COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Reference: Crimes Amendment (Working With Children—Criminal History) Bill 2009

TUESDAY, 10 NOVEMBER 2009

MELBOURNE

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SENATE LEGAL AND CONSTITUTIONAL AFFAIRS

LEGISLATION COMMITTEE

Tuesday, 10 November 2009

Members: Senator Crossin *(Chair)*, Senator Barnett *(Deputy Chair)*, Senators Feeney, Fisher, Ludlam and Marshall

Participating members: Senators Abetz, Adams, Back, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Jacinta Collins, Coonan, Cormann, Eggleston, Farrell, Feeney, Ferguson, Fielding, Fierravanti-Wells, Fifield, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Lundy, Ian Macdonald, Marshall, Mason, McEwen, McGauran, McLucas, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Sterle, Troeth, Trood, Williams, Wortley and Xenophon

Senators in attendance: Senators Crossin, Fisher and Hanson-Young

Terms of reference for the inquiry:

To inquire into and report on:

Crimes Amendment (Working With Children—Criminal History) Bill 2009

WITNESSES

Committee met at 9.47 am

CHAIR (Senator Crossin)—I declare open this hearing of the Senate Standing Committee on Legal and Constitutional Affairs Legislation Committee's inquiry into the Crimes Amendment (Working with Children—Criminal History) Bill 2009. This bill was referred to the committee by the Senate on 10 September for report on 17 November 2009. The purpose of the bill is to implement the Council of Australian Governments agreement of 29 November 2008 to facilitate the interjurisdictional exchange of criminal history information for people working with children, including information about spent, pardoned and quashed convictions. The amendments would create an exception to the disclosure prohibitions in the Crimes Act, allowing convictions of persons who work or seek to work with children to be disclosed to and taken into account by the Commonwealth, state and territory screening agencies when determining whether a person is suitable to work with children.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. People have the right to request to be heard in private session. If you seek to give evidence in camera, you simply need to request that of the committee and we will consider it.

[9.48 am]

BUDAVARI, Ms Rosemary, Co-Director, Criminal Law and Human Rights, Law Council of Australia

Evidence was taken via teleconference—

CHAIR—I now welcome Ms Budavari, the representative of the Law Council of Australia. We have received a submission from you, which we have numbered 15. Do you need to make any changes or amendments to that?

Ms Budavari—No, thank you.

CHAIR—Okay. I invite you to make an opening statement, and then we will go to questions.

Ms Budavari—The Law Council supports efforts to protect children by examining the criminal history of people who are responsible for the care, supervision and instruction of children, or who have direct unsupervised contact with children. The Law Council also supports the interjurisdictional exchange of criminal history information in these circumstances. However, the Law Council is concerned that the provisions of this bill go beyond these purposes by allowing disclosure and use of information about wrongful conviction pardons and quashed convictions, allowing disclosure and use of the information about spent convictions regardless of the type of conviction, and failing to properly define the phrase 'working with children'.

I will start by looking at the current provisions in the Crimes Act. The Crimes Act currently provides for restrictions on the disclosure and use of wrongful conviction pardons and quashed convictions, and there is no necessity for any qualification periods in relation to that prohibition. Those provisions reflect long-standing protections in our criminal justice system for persons who have been wrongly convicted or had their convictions quashed because of flaws in the system itself. These provisions support the integrity of the system and the fundamental principle that someone is presumed innocent until proven guilty.

The act currently also contains provisions that generally restrict the disclosure and use of spent convictions, where the conviction involved has not resulted in imprisonment or the imprisonment has been for less than 30 months, and a certain number of years have passed since the conviction. These provisions reflect the principle that persons convicted of less serious offences who have not committed further offences should be able to reengage in society without the stigma of a criminal conviction.

The Crimes Act also currently contains exclusions from these nondisclosure provisions in relation to spent convictions in certain circumstances, for example, assessing the employees for justice agencies, and the Law Council has no problems with those types of exclusions. It also currently provides exclusions for agencies which employ persons or provide services relating to the care, instruction or supervision of children, and the exclusions on the prohibitions of disclosure are related to sexual offences or offences against children. What the bill does is allow for these current exclusions from nondisclosure to be substantially extended, as I said before, to allow disclosure of wrongful conviction pardons and quashed convictions, to allow disclosure of spent convictions relating to any offence, and to apply to anyone working with or seeking to work with children, a phrase in the bill.

