are proposing in these two provisions will provide clarity about what can and cannot be asked for.

Hon NICK GOIRAN: The concept of an approved form is not a new one; it is already in the existing act. Who approves the form?

Hon MATTHEW SWINBOURN: It will be the CEO, but there is a delegation power, so the CEO can delegate that to someone else to do. That delegation power is already in the existing act.

Hon NICK GOIRAN: If the CEO is the person who approves the form, why will we be giving them the power under new section 9(3A) —

> The approved form may require the provision of any other information the CEO thinks fit.

Does that not already exist?

Hon MATTHEW SWINBOURN: I will be accused of furthering our bromance here, member, but it is an excellent question.

Hon Nick Goiran: Thank you. Hon Dan Caddy is away on urgent parliamentary business, so he'll be disappointed to have missed it!

Hon MATTHEW SWINBOURN: Of course! What a shame. He is probably following closely behind the scenes.

All I can add is that it is a belts-and-braces provision. It will make it very clear what the CEO's power is. If the member looks at the blue bill, he will see how it is currently indicated. The act does not make it clear that the CEO has that power, because subsection (1) does not create a power. As I say, this will put it beyond doubt. I am not sure that I can take it much further than that.

Clause put and passed.

Clause 11: Section 10 amended —

Hon NICK GOIRAN: Clause 11 will amend section 10 of the act. The section that has just been amended will be entitled "Application for assessment notice (child-related employment)", whereas the section that this clause will amend will be entitled "Application for assessment notice (child-related business)". Once again, this clause includes similar amendments insofar as it will insert new subsection (3A), which states —

> The approved form may require the provision of any other information the CEO thinks fit.

It will also insert new subsection (5), which states —

> The regulations may prescribe other requirements that apply in relation to an application or the consideration of an application.

The same questions arise as per the previous clause. The parliamentary secretary has already answered the question about the CEO by referring to the so-called belts-and-braces approach that will be undertaken by the entity that is often mentioned but never present. Perhaps he could indicate what type of regulations are intended to be prescribed under proposed section 10(5).

Hon MATTHEW SWINBOURN: Again, not surprisingly, it is the same answer as I have previously given. No regulations are currently proposed under this section of the act. The online application process is still being designed and it is unknown whether any further administrative steps or addendums to the application will be required to satisfy administrative requirements for processing applications online. There is also some commentary about the Joint Standing Committee on Delegated Legislation, but I do not need to repeat that.

Clause put and passed.

Clause 12: Section 11 amended —

Hon NICK GOIRAN: I have some questions on clause 12. I indicate that I have questions on each of the following clauses up until and including clause 17, at which point we will be able to, from my perspective, rapidly go to clause 19! In clause 12, there is reference to activities occurring "within a period determined by the CEO to be reasonable in the circumstances". What period is intended to apply?

Hon MATTHEW SWINBOURN: I will map this out a little for the member. It might raise further questions in itself, but I hope to deal with it from the CEO's point of view. Once someone has lodged their application for a working with children card, they have an entitlement to work on lodgement. Currently, it is a paper-based system so that when they lodge it, the employer —

Hon Nick Goiran: It is for certification.

Hon MATTHEW SWINBOURN: That is right; they have already certified it. It is expected that, over time, the vast majority of it will move online, so they are contemplating circumstances in which they get no verification from the employer. We cannot have an open-ended situation and the application remaining pending.

Hon Nick Goiran: Because they can still keep working.

Hon MATTHEW SWINBOURN: That is right; there is an entitlement to work. There has to be a period in which the CEO, as the person responsible for this, can say that the application is no longer pending and it will essentially—I do not want to use the word "fail" because that is not the word used here, but the member knows what I mean—not progress. Therefore, the entitlement to work will fall away if the work falls within the ambit of the act. That is what it is. The member's next question will probably be: what will that period be? That has not yet been determined. It will be under consideration during the period between when the bill is passed and when it comes into force. They will work out what that particular time is in the process. They do not anticipate that there will be a lot of applications that fall within this particular field. I am only opining here, but it might help to identify when people genuinely know that they have to get a working with children card. They will make the application, but there might be employers who are not doing their part. They are probably the recalcitrants out there who are identified to the department as engaging in behaviour they are not supposed to be engaged in, because they are supposed to be certified as well. I am thinking of home-based child care and those sorts of things, situations in which employers do not have their matters in order. It might actually be a useful tool to help identify those other areas, if people are working outside the system.

