## WORKING WITH CHILDREN (CRIMINAL RECORD CHECKING) AMENDMENT BILL 2022

*Committee*

Resumed from 22 November. The Deputy Chair of Committees (Hon Jackie Jarvis) in the chair; Hon Matthew Swinbourn (Parliamentary Secretary) in charge of the bill.

**Clause 15: Section 13 replaced —**

Progress was reported after the clause had been partly considered.

**Hon NICK GOIRAN**: We are making progress on this very important Working with Children (Criminal Record Checking) Amendment Bill 2022. We are currently considering clause 15 of 53. Members will recall that we spent at least two full parliamentary sitting days in the week before last considering the clauses to date. Substantial progress has been made, notwithstanding the fact that we are only on clause 15.

I note that we now have the benefit of a new supplementary notice paper. Members who are following this will note that this is the third issue of the supplementary notice paper for this bill. Why have there been three supplementary notice papers? Well, briefly, one was because of the work of the Standing Committee on Uniform Legislation and Statutes Review, which identified some Henry VIII clauses that the government agreed to remove. A second issue of the supplementary notice paper was distributed because of an amendment that continues to stand in my name under clause 44. We now have this third edition of the supplementary notice paper, which has a large number of amendments standing in the name of the Parliamentary Secretary to the Attorney General, who is conducting this bill on behalf of the government in a representative capacity.

At the outset, I indicate that we are now somewhat time-challenged because we are in the final sitting week of the calendar year. It is the shared view of the opposition and the government that it is important for this bill to pass this week, in the final sitting week of the calendar year. Ideally, this bill will pass this evening so that there is sufficient time for the other place to consider the amendments that we will be sending to it. A number of amendments have already been agreed to by the house, being the removal of the Henry VIII provisions. Despite the fact that this house considers Henry VIII clauses to be particularly reprehensible from both a drafting and parliamentary sovereignty perspective, they pale in significance when compared with the importance of the amendments that we will consider at clause 44.

I indicate at the very outset this evening that it is my intention, as the shadow Minister for Child Protection, to see the remaining clauses pass in the next one hour and 25 minutes that we have available to us. That is a little undesirable because large slabs of this bill still warrant further scrutiny and analysis; nevertheless, when we weigh up that benefit compared with the benefit of having this bill pass and made law as soon as possible, it is really no contest.

We will talk a little more about that when we get to clause 44, particularly as the government, it needs to be acknowledged, has agreed to narrow the circumstances in which a person currently working with a child in Western Australia with an authorised check who has committed one of these serious offences that will be shortly reclassified to class 1 will be able to make further application and have their working with children card renewed. Those circumstances will be significantly restricted as a result of the amendments on the supplementary notice paper at clause 44.

Returning to clause 15, there is essentially only one further line of inquiry. I indicate that I have some questions at clauses 16 and 17, and then we can move to clause 24. At clause 15, the question for the parliamentary secretary is as follows. I note that proposed section 13(4) provides that section 13(2) will not apply to a person who has been granted a pardon in relation to a class 1 offence. Is the parliamentary secretary in a position to provide for the chamber an example of when this would apply? That might then help explain the rationale for the inclusion of this special provision.

**Hon MATTHEW SWINBOURN**: I might have covered off some of this last time when I gave some examples, but, as the member knows, pardons are rare in themselves. The kind of pardon that we might contemplate as an example would be a pardon that relates to poor health and the person has been pardoned in that circumstance; or it might be a pardon whereby the person's original conviction related, for example—I do not like saying the murder word, because that opens it up—to a murder in the case of a person who was subjected to domestic violence. That conviction might have been from some time ago and the values of society and its understanding for domestic violence victims has changed. But it is also important for anyone who is following this or reviewing the transcript that the first thing to note with this pardon provision at proposed subsection (4) is that there will still be significant hurdles for the CEO to overcome. The pardon itself would not open the gateway for them to be simply treated like a person who has had no criminal convictions and would perhaps get their working with children card with a relatively low level of scrutiny from the department because they do not present any unacceptable risk because the normal factors are not highlighted. This person will have a presumption against them getting a card in the first place. They will be presumed not to be eligible. For them to be provided with a card, the CEO would have to exercise their discretion, and the CEO would not be restricted in the information they could have regard to, notwithstanding

that the person has been pardoned. The CEO will be able to take full account of the circumstances of the offending that resulted in the conviction that was later pardoned.

For example, if we go back to the domestic violence example, if that person had been involved in domestic violence against children, that might be a factor that would significantly mitigate against them having the discretion decided in their favour, and they would not be able to overcome that presumption. If the pardon had been issued for a health-related matter, for example, as an act of mercy, but the applicant's offending had been child related—for example, they were a paedophile and they were pardoned for whatever reason—in those circumstances, one cannot envisage that the CEO would exercise their discretion. The burden will be on the applicant to establish that they should receive the working with children card, and the presumption will work against them.