The Law Council submits that such significant extensions should be approached cautiously by parliament for the reasons set out in our submission. The Law Council recommends that the extension to include wrongful conviction pardons and quashed convictions should be removed from the bill; the extension to include spent convictions relating to any offence should be removed and that either only spent convictions relating to sexual offences or offences against children should be included, or offences which can be shown to influence the person's propensity to offend against children should be included. In this respect we note that the existing regulations under the Crimes Act contain a number of instances where the particular offences involved are restricted to either sexual offences, offences against children or offences involving violence.

We are also recommending that the phrase 'working with children' should be defined either in accordance with the current phrase in the Crimes Act to mean the 'care, instruction or supervision of children', or alternatively, a definition which better aligns with the definition in the state and territory legislation relating to criminal history checks for child related work. An example from the Victorian legislation is work that usually involves regular, direct, unsupervised contact with a child, so narrowing that definition rather than having a broad definition or a broad phrase that is actually not defined is recommended.

As we have stated in our submission, the Law Council submits that there is great potential for discrimination against persons subject to criminal history checks even by the screening agencies which will be prescribed under the bill. Legal practitioners and the Australian Human Rights Commission regularly deal with examples of such discrimination. In fact in 2004 the Australian Human Rights Commission decided to examine that issue in greater detail because of the increasing number of complaints that it was receiving.

Some examples from legal practitioners that have been provided to the Law Council include the examples in our submission of a youth worker who was dismissed because of a marijuana possession conviction 16 years prior, and a cleaner in a child-care centre who was dismissed because of a shoplifting charge 20 years prior. Those are examples of the 'any offence' problem that exists in this bill. Practitioners have told us that even some sexual offences can result in discrimination. For example, a 17-year-old male who sent a sexually explicit text message to his 16-year-old girlfriend was also dismissed.

The Law Council also agrees with the submission of the Privacy Commissioner that the safeguards in this bill in relation to the prescription of screening agencies are insufficient to protect privacy and prevent discrimination. The Law Council also agrees with a recent submission by the Australian Human Rights Commission on the model Spent Convictions Bill, which is an initiative of the Standing Committee of Attorneys-General that if broader exclusions to nondisclosure of spent convictions are introduced they need to be balanced by amendments to the Australian Human Rights Commission Act to make discrimination on the ground of criminal record unlawful and subject to the same processes as other discrimination complaints, that is, conciliation, and court action if conciliation fails.

They are the substantive matters that are of concern to the Law Council about this bill. I will just conclude with three short technical problems that we see with the bill. The bill proposes that sections 85ZS, which relate to wrongful conviction and pardons, and 85ZT and 85ZU which relate to quashed convictions, all be subject to division 6. Division 6 will now include: subdivision A, the new exclusions about pardons, quashed and spent convictions; subdivision B, the existing exclusions relating to spent convictions; and subdivision C, the existing exclusion relating to fair and accurate reporting of proceedings. But sections 85ZS, 85ZT, and 85ZU only deal with wrongful conviction, pardons and quashed convictions, so on a technical point we feel that these sections should only be subject to subdivisions A and C of division 6 and not subdivision B, which is implied by making them subject to division 6 altogether.

section 85ZZ(1)(b)

section 85ZZH(k)

The other technical point is also outlined in the Privacy Commissioner's submission that section 85ZZH(k)currently allows for further exclusions to be made by regulations, and the current regulations provide in item 15 of schedule 4 to regulation 8 for exclusion relating to persons or bodies who employ persons to provide services for the care, instruction and supervision of children and who assess persons employed in work likely to involve direct contact with children, but only in relation to sex offences all offences against children. If the provisions in the bill proceed this item should be repealed, as pointed out by the Privacy Commissioner.

Finally, as also outlined in our submission, we suggest that the relationship between the Privacy Commissioner's existing function under section 85ZZ(1)(b)of giving advice to the minister on further exclusions of persons from the nondisclosure of spent convictions be clarified in relation to its interaction with the making of the regulations pursuant to section 85ZZH(k). If the purpose of providing the advice by the Privacy Commissioner is for the minister to make regulations about spent convictions only, then it is unclear why the bill provides that the Privacy Commissioner's functions should be extended to providing advice on wrongful conviction, pardons and quashed convictions as well. If it is intended that the commissioner should provide such advice, and that the minister should have the corresponding power to make regulations, then this needs to be provided with a specific regulation-making power in the bill. That concludes my opening statement. Thank you, Chair.