Hon NICK GOIRAN: Proposed section 11(3A) says that the application will be taken to have been withdrawn if the preconditions in subsections (a), (b) and (c) have been met but also, under subsection (d), if the CEO gives the applicant a written notice stating that the applicant is taken to have withdrawn the application. In other words, it is not the case that a person will put in an application, the employer will fail to respond to the department, and the applicant will have no idea that their application has been lost. I use the word "lost" in the sense of it having been withdrawn. They will be given notice, but that will be little comfort if the application has already been withdrawn.

I take it that nothing would stop them from making a fresh application. Rather than them having to make a fresh application and the department having to go through that process as well, will there be some kind of warning letter to the applicant to say, "You might like to get into touch with the employer and get them to comply with their requirements"?

Hon MATTHEW SWINBOURN: The provisions in proposed section 11(3A) set out the process. The first part, subsection (a), says —

> (a) an employer or proposed employer identified by the applicant for the purposes of the application fails, within a period determined by the CEO to be reasonable in the circumstances, to verify that they employ or propose to employ the applicant in child-related employment —

That is the first element, allowing the CEO to create a post-lodgement period in which a verification must come from the employer. If we get to the end of that period, subsection (b) will kick in, which states —

> (b) the CEO gives the applicant a written notice that informs the applicant that if a verification of the kind referred to in paragraph (a) is not provided to the CEO within a reasonable specified period then the applicant's application will be taken to have been withdrawn —

That will add an additional period, which puts the applicant on notice that the CEO has not received the verification information from the employer or proposed employer. If I were a self-helping applicant, I would then trot off to my employer—the human resources department or whoever is responsible—and say, "Hey, I'm not going to be able to work here anymore unless you do your job." Hopefully, in an overwhelming number of instances, the employer will then do their part. If that does not happen, subsections (c) and (d) will kick, which state —

(c) the verification is not provided to the CEO within the specified period under paragraph (b); and

(d) the CEO gives the applicant a written notice stating that the applicant is taken to have withdrawn the application.

The term "withdrawn" is used, rather than "failed" or "rejected", to avoid giving rise to the negative consequence of not being able to get the working with children card. We do not want that for the people who come under this category. We want to have the right people getting the right certification to work with children, and we want employers to have a system that is as efficient, secure and safe as possible. We have a lot of things to consider. There are many competing but important interests, one of which is not to punish people whose employers or prospective employers do not do the right thing. There are a number of situations in which these circumstances might arise. The employer might not be acting in good faith, or they might have decided not to employ the person but not notified them of the fact. There could be any number of different reasons.

The other thing that I am advised is that, before an application is withdrawn, it will be able to be updated. Say an early childhood educator wants to work in early childhood education. They have made an application for a working with children card for a particular job but the employer has not verified it. They have then found another job. In that case, the CEO will allow them to update their application without having to lodge an entirely new application and pay a new application fee. I think that is an important protection for the overwhelming majority of the 140 000 people per year who apply for these cards. They will not have to start again from point zero.

I am also advised that, even if the application is withdrawn, the CEO will still retain discretion to refund an application fee. In a circumstance in which somebody has made an application in good faith, provided all the correct information and acted judiciously and expeditiously but their employer or prospective employer has not done their part, it would be open to them to ask for a refund of the application fee.

Hon Nick Goiran: Will it be possible to waive the fee for the fresh application?

Hon MATTHEW SWINBOURN: Yes.

Hon NICK GOIRAN: The parliamentary secretary indicated that the period of time that the CEO will give the employer to respond will be determined over the next three to six months. Will the period be the same as the period given to the applicant in what I am referring to as the reminder or warning notice described in proposed section 11(3A)(b)?