Again, in the fullness of making this amendment, in covering off this part, it allows for that discretion because there are particular circumstances that could allow the discretion of the CEO to be exercised in a positive way, but, as I say, the CEO would still have regard to the overall circumstances of the offending. The CEO's powers will not be restricted by the fact that the pardon was issued. The applicant will not get to start from scratch like an 18 or 19-year-old who is applying for the first time and has no criminal history or conduct of any regard. They will not be in the same category.

**Hon NICK GOIRAN**: A person who has been convicted at some stage of a class 1 offence would ordinarily, but for the pardon, receive a mandatory negative notice from the CEO. In this instance, because of the pardon, they will not mandatorily receive a negative notice, but they may still receive one, and a test will still be applied by the CEO. Which of the various tests under section 12 of the act as amended will apply to a person who has been convicted of a class 1 offence but has subsequently been pardoned? What will be the threshold or test that will be applied to that person, noting that it will not be a mandatory negative notice?

**Hon MATTHEW SWINBOURN**: It is section 12(6) of the act, which states —

> If this subsection applies, 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.

That is the test. We could break it down into smaller parts, but it is essentially subsection (6).

**Hon NICK GOIRAN**: That is what I describe as the exceptional circumstances test in contrast to the mandatory negative notice provision. This is in respect of a class 1 offence. Of course, that is particularly relevant given all the discussion and dialogue we have been having about class 1 offences, and, in particular, the policy decision that has been made by government and agreed to by the chamber at the second reading stage that class 1 offences of their very essence are so serious and heinous that they warrant no consideration and a mandatory negative notice. The government is proposing to carve out an exception for a person who has received a pardon for a class 1 offence. The parliamentary secretary has explained that that does not mean that the person will automatically receive a working with children card—far from it. In fact, the person will still have a fairly significant hurdle to leap over in the form of the exceptional circumstances test. We could continue to have a debate about whether that is appropriate, but that is not the point at this late stage in the consideration of this bill. It is just clarifying that that will be the situation for that person. How would that situation change if the person has been pardoned of what we would describe as a lesser offence in the sense of a class 2 offence? What test would be applied to the person in that circumstance?

**Hon MATTHEW SWINBOURN**: It is still section 12(6) of the act. My advice is that if the person has received a pardon, the test for a class 2 offence will be the same as for a class 1 offence.

**Hon NICK GOIRAN**: Can the parliamentary secretary draw to my attention where in the table in section 12 there is a reference to class 2? The reference to a class 1 offence is immediately apparent—it is proposed item 10A—but where is the reference to class 2?

**Hon MATTHEW SWINBOURN**: I am advised that it is in item 9 —

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

It then states in the third column that the applicable provision is section 12(6). I am advised that notwithstanding the pardon, it would still apply.

**Hon NICK GOIRAN**: I note, perhaps as a drafting curiosity at this point more than anything else, that we are going out of our way to set out the circumstances for when a pardon has been granted for a class 1 offence. Two scenarios that will play out in section 12 of the act, as amended, are proposed items 10A and 11. For the first scenario, the result will be a mandatory notice; for the second scenario, the exceptional circumstances case will apply. Proposed item 10A speaks for itself, and we have looked at that most recently. Proposed item 11 will read —

> The CEO is aware of a Class 1 offence (that was not committed by the applicant when a child) of which the applicant has been convicted, other than where the applicant has been granted a pardon in respect of that offence.

We will then apply the provisions in section 12(7). Nevertheless, irrespective of the drafting curiosity, it is now clear that regardless of whether the person has been pardoned of a class 2 offence, the exceptional circumstances test will apply. That certainly meets with my approval.

**Clause put and passed.**

**Clause 16: Section 17 amended —**

**Hon NICK GOIRAN**: This clause will amend section 17 of the Working with Children (Criminal Record Checking) Act 2004. Section 17 carries a penalty, if I am not mistaken. Section 17(4) states —

> A person must comply with a notice given to the person under subsection (3)(c) within the period referred to in that paragraph.

We are, for drafting purposes, amending section 17(4) by adding the words "Penalty for this subsection" so that it will now read "Penalty for this subsection: a fine of $1 000." I note that there has been no change to the fine, which remains at $1 000. Is that the same penalty that applied when the act commenced in 2004?

**Hon MATTHEW SWINBOURN**: Yes, member.

**Hon NICK GOIRAN**: Was any consideration given to changing the penalty, given that it will shortly be 20 years—two decades—since the penalty was first put in place?

**Hon MATTHEW SWINBOURN**: The answer to the member's question is no. No serious consideration was given to amending the penalty. I pushed the advisers a little and asked how many people had been convicted under this provision and they said they were not aware of any. I think, in the big scheme of things, it is still considered appropriate because we are not having an issue with people not complying with this particular provision and therefore there is no need to impose an increased penalty. I will leave it at that.

