

CHAPTER 1

INTRODUCTION

1.1 On 10 September 2009, the Senate referred the provisions of the Crimes Amendment (Working With Children – Criminal History) Bill 2009 (the Bill) to the Legal and Constitutional Affairs Legislation Committee for inquiry and report by 29 October 2009. On 29 October 2009 the Senate agreed to extend the reporting date until 17 November 2009. On 17 November 2009 the Senate agreed to further extend the reporting date until 19 November 2009.

1.2 The Bill was introduced in the House of Representatives on 20 August 2009 by the Minister for Home Affairs, the Hon Brendan O'Connor MP. The Bill amends Part VIIC of the *Crimes Act 1914* (the Act) to create exceptions to provisions that prevent the disclosure of pardoned, quashed and spent convictions.

1.3 The Bill would implement the Council of Australian Governments' (COAG) agreement of 29 November 2008 to facilitate the inter-jurisdictional exchange of criminal history information for people working with children, including information about spent, pardoned and quashed convictions. It will create new exceptions to the non-disclosure provisions, which will have the effect of allowing pardoned and quashed convictions to be disclosed, and expanding the existing exceptions for the disclosure of spent convictions for persons who work, or seek to work, with children.

1.4 The Act currently only allows disclosure of information on spent convictions in relation to a person working with children for the limited purpose of determining whether the person has been convicted of a designated offence, which includes a sexual offence or an offence against the person where the victim was under 18 years at the time the offence was committed. Under the proposed amendments, these convictions, as well as convictions for non-sexual offences (ie: all offences regardless of nature), can be disclosed to and taken into account by Commonwealth, State and Territory screening agencies in determining whether the person is suitable to work with children.¹

1.5 Proposed section 85ZZGA of the Bill outlines the objective of the new exclusions as being to help protect children from sexual, physical and emotional harm by permitting criminal history information to be disclosed and taken into account in assessing the suitability of persons for work with children.

1.6 The Minister explained the Government's reasoning in seeking to create the new exceptions in the following terms:

The Australian Institute of Criminology, in its report *Child sexual abuse: offender characteristics and modus operandi*, noted that incarcerated sexual offenders are more likely to have previous convictions for non-sexual offences than for sexual offences.

1 See Explanatory Memorandum, p. 1.

Further, law enforcement agencies have indicated that charges relating to offences against children are often withdrawn as a decision is made to protect the child victim from the stress and trauma of giving evidence, cross-examination and simply waiting for committal and trial.

For these reasons, jurisdictions considered at COAG that it was appropriate to consider a person's full criminal history, including non-conviction information, in assessing whether he or she poses a risk to children if employed in child related work.²

1.7 The Minister's second reading speech acknowledged that child-related employment screening is a difficult and challenging process, requiring the careful balancing of potential risks to children with individual rights to privacy, employment and the freedom to participate in the community as a volunteer. Indeed, it is clear from the response to this inquiry that balancing these interests is the key issue that emerged in this inquiry, and while some submissions were of the view that the trade off of rights of individuals is justified, others were concerned that this undermines some important legal principles.

Summary of key amendments

- Repeal the existing exclusions in Division 6 which relate to the disclosure of spent convictions information in relation to the care, instruction or supervision of minors.
- Replace the existing exclusions with new exclusions which allow the disclosure of information:
 - about a person's spent, quashed and pardoned convictions,
 - to or by a prescribed person or body permitted or required by or under a prescribed law to obtain and deal with information about persons who work, or seek to work, with children, and
 - for the purpose of obtaining or dealing with such information in accordance with the prescribed law.
- Define 'child' and 'work' for the purposes of the new exclusions.
- Specify criteria that screening units must meet before they can be prescribed to enable them to obtain and deal with Commonwealth criminal history information.
- Require the Minister for Home Affairs to cause a review of the operation of the new provisions to be conducted after an initial trial period.³

2 The Hon Brendan O'Connor MP, Minister for Home Affairs, *House Hansard*, 20 August 2009, p.8476.

3 Explanatory Memorandum, p. 1.

Conduct of the inquiry

1.8 The committee advertised the inquiry in *The Australian* newspaper on 23 September 2009, and invited submissions by 28 September 2009. Details of the inquiry, the Bill and associated documents were placed on the committee's website. The committee also wrote to over 90 organisations and individuals inviting submissions.

1.9 The committee received 17 submissions which are listed at Appendix 1. Submissions were placed on the committee's website for ease of access by the public.

1.10 A public hearing was held in Melbourne on 10 November 2009. A list of witnesses who appeared at the hearing is at Appendix 2, and copies of the Hansard transcript are available through the internet at <http://aph.gov.au/hansard>.

Acknowledgement

1.11 The committee thanks organisations and individuals who made submissions and gave evidence at the public hearing.