Hon MATTHEW SWINBOURN: No, it will not necessarily be the same period of time. We can think about the scheme in its entirety and the different kinds of employers. I have already indicated that the department has not yet turned its mind to the finer details of these points. Again, we are talking about very large employers like the Department of Education, which employs more than 30 000 people—it might be closer to 50 000—who work with children. It will have a lot to go through. Then there are employers like small kids' karate clubs, which will be mum-and-dad–type operations. The demands will be different for those groups. In most instances, the next step—the notification—is likely to involve a shorter period of time. We also need to keep this in the context that the person will not yet have had their application fully assessed and we do not want people to work in the interim. The department will turn its mind to the specifics and minutia of those things following the passage of the bill.

Clause put and passed.

Clause 13: Section 12 amended —

Hon NICK GOIRAN: Clause 13 will make some amendments to section 12 of the Working with Children (Criminal Record Checking) Act 2004. I specifically draw to the attention of the parliamentary secretary section 12(8), which will be amended to read —

> If subsection (5) or (6) applies in respect of an offence or a conduct review finding or outcome, the CEO must decide whether the CEO is satisfied in relation to the particular or exceptional circumstances of the case …

A number of matters are listed below subsection (8) in the act that the CEO must take into account, including, but not limited to, the best interests of children. Will the information that is being taken into account—that is, the findings—be put to the applicant?

Hon MATTHEW SWINBOURN: The answer is yes. I refer the member to proposed section 13, which will provide for the CEO to give notice of an intention to issue a negative notice. That proposed section deals with the obligations of the CEO.

Hon NICK GOIRAN: I turn to the earlier provisions in section 12, entitled "Deciding applications for assessment notice". Item 11 of the table will be amended to read —

> The CEO is aware of a Class 1 offence (that was not committed by the applicant when a child) —

I will pause there for a moment. In other words, the CEO will be aware of an adult having committed a class 1 offence when they were an adult. It goes on to say —

> of which the applicant has been convicted, other than where the applicant has been granted a pardon in respect of that offence.

That latter part—the introduction of the granting of a pardon—appears to be new. That is certainly apparent from the blue bill. What is the justification for that?

Hon MATTHEW SWINBOURN: The member referred us to item 11, as amended, but it must be read in conjunction with proposed item 10 A. In this instance, we have obviously carved out an exception for a class 1 offence for someone who has been issued a pardon. The member would be as aware as anyone how exceptionally rare are pardons and the circumstances in which they are granted. I think what has happened here is that it was considered appropriate that section 12(6) apply in circumstances in which a pardon is issued. Section 12(6) states —

> If this subsection applies —

Which it will in relation to a pardon under proposed item 10A —

> the CEO is to issue a negative notice to the applicant unless the CEO is satisfied that, because of the exceptional circumstances of the case, an assessment notice should be issued to the applicant.

There might be circumstances in which a pardon is granted for any number of matters of mercy, but the behaviour of that person —

Hon Nick Goiran: They will still have been convicted of an offence.

Hon MATTHEW SWINBOURN: Yes, that is right. The facts of the case might still be such that it would be completely inappropriate for them to work with children; however, they may be granted a pardon because of circumstances of —

Hon Nick Goiran: Possibly age and illness. They might be at the end of their life.

Hon MATTHEW SWINBOURN: Possibly. Again, it is predicated on the basis of a presumption against the granting of a working with children permit, unless there are exceptional circumstances that satisfy the CEO. It will still be a very high bar. As I said, pardons are extremely rare. I am just trying to think of the last time one was issued.

Hon NICK GOIRAN: It is that rareness that has piqued my interested. Item 11 in the table is not new; it is an existing provision. Although a lot of the reforms in the bill could be described as strengthening the system, it appears that this amendment will, in one sense, loosen the system. At the present time, if the CEO is aware that someone has committed a class 1 offence, what do they do? Section 12(7) of the act states —

> If this subsection applies, the CEO is to issue a negative notice to the applicant.

No correspondence is entered into; they will get a negative notice. All of a sudden, we will introduce for the first time the notion of a pardon. It will not guarantee that the person will be issued a card, but it will open the door, albeit with a gatekeeper, as we described earlier. What triggered this provision? Did it come from a recommendation of the royal commission, the statutory review or the Auditor General?