**Hon NICK GOIRAN**: This might be a convenient time for us to consider the intersection of this particular provision with one of the amendments the parliamentary secretary has foreshadowed on supplementary notice paper issue 3. I draw to the parliamentary secretary's attention the amendment standing in his name at 20/44 that refers to activities taking place under sections 17(3)(d) and 17B(2)(b). I acknowledge that section 17B(2)(b) will be dealt with in the clause immediately following this one, being clause 17. Nevertheless, section 17(3)(d) falls within the ambit of the clause presently before us. Can the parliamentary secretary explain the intersection between the proposed amendment at 20/44 and section 17 of the act? In particular, how will those transitional provisions work for, as I understand it, a person with what I would perhaps describe as a "live assessment notice"? The language in the statute is a "current assessment notice". Can the parliamentary secretary explain the interaction of that and what we intend doing when we get to amendment 20/44?

**Hon MATTHEW SWINBOURN**: I hope this answer will cover it off. We had some discussions about this behind the chair. I have speaking notes that I will read. The insertion of proposed new section 74(1A) is to ensure that any reassessment triggered under the act will result in the new offence provisions applying to the person for the purposes of that reassessment. This was previously restricted only to a reassessment triggered by a class 1 or class 2 offence, but will now capture all reassessments, including as a result of actions taken under section 17(3)(d)—class 3 offences—and section 17B(2)(b)—the conduct review finding or outcome. That is what we are doing here. I think this is where we went a little bit further than the member had encouraged us to do in removing the in-perpetuity elements. The member raised this issue during the course of the debate as well. As I said, this will rope in the class 3 offences and the conduct review findings or outcomes.

**Hon NICK GOIRAN**: In terms of the way in which the Working with Children (Criminal Record Checking) Act is structured, is section 17 the reassessment provision? Are the circumstances in which reassessments are undertaken set out in section 17?

**Hon MATTHEW SWINBOURN**: I am advised that that provision does not contain all the reassessment provisions. This clause relates to notice provisions received by police, for example, which will then trigger a reassessment. That is what this provision will do. When a reassessment is triggered, the amendment will mean that they will not get the benefit of the —

**Hon Nick Goiran**: Will the reassessment be done under the new classification?

**Hon MATTHEW SWINBOURN**: Yes, under the new classification, so they will not get any benefit.

**Hon NICK GOIRAN**: Will this type of what I will describe as section 17 reassessments be triggered only in circumstances in which police provide information to the CEO? Will they be the only type of designated authority?

**Hon MATTHEW SWINBOURN**: No. It is being expanded to include prescribed authorities. For example, if the division of the Department of Communities responsible for doing the assessments for working with children cards receives notice from any other part of the Department of Communities, that will also trigger the reassessment.

**Hon NICK GOIRAN**: This has been changed. As the law sits at the moment, is it only the Commissioner of Police who can —

**Hon Matthew Swinbourn**: Yes.

**Hon NICK GOIRAN**: Only the police commissioner can issue one of what we can describe as section 17 notices to the CEO of the Department of Communities. Will it be mandatory for the CEO to undertake a reassessment, or will it be discretionary?

**Hon MATTHEW SWINBOURN**: I am advised that it will not be mandatory. There will be a threshold test, which is that there must be reasonable grounds for the CEO to do the reassessment. Obviously, it will depend on the nature of what has been notified. I am also advised that, in practice, it almost always results in a reassessment once the CEO has been notified by the Commissioner of Police. There is obviously the legal standard and the test for reasonable grounds, but in practice, if the police give the CEO a notice, a reassessment almost always results.

**Hon NICK GOIRAN**: How prevalent are these reassessments?

**Hon MATTHEW SWINBOURN**: We do not have any stats at the table but I am told they are fairly regular and frequent. They are notified by police not on a daily basis but on a weekly basis.

**Clause put and passed.**

**Clause 17: Sections 17A to 17C inserted —**

**Hon NICK GOIRAN**: This clause seeks to insert new sections into the act, specifically proposed section 17A, "Provision of information by conduct review authority, proposed section 17B, "Action based on information received in relation to conduct review finding or outcome", and proposed section 17C, "CEO may obtain further information about conduct review finding or outcome". It appears that there will be some capacity for bodies to be prescribed by regulations. Which bodies are intended to be prescribed?

**Hon MATTHEW SWINBOURN**: I am advised that it is the Teacher Registration Board and the Ombudsman.

**Hon NICK GOIRAN**: Under proposed section 17A(3)(g), it is intended that the conduct review authority may give notice to the CEO of "any other information of a kind prescribed by the regulations". What type of information are we considering there?

**Hon MATTHEW SWINBOURN**: I cannot be specific, member, because that sort of thing is a bit of a—how do I describe it?—known unknown at the moment. I have previously said that it is there to facilitate the move to an online system. An example that has been given is a reference number or something like that that might be useful. This provision will also allow other bodies that might be prescribed at a later date to provide the information that they need to provide to the CEO. That is not a great answer, but, as I say, it is not fully known what that might be at this stage.