CHAIR—Thank you, Ms Budavari, and thank you once again for your detailed analysis of the legislation we have before us. It is always most appreciated. I have a few questions, but Senator Fisher will start.

Senator FISHER—Likewise, thank you, Ms Budavari. You have touched on it in your opening statement, but you say in your submission that there no justification in the second reading speech or the explanatory memorandum for the amendment that would allow a person's wrongful conviction or the quashing of their conviction to be taken into account as for the suitability in child related work. So you note that there is no

justification provided for that by the government in terms of the bill. Can you speculate as to what might be the justification, given what the minister has said about the bill—and what do you think of that?

Ms Budavari—I think the intention of the bill is quite clear—that there is concern about protecting children and, as a result of that concern, the government, and in fact the state and territory governments through COAG, ought to broaden the scope of what is included in a criminal history check as far as possible. The problem that the Law Council has with that is that it conflicts, as I alluded to in the opening statement, with traditional protections associated with wrongful convictions, pardons and quashing of convictions. If the government wants to make a policy decision that they prefer the protection of children to the extent that they want to remove those traditional protections then that of course is a decision for the government. The Law Council simply points out that those traditional protections are in there for a reason: they support the integrity of our justice system and they should not lightly be removed, particularly if there is no evidence to support the assertion that someone's wrongful conviction, pardon or their quashed conviction is relevant to the protection of children.

Senator FISHER—Indeed, it in a sense makes a complete nonsense in some circumstances of bothering to quash a conviction, doesn't it?

Ms Budavari—Yes.

Senator FISHER—On the top of page 2—of our copy anyway—of your submission you refer to the three dot points, and you did in your opening statement, which are the basis for which a person can be pardoned under the Crimes Act at the moment. Then you say that as a result of that they are not required to disclose; no other person may disclose; and no other person may take into account the fact of the charging et cetera unless the person consents. An extension of what the Law Council is saying, is it not, is that the government should essentially justify in this case under this bill why every one of those protections should be able to be have inroads into them in these circumstances, shouldn't it? Surely a logical consequence of what the Law Council is saying is that, 'Yes, we applaud the spirit of the bill, but it is such a trammelling of some fundamental principles that the government should have to justify each and every one of those dot points at the top of page 2 of your submission.' Isn't that what you must be saying?

Ms Budavari—Yes, that is certainly the essence of it. We are very concerned about the removal of those traditional protections and think that it should not be done lightly and that there should be substantial justification for it.

Senator FISHER—Does the bill actually remove those principles or allow, as I said, inroads to be made into them in certain cases?

Ms Budavari—It is probably more accurate to say that it allows inroads in certain cases—

Senator FISHER—Yes, the latter.

Ms Budavari—rather than complete reversal, yes.

Senator FISHER—On the same page—page 2 of your submission in the copy I have—you also say:

The result of these amendments is that a person's employment opportunities may be curtailed on the basis of a prior criminal charge, even though ultimately the person was exonerated.

You have about the lack of an adequate definition of 'working with children'. It is one thing to have a person's employment opportunities curtailed, but what sort of employment opportunities are you contemplating may be curtailed?

Ms Budavari—I guess because of the broadness of the definition, some of those examples that I mentioned in the opening statement. The broadness of the phrase might mean that a cleaner in a childcare centre may have to have their conviction disclosed or taken into account. The Law Council would definitely prefer a definition and a definition that is reasonable and proportionate to the risk being addressed: some type of definition which involves either care, supervision and instruction of children; or close contact with children; or direct, unsupervised contact with children—something along those lines.

Senator FISHER—Your scenarios still ultimately arguably involve some involvement in the prospective employment with children, but as the bill stands at the moment—and without overdramatising—it is at least conceivable, isn't it, that those curtailed employment opportunities could be any employment, because there is no actual technical requirement that links the chain of events back to children, is there?

Ms Budavari—Yes, that is right. So some of the hypothetical scenarios we considered when looking at this were things like someone working at McDonald's, where there is going to be a clientele of both adults and

children; is that working with children? Or someone working in a retail outlet where some of the customers are going to be adults and some are going to be children—is that working with children, potentially?

Senator FISHER—Yes. Let's face it; happily, kids are everywhere.

Ms Budavari—Yes.