Hon MATTHEW SWINBOURN: It came from the department itself. The rationale I am given is that, given that the additional offences that the bill proposes will become class 1 offences—a whole heap of offences will move into this new category—an avenue for treatment of pardons is appropriate for insertion into the act. Essentially, because we have changed a range of matters, consideration was given to those rare circumstances in which pardons are issued and what should happen in those circumstances. Should it remain as it is in item 11, and if the person is convicted, is it automatic, or would there be other circumstances? The department has given thought to this situation but it has not come from an external recommendation from the royal commission, the statutory review or the Auditor General's inquiries. That is what gave rise to it. The member might not agree with me but, from my point of view, I think this is a demonstration of the thorough thought that has been given to the entire situation. Although, as the member said, the whole act is about strengthening the provisions, we also have to think about the consequences of that. In this particular instance, I think it is appropriate.

We might disagree on that but I think it is appropriate in the limited circumstances in which a person has been pardoned. For example, I am thinking of those circumstances in which women have been convicted of murdering their abusive partner. In hindsight, we have taken the view that the values of society have changed. Although under the law their conviction was completely justified, the values of society have significantly changed and therefore a pardon has been issued. In that circumstance, that woman may be an appropriate case if they choose to still work with children. People would disagree with that but I am more comfortable with there being a presumption against the issuing of the card and the requirement to satisfy the extenuating circumstances. As the member said, pardons are often issued because of ill health and age. In those circumstances, we would say their offending was so abhorrent that we would still not give them a working with children card.

Hon NICK GOIRAN: I would agree with the parliamentary secretary that it is indicative of the thoroughness of the work that has been undertaken in the preparation of the bill. I am not sure that the example that was given would be applicable because, as I understand it, a conviction for murder, to be a class 1 offence in this situation, is limited to a murder of a child.

Hon Matthew Swinbourn: I was thinking on my feet.

Hon NICK GOIRAN: I understand the spirit of what was being expressed at the time. The department would not have been inundated by applicants who have a pardon. Have any current cards been issued to a person with a pardon and that is why this has been triggered?

Hon MATTHEW SWINBOURN: Not that the advisers are aware of. As the member knows, the department issues over 140 000 cards a year. Although somebody who has been pardoned might stick out like a sore thumb, there are none they are aware of.

Hon NICK GOIRAN: This has just been brought about by some exceptional intellectual and academic thinking about the various scenarios that might unfold rather than making the point, without jest, that it is not because of a known, practical case.

Hon Matthew Swinbourn: It is not to accommodate someone in particular, no.

Hon NICK GOIRAN: With respect to the table of 11 items, we have previously discussed at some length—and I do not intend to re-litigate those arguments—the seven Western Australians who had a working with children check card, six of whom continue to have one. One recently expired in September. Of those seven, if the seventh one—if I can call the person with the expired card "the seventh one"—were to apply for a renewal any time prior to all the operative provisions in the bill coming into force on the date fixed by proclamation, which we estimate will be some three to six months away, and the other cohort of six apply for a renewal any time into the future, which of these categories will those seven people fall under?

Hon MATTHEW SWINBOURN: Let me just get the framing right. Until the bill comes into force and passes the house, the existing law applies. Following the commencement of the operation of the bill, transitional provisions will take effect. Regarding the individuals we are talking about, their current cards will expire and they must apply for a new card. For the six who have existing cards, they will be dealt with post the commencement of the provisions under the transitional arrangements, which means that they will fall under item 9 —

> The CEO is aware of a Class 2 offence of which the applicant has been convicted.

Their current offences will be grandfathered, for want of a better word, as class 2 under the transitional provisions, so if their card is coming towards the end of its three-year expiry, and they have made an application for a new card —

Hon Nick Goiran: It is a new application as distinct from an application for a renewal.

Hon MATTHEW SWINBOURN: Yes, there is no renewal application as such. I tried to make this distinction. If we think about drivers' licences, we get a renewal notice that says if we do not pay the fee the licence will expire. It is not the same process. Every three years, people must make a new application for a working with children card, and that application must be assessed every three years.

Hon Nick Goiran: The person whose card has expired has not necessarily done anything wrong or been slack in any way. Everyone's expires, and if they want to, they make a new application.