**Hon NICK GOIRAN**: Why is it discretionary for a conduct review authority to provide the person's name to the CEO?

**Hon MATTHEW SWINBOURN**: To understand this, we first need to understand that the discretionary thing is that the conduct review authority "may give the CEO notice of the following", and then proposed paragraphs (a) to (g) are listed. It would be nonsensical to provide notice if the person's name and any former name or alias were not identified. An authority could provide just the person's name, and not the former name or alias, but what must also be taken into consideration is not so much the exercise of discretion—the will I or will I not—but that it may not have all that information to give in the first place. This does not prescribe that they must provide this information because it is contemplated that there will be gaps in the information and that the authority will provide what it can. The notice will not be meaningful in nature if it does not include the person's name or to whom it relates because it could not then be married up with a particular working with children card or application.

**Hon NICK GOIRAN**: If it is conceded that the conduct review authority may not have all the information set out in proposed section 17A(3), one would assume that it would make best endeavours to ensure that the notice it gives to the CEO contains as much of the information contained in that list as possible. Would it not be better at proposed subsection (3)(g) to say "any other information that the conduct review authority thinks fit"?

**Hon MATTHEW SWINBOURN**: I think the member was saying information that it thinks fit. The issue in that regard is that if the review authority provides to the department information that it thinks fit, the department would then have an obligation to do something with that information. If, for example, the information it provided related to a person who was not working with children, it would have to manage what could be voluminous amounts of information. There would be an obligation on it to hold that information under a number of different acts, as the member knows. Therefore, it would be better to use proposed paragraph (g) if that happened. Firstly, proposed

subsection (3)(a) to (f) provides a signpost to the review authority of the kind of information that it should be providing to the department in the first place and proposed paragraph (g) is the mechanism by which the department or the CEO, or however we want to describe it, would be able to provide further signposts to say something very specific in relation to those sorts of things. I think I gave the member the example of a particular reference number that might relate to an employee. I get the point that the member is more broadly making about proposed paragraph (g) that making regulations in circumstances in which it is discretionary might be a bit over the top, but I do not think there is any particular harm in what is happening here either.

**Clause put and passed.**

**Clauses 18 to 23 put and passed.**

**Clause 24: Section 29 amended —**

**Hon NICK GOIRAN**: Clause 24 looks to amend section 26 of the primary act.

**Hon Matthew Swinbourn**: Section 29.

**Hon NICK GOIRAN**: Sorry—section 29. Thank you for the correction. Section 29 of the primary act is entitled "People employed in child-related employment to notify CEO of relevant change in criminal record". Hopefully, the parliamentary secretary still has the blue bill at his disposal. He will see that section 29(2) currently has a penalty that we are removing. Why are we doing that?

**Hon MATTHEW SWINBOURN**: It is a bit of a draft. It is not a mystery. How am I going to describe it? I do not know; I am not going to be clever with my words because time is against us. I am advised that that penalty related to a provision that was deleted in 2010 and it should have been deleted at the same time.

**Hon Nick Goiran**: Very sloppy opposition in 2010 that failed to pick it up.

**Hon MATTHEW SWINBOURN**: I would have to check the *Hansard.* I would never make such an allegation about the excellent opposition of 2010.

I am advised that the previous wording was "the employer must give the CEO written notice of a relevant change in the employer's criminal record as soon as practicable after the employer is given notice under subsection (1)". That was removed. It is just a tidy up.

**Hon Nick Goiran**: Was it because the penalty at the moment makes no sense under section 29(2) of the act?

**Hon MATTHEW SWINBOURN**: Yes, that is correct.

**Hon NICK GOIRAN**: Section 29(1) of the act retains its existing penalty, which is a maximum fine of $60 000 or imprisonment for five years. Obviously, particularly with respect to term of imprisonment, it is a very substantial penalty. It is the same for section 28, which applies a maximum penalty of a fine of $60 000 and imprisonment for five years. If the parliamentary secretary still has a copy of the blue bill handy, he will see that the same maximum penalty applies for infractions of section 30, "People carrying on child-related business to notify the CEO of relevant change in criminal record", and proposed section 31, "Duties and employment of people with assessment notice who have relevant change in criminal record". Indeed, it applies for multiple instances in proposed section 31. I notice that it also applies for section 32A, "Certain applicants for assessment notice to notify proposed employer relevant change in criminal record". Remember that the genesis of this particular bill was three substantial pieces of work, one of which was the statutory review. Were there any recommendations about the penalties in the act or were the penalties even considered at all as part of the statutory review?

**Hon MATTHEW SWINBOURN**: I am advised no. It was not a recommendation of the statutory review.

**Hon NICK GOIRAN**: There was no recommendation on the penalties, but was it considered as part of the statutory review?