Hon MATTHEW SWINBOURN: That is right, yes. It is an important difference. As I said, with a driver's licence, people do not have to resit the test to say that they are competent—though arguably, that might be appropriate for some drivers; I know of a couple whose names shall remain secret to protect my wellbeing! However, when it comes to these matters, a card is issued for a period of three years and if no events during those three years give rise to their eligibility being reassessed—for example, they are convicted of an offence during that period—they will have that card for that period. Three months prior to the end of that period, they will be invited to make a new application. For the six who still have their working with children cards, they will make that application and because of the transitional provisions, their offence will remain in class 2. If the individual we are talking about whose card has expired makes the application for a new card post the commencement of these provisions, they will not be the beneficiary of the transitional provisions because they will not have a card and they will fall under item 11. They will automatically be refused the card, because their offence will be in class 1. I am sure that will create issues for the member and I think I know what he will say.

Hon NICK GOIRAN: It seems then that the transitional provisions turn upon the date that a card expires. We have been describing the person whose card expired in September as the seventh person. They could apply at the moment; they could apply tomorrow and they will have the benefit under the new application of being considered under item 9. But if they apply once the operative provisions of this bill come into full force, they will not be considered under item 9. I take it they would be considered under item 11.

Hon Matthew Swinbourn: That is what I said, yes.

Hon NICK GOIRAN: Do any of the cards of the other six individuals expire in the next six months?

Hon MATTHEW SWINBOURN: We are going to have to take some time to get that answer.

We are trying to get that information, but it is not at hand. We obviously have the interruption for question time and we will come back for 20 minutes. I cannot say whether I am allowed to provide that information to the honourable member yet, but we will try to find that information by the end of the day. I will see what my instructions are.

Hon NICK GOIRAN: Regarding these seven offenders, it seems to me that three scenarios are at play here. To be clear for the purpose of this exercise, when I refer to commencement, I am referring to the commencement of the rest of the act—that is, the bill that is before us—on a day before proclamation. In scenario 1, if their card expires before commencement and they apply pre-commencement, they will fall under item 9; that is, their offence will be considered to be class 2. We know that is a live option for at least one of the offenders, the one whose card expired in September. Scenario 2 is that if their card expires before commencement and they apply post-commencement, they will then fall under item 11. That is also a possibility for one of these offenders. Both of those scenarios may apply to others in that group of six, hence, if we can, we will find out in due course when their cards expire. Scenario 3 is if their card expires post-commencement and an application is made post-commencement, they will be considered under item 9—that is, a class 2 offence. They seem to me to be the three scenarios at play with this group of seven offenders.

Hon Matthew Swinbourn: By way of interjection, there is probably a fourth scenario. If any of those individuals commit an offence, then they are not entitled to the transitional provisions.

Hon NICK GOIRAN: Absolutely. That is what I would describe as a change of circumstances. When some, shall I say, fresh information comes forward, they will be dealt with accordingly, as is the case with everybody else. The reason I have not included that in the scenario is because, in many respects, there is nothing special about that. That applies to every Western Australian. I am just trying to define here what I am describing as the special treatment that is being allowed for these seven offenders. Those three scenarios are live. We will see to what extent they apply to each of the seven offenders in due course, if we can get the information on when their cards are due to expire. What provision is it in the bill before us that facilitates this particular scenario unfolding?

Hon MATTHEW SWINBOURN: We are working on the details of the provisions the member is talking about. They are all contained in the transitional provisions, but we are trying to get more specific ones. I have got information about the cards. I do not have precise dates—I think the member can appreciate that—but I can give him an indication. One will expire prior to the end of December of this year, another will expire prior to 1 July 2023 and the others will all expire post the end of 2023. We have got one offender who does not have a card currently, and another two cards, meaning four will be post 2023, once the bill —

Hon Nick Goiran: Post 31 December 2023?

Hon MATTHEW SWINBOURN: That is right. I am advised that the specific provisions are contained within clause 44 of the bill, specifically within proposed subdivisions 1 and 2 of the proposed division 2 and the proposed sections 62 through to 74. Did the member need me to repeat that?

Hon Nick Goiran: No. I have got that.

Hon NICK GOIRAN: The proposed sections that the parliamentary secretary refers to, proposed section 62 through to 74, encompass the entirety of proposed subdivisions 1 and 2 of proposed division 2, and are all contained within clause 44 of the bill. What will be the consequence of the deletion of all of those provisions?

Hon MATTHEW SWINBOURN: I think the member asked what would be the impact of the deletion of proposed subdivisions 1 and 2. I understand what the member is probably getting at, which is —

Hon Nick Goiran interjected.

Hon MATTHEW SWINBOURN: Yes, but this is what the impact of that would be. It would impact persons with a pending application on commencement day; persons with a pending application to cancel a negative notice on commencement day; persons with a review of appeal process on foot at the State Administrative Tribunal or a court on commencement day; or any reassessments on foot on commencement day. Our view is that a significant number of very ordinary people will benefit from the transitional provisions. In fact, those provisions were overwhelmingly drafted for the benefit of those particular people. If we were to delete any of those particular provisions, the consequences, as I read out, would be significant.

Hon NICK GOIRAN: I accept that if all of proposed subdivisions 1 and 2 of proposed division 2, as found in clause 44, were to be deleted, it would create undesirable consequences. However, can I get the parliamentary secretary to specifically consider at this time the provision set out at proposed section 63, the first of the proposed

sections under proposed subdivision 2? Is it proposed section 63, "Current assessment notices", that will, as the parliamentary secretary referred to, grandfather the arrangement for the seven individuals whom we referred to earlier?

Hon MATTHEW SWINBOURN: The member essentially asked whether this is the provision that grandfathers the arrangements for the seven individuals that we were talking about. The direct answer is: yes, it is. I draw the member's attention to proposed section 69, which facilitates the making of the applications once a person's current card is about to expire. Those provisions have to be read in conjunction with each other to understand the full picture.

Hon NICK GOIRAN: Proposed section 63 applies to many more people than just the seven in question?

Hon Matthew Swinbourn: Yes.

Hon NICK GOIRAN: But the point of contention is that those seven people, of the many who will benefit from proposed section 63, are of particular concern because the nature of their offence is unlike that of the remaining cohort. It appears that the point of contention is the use of the phrase "until the person ceases to have a current assessment notice." At first blush, if one does not have regard for proposed section 69, at some point in time everyone's assessment notice will cease, as we described earlier. There is nothing strange about people's cards expiring, albeit that people then make an application for a new card. That is the normal course and will continue to be the course moving forward. But does proposed section 69 apply to applicants other than the six to whom we referred? I am not going to refer to the seventh one at this time because the seventh's card has already expired. It seems that if the seventh person wants to do something, they will have the opportunity to do so under proposed section 64, in what is referred to as a "pre-commencement assessment application", and they will be dealt with accordingly. Of course, they might then benefit from this particular provision. Ultimately, that card itself will expire three years later, but they will not then have the benefit of the extra protection under proposed section 69. It seems that only six of the individuals to whom we referred would benefit from proposed section 69. Is that right or does it apply to a greater cohort?

Hon MATTHEW SWINBOURN: If I understand the question correctly, the member asked whether proposed section 69 is relevant to all the persons covered by subdivision 2.

Hon Nick Goiran: Yes, which, of course, includes those six, but then everybody else.

Hon MATTHEW SWINBOURN: The answer is yes. Section 69 is relevant to everybody else—that is, the beneficiaries of the transitional provision. It is not just the six.

Hon NICK GOIRAN: I am thinking—because of course I would be—that we are still considering section 12.

Hon Matthew Swinbourn: Clause 11, isn't it?

Hon NICK GOIRAN: Clause 11, which amends section 12.

The DEPUTY CHAIR (Hon Jackie Jarvis): Section 12 in clause 13.

Hon NICK GOIRAN: Clause 13 amends section 12. Proposed section 69 deals with section 12.

Hon Matthew Swinbourn: Yes. There is no truck about this.