**Hon MATTHEW SWINBOURN**: No, member.

**Hon NICK GOIRAN**: The statutory review is about 10 years old or something like that.

**Hon Matthew Swinbourn**: I am getting nods on that.

**Hon NICK GOIRAN**: I think it is about 10 years old. This goes to the heart of one of the comments that I made in my contribution to the second reading debate about the currency of the consultation. A lot of the work that has been done here is without question important but now, because of the passage of time, it runs the danger of being a bit old. This is one of those examples. Ten years ago, for reasons that are not necessarily apparent to any of us, the penalties were not considered as part of the statutory review. Plainly there was no recommendation as a result of that review, but then we have all of these, what I am going to describe as, old penalties. Not for a moment am I suggesting that a term of imprisonment of five years is anything minor or necessarily even needs to be changed, but certainly when it comes to the fines, I think that is a different situation entirely. These are still significant fines of up to $60 000.

The earlier example I gave was of a really insignificant one of $1 000. Nowadays, there would probably be a greater fine than that for holding a mobile phone while driving, not that I have any experience with such fines. The point is that some 20 years ago, we thought a fine of $1 000 was appropriate; it is hard to think that it will still be appropriate in 2024. Does the government have any intention in the near future to consider the penalties that are set out in the Working with Children (Criminal Record Checking) Act?

**Hon MATTHEW SWINBOURN**: I cannot say to the member that there has, as a matter of fact, been a decision made to do that. The member has raised these matters in front of these good people at the table today; some of them are extremely senior, so I think they will turn their minds to that. As we have indicated, these are phases of reform and I think it would be appropriate to give consideration to the appropriateness of the penalties at some later stage. However, it is also a question of biting off more than we can chew with these sorts of things. The member is right; the statutory review was almost 10 years ago. I am just speculating here, but if there were proposals to increase penalties, it could have been a basis for delaying the introduction of this bill at the expense of the other significant reforms we are trying to achieve. I have also been advised that the department's ability to enforce provisions of the act will be enhanced by this bill, so its capacity to make its own judgements about the appropriateness of the penalties will be enhanced by its firsthand experience when it takes on that considerable responsibility.

**Hon NICK GOIRAN**: With regard to the statutory review that was undertaken approximately 10 years ago, is that review provision in the primary act being amended in any way in this bill, or will there still be an ongoing obligation to carry out a statutory review from time to time?

**Hon MATTHEW SWINBOURN**: I am advised that section 47 of the current act is the relevant section. That is being amended so that there will be a review obligation on the minister. Proposed section 47 states, in part —

> (1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review —
>
> (a) as soon as practicable after the 5th anniversary of the day on which the *Working with Children (Criminal Record Checking) Amendment Act 2022* section 40 comes into operation;

It is being refreshed, if I can use that term, and it will be an ongoing review, because paragraph (b) then states —

> after that, at intervals of not more than 5 years.

So that is almost a gold-standard review clause.

**Clause put and passed.**

**Clauses 25 to 28 put and passed.**

**Clause 29: Parts 3A and 3B inserted —**

**Hon NICK GOIRAN**: Clause 29 is a very significant provision that will insert parts 3A and 3B into the primary act. It deals with information gathering and sharing, compliance and enforcement. This provision, which starts at page 41 and continues through to at least page 64, could be the subject of extensive analysis and consideration in and of itself. We simply do not have the time for that this evening in the 35 minutes remaining. I simply ask the parliamentary secretary to look at the contents of the bill. He will see the large list of powers provided in proposed part 3A, "Information gathering and sharing", which is not an insignificant matter, particularly given some of the recent controversies both in Western Australia and around the nation when it comes to data collection, let alone the gathering and sharing of it. The parliamentary secretary will see that under proposed part 3B, "Compliance and enforcement", a number of significant powers are listed, including the power to enter, the power to seize and provisions with respect to entry warrants and the like. Are these powers new? To what extent will new powers be provided as a result of this bill or will they simply replace like existing provisions?

**Hon MATTHEW SWINBOURN**: Member, it is a bit from column A and a bit from column B. Some powers are in the current act as unamended. For example, in relation to proposed part 3A, I am advised that there are existing powers like those in proposed sections 34D, 34E, and 34F. The current provisions will be updated.

**Hon Nick Goiran**: Does it use the same numbering system?

**Hon MATTHEW SWINBOURN**: No, it does not use the same numbering. They do not directly correlate. It is fair to say that the act is quite narrow or threadbare when it comes to these sorts of powers. As I understand it, this reform will move to a much more proactive kind of approach, rather than what can perhaps be described as a more passive approach, to checking whether people should be working with children. For example, section 42, which proposed section 3B will replace, allows for the CEO to ask for information. We are not moving away. It is not really a compliance power if we can ask for information; we want to compel the production of information.