Hon NICK GOIRAN: No. That is why we need to take a little bit of extra time reading the bill and its interconnecting parts. I want to make sure that there would be no unintended consequences if the chamber were minded to delete section 69. I can totally accept the parliamentary secretary's earlier point that there would be some undesirable consequences if the chamber were to delete all of subdivisions 1 and 2. Let us take proposed section 71, "Proceedings before State Administrative Tribunal or court", as an example. Matters are underway that are, if you like, being litigated, and there are other applications in train but we do not want to create any chaos around a well-intentioned reform that, on the whole, will strengthen our working with children check systems. I accept that it would be undesirable at this time to delete all of proposed subdivisions 1 and 2 in proposed division 2, as contained in clause 44, but I wonder whether the government might consider the deletion of proposed section 69. That might address the impasse between the opposition and the government, because it appears to me that the only people who would be materially affected would be the six offenders. Of course, the number may not even be as high as six because, as the parliamentary secretary has identified, the card of one of the six will expire by the end of December this year, and there is little prospect that the operative provisions will come into effect prior to that time. Indeed, a further person's card will expire on 1 July 2023, so it may not even be applicable to them, either. In either case, they would be the beneficiaries—like person 7, as I refer to them, whose card expires in September—of what I would describe as a generous provision under proposed section 64. That is, they could make an application and they could still come under the old classification system rather than the new one, but when that card expires, that will be the end of it.

Maybe we will just get clarification on that. In the case of person 7, if they make an application now, pre-commencement, under proposed section 64 and they receive a working with children card, that in turn will expire in three years'

time. I take it that when that card expires, they will no longer be considered to have a current assessment notice and that at that point, in three years' time, the new classification system will apply to them.

Hon MATTHEW SWINBOURN: The member's specific question got a bit lost at the table.

Hon Nick Goiran: In fairness, there were a few thrown in there.

Hon MATTHEW SWINBOURN: Yes. I think it was just a point of clarification that the member was seeking. One of the issues that has been under discussion at the table is the member's invitation to give consideration to the deletion of proposed section 69. As he would know, I am in no position to agree to any deletion or amendment to the clause. I am a parliamentary secretary representing a minister representing a minister. However, given the time and where we are at, the bill will not be passed today under any circumstances. We would be lucky if we had maybe half an hour of debate left on this matter. The proposed section is much further on in the bill. Discussion with the advisers at the table indicates that consideration will be given to the member's request for consideration, if I can put it in those terms, because there is time to do that. When debate on the bill resumes, if it is number one on the list for debate on Tuesday, they will be able to respond to him in much greater specificity on why his proposal either is impractical or would have the unintended consequences that we are trying to avoid. I take it that the member made the proposition in good faith. Alternatively, perhaps they will be persuaded by the member's very persuasive arguments and, therefore, have a different proposition. I do not think that will stop us from proceeding further with other elements of the bill because, whilst we are jumping somewhat ahead, it is connected to the clause that is currently the question before the chamber, so I am sure that we can get on with that.

The member often says that the opportunity to reflect overnight is a benefit. Perhaps this will be a couple of nights. I think that is appropriate. I do not think that in the member's own mind—if he does not mind me venturing an opinion—he is satisfied that the deletion of clause 69 in itself will be the solution to the mischief that he is talking about.

Hon Nick Goiran: By way of interjection, I say that it would not be a complete solution, but it would be a significant improvement. It would ensure that the problem that I am referring to probably has a life span of no more than three years.

Hon MATTHEW SWINBOURN: I have given the member the undertaking to consider what he has proposed in that particular period. One of the reasons that will be useful is that some of the issues he is putting to us are complex. There is no question about that. There are complexities about how they will interact. The advisers will also have the opportunity to review the *Hansard* for the last two hours or so and perhaps narrow that down.

Hon NICK GOIRAN: I will have one further question on clause 13, which seeks to amend section 12.