I do not want to harp on about this, but it is an important part of being able to protect children that we have a robust regime so that the department can undertake its work. For example, it is not enough for people to say their sole

practice or other business does not involve working with children and then not have the powers to properly identify whether that is true; if there is a suspicion that people are conducting that kind of work, it necessitates these heavy-handed powers. The power to enter someone's property should never be used lightly, but, again, we are balancing that against our need to protect children. I do not want to be overly gratuitous in my praise of the member and his sense of wanting to protect children, but if we want this department to be able to do that, we have to have a robustness around these working with children passes and the interaction between employers and sole traders who work in this space. The department has to have some teeth, and I think that is what this provision does.

**Hon NICK GOIRAN**: As an example of this, under proposed section 34Z, "Additional power to request information", the CEO—that is, the director general of the Department of Communities—may request certain information from what is referred to as prescribed entities. The list of prescribed entities is a public authority, a criminal records agency, a corresponding authority and a commonwealth agency or instrumentality. There is no obvious objection to the requesting of information from any of those prescribed entities, but then we sneak in "a person or body, or person or body of a class, prescribed by the regulations for the purposes of this definition", which technically could be anybody. It could be a member of this chamber, who is intended to be prescribed by virtue of proposed section 34Z(1)(e).

**Hon MATTHEW SWINBOURN**: I cannot identify anybody at this stage. I am sorry, but we do not currently have anyone in mind.

**Hon Nick Goiran**: We could just delete the lines, then.

**Hon MATTHEW SWINBOURN**: At this late stage, I do not think that would be appropriate. The record indicates that we do not intend to use it to capture the kind of things that the member identified, which is members of Parliament and things like that. Again, it is a power to request that information, so it needs to be understood in that context, rather than the power to compel the production of that information.

**Hon NICK GOIRAN**: To the extent that this bill has enhanced powers, the persons who will be able to exercise these powers are referred to as authorised officers. Will they be police officers or police officers and another class of officer? Can the parliamentary secretary indicate who will have these new powers?

**Hon MATTHEW SWINBOURN**: They will not be police officers; they will be directly employed as investigators by the department. They will not be child protection officers. These people will be employed for the specific purpose of carrying out the functions that are dealt with in this part.

**Hon NICK GOIRAN**: Do these officers already exist?

**Hon Matthew Swinbourn**: Yes.

**Hon NICK GOIRAN**: These officers already exist and have certain powers. Once this bill passes, they will have enhanced powers. As a result of the enhanced powers, will there be enhanced oversight of these officers?

**Hon MATTHEW SWINBOURN**: No, member, the existing oversight powers will remain, which are making an application to the State Administrative Tribunal, making a complaint to the Ombudsman or, ultimately, using the court's jurisdiction to deal with administrative bodies.

**Hon NICK GOIRAN**: Yes, but is there an intention by the director general to implement some form of enhanced oversight internally of these powers? We do not want a situation in which these powers are misused and there is limited recourse available to a person. Let us take the more extreme example, which the parliamentary secretary might recall, of Professor Cunningham and his wife, Catherine Atoms. He had the means and the capacity, really, to take on the police and, ultimately, was vindicated and a large amount of compensation flowed through to that individual. This was against the WA Police Force—if you like, the most expert in Western Australia in the use of such extraordinary powers. We no doubt have some hardworking officers within the Department of Communities, but presumably they will not have the experience or all of the skills of a police officer. If police officers can make a mistake and misuse power, and we have a Professor Cunningham situation, it is a point of concern. Of course, the police have a robust internal affairs department and any indiscretion by a police officer is required to be automatically reported to the Corruption and Crime Commission. Has the director general given consideration to some robust internal oversight of these new powers?

**Hon MATTHEW SWINBOURN**: I can provide the member with a breakdown of the structure. The day-to-day activities of officers designated as authorised officers under proposed section 34K will be supervised by the manager, compliance and investigations, and the director of the working with children screening unit. Practices, policies and procedures are being prepared to support the exercise of these new powers, and the activities of authorised officers will be subject to scrutiny and oversight by the department's integrity, intelligence and professional standards units should there be allegations of misconduct. As with other government departments, the Ombudsman's office, the Corruption and the Crime Commission and the Public Sector Commission are able to oversight the Department of Communities' activities. That indicates that they are contemplating an expansion of these roles. They have given thought to how that will be managed within the department. I think, as a matter of practice, they will have

to review how they are progressing with those sorts of things. Let us hope there is not a Professor Cunningham and Ms Atoms–type situation. Given this department has to work with organisations all the time in terms of the working with children function, and it is mostly a facilitative role for people to get their cards and for employers, I do not think it will necessarily go down a heavy-handed path like the police, in that, to a hammer, everything is a nail kind of thing.

**Hon NICK GOIRAN**: Do these authorised officers currently use special powers under statutes other than the Working with Children (Criminal Record Checking) Act?

**Hon MATTHEW SWINBOURN**: No, member, they do not have any special powers under other acts in performing that role.

**Clause put and passed.**

**Clauses 30 to 43 put and passed.**

**Clause 44: Part 6 Division 2 inserted —**

**Hon MATTHEW SWINBOURN**: Members will notice that supplementary notice paper 81, issue 3, contains a number of amendments in my name that all relate to clause 44. I wish to speak to all those amendments at this stage, without first moving them. Hopefully, we can then proceed in an ordinary manner to deal with the amendments. Further to discussions in this place during Committee of the Whole House on Tuesday, 22 November 2022, I reiterate the government's support of the amendments that have been placed on the supplementary notice paper to remove the in-perpetuity elements of the transitional arrangements in clause 44 of this bill. The government has considered how this may best be achieved.

As previously advised, the in-perpetuity element is not confined to proposed section 69, but is woven through several proposed sections in the transitional provisions. Extensive amendments to various provisions in clause 44 are therefore required to accommodate this significant shift. The changes mean that any working with children cardholder will remain subject to the old offence provisions only for the duration of their card and only if that card was current on commencement day or issued after commencement day in response to an application for a card or a reassessment that was pending on the commencement date, an application to cancel a negative notice that was pending on commencement day, or a review or appeal proceeding on commencement day or commenced after commencement day if the person is otherwise covered by the transitional arrangements. Once that card ceases to have effect, or an application for a further card is made, the person will be subject to the new offence provisions.

The government's previous position was to grandfather all persons who held a card or were issued a card as a result of a pending application on commencement day so that those persons would remain subject to the old offence categorisations in perpetuity until either they are newly charged with or convicted of a class 1 or class 2 offence on or after commencement day, or they fail to apply for a further card before the expiry of their current card at any time in the future. The removal of the in-perpetuity elements of the transitional provisions means that all working with children cardholders will be subject to the new offence categorisations much earlier and no-one will have the benefit of the old offence categorisations for longer than the life of their current card.

All the amendments relate to clause 44 of the bill. To achieve the goal of removing the in-perpetuity elements of the transitional provisions, we have proposed amendments as follows. This is going a little backwards, but we will start by deleting proposed sections 69 and 70. Proposed section 69 would have allowed a person covered by the transitional provisions to make further renewal applications into the future, prior to expiry of their current card, and would remain subject to the former offence provisions. Proposed section 70 provided for a person covered by the transitional provisions to remain subject to the former offence provisions despite the issue of a negative notice or interim negative notice in the future. We will seek to amend the wording in proposed sections 64, 65, 66, 67, 68 and 71. Instead of referring to when "the person ceases to have a current assessment notice", those proposed sections will employ the following wording —

> that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2, Division 1 (whichever occurs first) …

Together with the removal of proposed sections 69 and 70, this will narrow the application of those proposed sections from all subsequent assessment notices to just the one assessment notice. Any application to renew an assessment notice after commencement day will become subject to the new offence categorisations.

Further, we seek to delete proposed section 63 as it will no longer be required. Proposed section 63 worked in conjunction with the wording that will be deleted in other proposed sections to ensure that a person held a card on commencement day, and if that person did not lodge a new application before the expiry of the card, the new offence categorisations were to apply. With the new wording to be adopted in other proposed sections, the need for proposed section 63 will fall away. I have also referred previously, which I will repeat, to the insertion of proposed new subsection (1A) to proposed section 74, to ensure that any reassessment triggered under the legislation will result

in the new offence provisions applying to the person for the purposes of that reassessment. This was previously restricted to only reassessment triggered by a new class 1 or class 2 offence, but will now capture all reassessments, including as a result of actions taken under section 17(3)(d), class 3 offences, and proposed section 17B(2)(b), conduct review findings or outcomes.

Hon Nick Goiran has indicated to me that the opposition alliance will support the proposed amendments, and I thank him for the good faith manner in which he has pursued this matter. I think that with these amendments we will have a better bill—a bill that is squarely and unashamedly designed to better protect the state.

With that, I move —

Page 75, lines 18 to 23 — To delete the lines.

**Amendment put and passed.**

**Hon MATTHEW SWINBOURN** — by leave: I move —

Page 76, lines 3 to 5 — To delete "the person ceases to have a current assessment notice; or" and insert —

that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first); or

Page 76, lines 10 to 12 — To delete "the person ceases to have a current assessment notice." and insert —

that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first).

Page 76, lines 20 to 22 — To delete "the person ceases to have a current assessment notice; or" and insert —

that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first); or

Page 76, lines 27 to 29 — To delete "the person ceases to have a current assessment notice." and insert —

that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first).

Page 77, lines 13 to 15 — To delete "the person ceases to have a current assessment notice; or" and insert —

that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first); or

Page 77, lines 20 to 22 — To delete "the person ceases to have a current assessment notice." and insert —

that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first).

Page 78, lines 5 to 7 — To delete "the person ceases to have a current assessment notice; or" and insert —

that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first); or

Page 78, lines 13 to 15 — To delete "the person ceases to have a current assessment notice." and insert —

that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first).