I thank the parliamentary secretary for agreeing to take, effectively on notice, my question about whether the government would agree to deleting proposed section 69, which is contained within clause 44. I encourage those who will be responsible for being part of that deliberative process and, ultimately, making the decisions to understand the request in the spirit that it is intended. In my view, this is really the only major sticking point in what is otherwise an excellent bill and a significant improvement to our system. I hope we can deal with the situation of these seven offenders, as I have referred to them. Even if there is an ongoing desire to grandfather the provision—which is not my preference, as I made perfectly clear earlier—at least limit the grandfathering to a period of three years so people cannot continue in perpetuity to take advantage of proposed section 69. That would be a good outcome. I think I can safely speak on behalf of the opposition when I imagine that at that point in time the bill will receive very speedy passage through the remaining clauses. I take it on board that my question has been taken on notice, and I am grateful to the parliamentary secretary for that.

Returning specifically to clause 13, which seeks to amend section 12 of the act, the parliamentary secretary will see that the amended section 12(8) will state, "If subsection (5) or (6) applies in respect of an offence or a conduct review finding or outcome". Will the information be provided by the CEO to the minister?

Hon MATTHEW SWINBOURN: I am a bit confused. The member said "to the minister".

Hon Nick Goiran: Yes. The chief executive officer will be exercising some discretion. Under sections 12(5) and (6), the CEO will have to determine whether there are particular or exceptional circumstances. Will the minister be informed of the outcome of that use of discretion?

Hon MATTHEW SWINBOURN: No.

Hon NICK GOIRAN: We can see the distinction between that and the other provisions, in which there is no discretion on the part of the CEO; the CEO will either approve the application or issue a negative notice. I am not looking for precise numbers or percentages, but is there any data that would give an indication of the proportion of matters that come before the CEO and fall under section 12(4)—the CEO issues an assessment notice—and section 12(7)—the CEO issues a negative notice? They are the two non-discretionary matters. To compare and

contrast that, what is the proportion of matters that fall under sections 12(5) and (6)? I am trying to get to the heart of whether there are a lot of matters that come before the CEO and require the use of discretion on particular and exceptional circumstances.

Hon MATTHEW SWINBOURN: I can give an answer for the proportion of matters that come under section 12(4), which is 84 per cent of all applications.

Hon Nick Goiran: They are, effectively, approved and granted?

Hon MATTHEW SWINBOURN: Yes. They are people who have a completely clear criminal record and their application is granted. Unfortunately, I cannot break down the proportions for the rest of the categories. The department does not keep the data separately for matters that fall under sections 12(5), (6) and (7). My advisers indicate that it is quite complex because of the decision-making process and the different factors, but I think that the 84 per cent indicates that a lot of work is happening on the 16 per cent that fall within subsections (5), (6) and (7).

Hon NICK GOIRAN: I thank the parliamentary secretary. Obviously, the total proportion of matters relating to sections 12(5), (6) and (7) is 16 per cent. It would be interesting to know how many mandatory negative notices are issued under section 12(7).

Hon Matthew Swinbourn: We do not have that.

Hon NICK GOIRAN: I take the point that that data is not available, but over the next three to six months, as the department considers the finalisation of this matter, it might like to collect that data from here on in because it also goes to the issue of resourcing. If the CEO has to spend a lot of time considering particular circumstances and exceptional circumstances, that is quite different from issuing an automatic negative notice. Although it would take a little bit more work to collect that data than the issuing of an assessment notice, it would not be too much more work than that.

That said, I just offer that as a helpful suggestion during the next three to six-month period, but I have no further questions on clause 13.

Clause put and passed.

Clause 14: Section 13A amended —

Hon NICK GOIRAN: There is a definition of "other person" in the explanatory memorandum for this provision, but is "other person" defined anywhere else in the bill?

Hon MATTHEW SWINBOURN: The simple answer to the member's question is no, it is not defined anywhere else. I have the EM here. We were thrown a little bit because the member said that the EM gave a definition, but all it says is "to give a copy of the notice to the other person" and in parentheses it says "(this being a person who employs or proposes to employ the applicant in child-related employment)", which obviously is used for the purposes of further interpretation of the clause, but it is not elevated significantly high enough —

Several members interjected.

Hon MATTHEW SWINBOURN: That is all right; some of us are doing the work of the Council while others are doing —

Hon Tjorn Sibma: Some of us are doing the work of the government!

Hon MATTHEW SWINBOURN: Not you!

Committee interrupted, pursuant to standing orders.

[Continued on page 5507.]