Page 78, lines 29 to 31 — To delete "the person ceases to have a current assessment notice; or" and insert —

that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first); or

Page 79, lines 5 to 7 — To delete "the person ceases to have a current assessment notice." and insert —

that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first).

**Amendments put and passed.**

**Hon MATTHEW SWINBOURN**: I move —

Page 79, line 8 to page 81, line 11 — To delete the lines.

**Amendment put and passed.**

**Hon MATTHEW SWINBOURN** — by leave: I note that there was a proposed amendment on the supplementary notice paper in the name of Hon Nick Goiran. Now that we have deleted those lines, that amendment falls away. Therefore, I move —

Page 82, lines 19 and 20 — To delete "the person ceases to have a current assessment notice; and" and insert —

that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first); and

Page 82, lines 30 to 32 — To delete "the person ceases to have a current assessment notice." and insert —

that assessment notice ceases to have effect or the person applies for a further assessment notice under Part 2 Division 1 (whichever occurs first).

**Amendments put and passed.**

**Hon MATTHEW SWINBOURN**: I move —

Page 83, after line 29 — To insert —

(1A) Despite any other section in this Subdivision, the new classification provisions apply to and in relation to a person if the person is subject to a decision of the CEO to act under section 17(3)(d) or 17B(2)(b) made on or after commencement day.

**Amendment put and passed.**

**Hon MATTHEW SWINBOURN**: Last but by no means least, I move —

Page 83, line 31 — To delete "subsection (1)," and insert —

subsection (1) or (1A),

**Amendment put and passed.**

**Clause, as amended, put and passed.**

**Clause 45: Schedules 1 and 2 replaced —**

**Hon NICK GOIRAN**: Clause 45 sets out all the class 1 and class 2 offences. When was the most recent time that consultation was undertaken to establish what should be a class 1 offence and what should be a class 2 offence?

**Hon MATTHEW SWINBOURN**: The last consultation, if we can refer to it in this way, was when the draft copy of the bill was circulated among the stakeholders; for example, the WA Police Force, the State Solicitor's Office and the Director of Public Prosecutions—I think we covered off earlier who those people were. That was done between October last year and May this year. Although the offences were not specifically consulted on, if I can use that term, because the member has asked a direct question, they were given the whole bill, including schedules 1 and 2 that are to be replaced, and they did not give any feedback that they had any concerns about what would be in class 1 and what would be in class 2.

**Hon NICK GOIRAN**: Can the parliamentary secretary remind me again whether the Commissioner for Children and Young People and the Commissioner for Victims of Crime were consulted on what has been left as a class 2 offence?

**Hon MATTHEW SWINBOURN**: The Commissioner for Children and Young People, yes, but the Commissioner for Victims of Crime, no.

**Hon NICK GOIRAN**: Would that have been the former Commissioner for Children and Young People, not the current one?

**Hon MATTHEW SWINBOURN**: It would be safer to say yes, because I think the current commissioner commenced only in the middle part of this year.

**Hon NICK GOIRAN**: I want to make a comment at this time, particularly for those who will continue to have responsibility for managing this legislation, and for continuing to review it from time to time. I accept and acknowledge that, as a bare minimum, there will be another statutory review of this legislation in five years. I hope that at the time of the next statutory review, or, indeed, before that time, interested persons will give further consideration to what is currently a class 2 offence. It troubles me that an offence such as aggravated sexual penetration without consent will remain a class 2 offence.

I would like to know that that particular provision will be expressly put to the attention of the Commissioner for Children and Young People and, for that matter, the Commissioner for Victims of Crime, and that they will come back to government with an opinion about whether a person who has been not just charged with, but convicted of, aggravated sexual penetration without consent should ever be able to work with a child. I would need a lot of persuading that there would be any circumstances when that would be the case. There is no such thing as an ordinary

offence, but the very fact that this particular offence refers to circumstances of aggravation means that it ought to be heightened in our minds when considering whether these persons should be able to work with children. I acknowledge that, as a result of this bill, if the aggravated sexual penetration without consent is committed against a child, that will now be a class 1 offence, but for a class 2 offence, as I understand it, if the offence is committed against an adult, it will not be covered, and that troubles me. As I say, I cannot see a reasonable circumstance in which that ought to apply. I encourage those with responsibility to continue to oversee these things to give that express consideration and seek expert advice from some of the stakeholders.

**Clause put and passed.**

**Clauses 46 to 53 put and passed.**

**Title put and passed.**

*Report*

Bill reported, with amendments, and, by leave, the report adopted.

*As to Third Reading — Standing Orders Suspension — Motion*

On motion without notice by **Hon Matthew Swinbourn (Parliamentary Secretary)**, resolved with an absolute majority —

That so much of standing orders be suspended so as to enable the bill to be read a third time forthwith.

*Third Reading*

Bill read a third time, on motion by **Hon Matthew Swinbourn (Parliamentary Secretary)**, and returned to the Assembly with amendments.