Senator FISHER—Going to the final area I have questions on, on page 3 of your submission you say the minister will only be able to prescribe a person or body as someone to whom criminal history information may be disclosed subject to those bodies satisfying three conditions. Those conditions relate to compliance with laws, compliance with principles of natural justice, including privacy issues, and having appropriate risk assessment frameworks and skilled staff to assess risks to children against those frameworks. But is there anything in the bill that says it must also be a body that has the role of doing this sort of thing or has a role that is somehow related to the whole purpose of the bill itself? I have not seen it thus far.

What I am getting at is there may well be bodies that comply with those three conditions in your submission yet have nothing to do with and would not normally have anything to do with people working in industries that you might traditionally regard as working with children. That proposition that I put to you is probably the furthest reach of my concerns, but somewhere in between there surely lies an appropriate balance, where the body to whom the information is provided not only ensures there is natural justice, some sort of assessment framework and looks after privacy concerns but also has a purpose that is related to the whole game, as it were.

Ms Budavari—Yes. I guess the only comment I can make is that proposed section 85ZZGE, where the prescription process is set out, does contain paragraph (c), which states:

the Minister must be satisfied that the person or body:

(c) is required or permitted by or under a Commonwealth law, a State law or a Territory law to obtain and deal with information about persons who work, or seek to work, with children …

Now if—

Senator FISHER—What section was that, sorry?

Ms Budavari—Section 85ZZGE, paragraph (c).

Senator FISHER—Thank you.

Ms Budavari—That is okay. If the problem with no definition of 'work or seek to work with children' were resolved in some way then that paragraph would probably confine the bodies which could be prescribed. So the bodies which could be prescribed would have to also comply with paragraphs (d), (e) and (f), and paragraph (f) in particular talks about 'risk assessment frameworks and appropriately skilled staff to assess risks to children's safety'.

So, yes, it would appear that the scope to prescribe a very general body is limited by both paragraph (c), if the problem with working with children is fixed, and paragraph (f). I note that you are going to hear from the Office of the Federal Privacy Commissioner. We also share the concerns expressed in their submission about the generality of paragraph (d), which says:

(d) complies with applicable Commonwealth law, State law or Territory law relating to privacy, human rights and records management …

They have called for that to be explained either in the bill or in the explanatory memorandum. For example, I am not even quite sure what would qualify as a Commonwealth, state or territory law relating to human rights. Is that only a human rights act or is that some other legislation that touches on human rights?

Senator FISHER—Yes, many bits of legislation have provisions arguably relating to human rights and to records management.

Ms Budavari—Yes.

Senator FISHER—I think the subsections you have identified do go quite some way to addressing those concerns I raised right at the end. I will think further about whether they go the whole way, but they do go some way, so thank you.

CHAIR—Ms Budavari, I understand where the Law Council is coming from in relation to the current provision in the Crimes Act about free and absolute pardon not having been disclosed. But when I read these papers last night I thought to myself: what if we have a situation where someone may well have been accused of assault of a child 20 years ago, there is not enough evidence, facts or proof, the police and prosecutors are

incredibly frustrated, and the court says, 'There is not enough here to deal with this so, off you go, you are pardoned'? I pictured headlines that then say that person X was arrested, that they had been picked up for a similar crime 20 years ago but it had not been discovered and asking why this was not know when this person was hired, that there is a history of this.

I understand where you are coming from, but I can also see a situation where it may well be, then, that governments are accused of not having legislation that is tight enough to have had this on their radar so as to make sure that any question or query about a person's previous behaviour, whether proven or not, is known and people are made aware of it.

Ms Budavari—In relation to the point about when there is not sufficient evidence to result in a conviction, that situation is generally quite distinct from if someone has been convicted and then the conviction has been quashed or the person has been pardoned because of some sort of flaw in the process. This bill does not really address the situation, which is referred to in the explanatory memorandum, where the police or the Director of Public Prosecutions simply withdraws a charge because there is not enough evidence or a charge is not proved because there is not enough evidence. So the bill actually does not deal with those particular situations. The bill does deal with if someone has been through the court process and been convicted and then a problem is raised and the person is pardoned or has their conviction quashed.

Getting back to the situation where someone is behaving in a certain way and there is not enough to secure a conviction, some of how you could remedy that or address that may be through some other types of screening processes. The *Bills Digest* actually looked at some of the other ways in which people are screened. It is not just criminal history which is taken into account in screening people who are going to work with children; it is a variety of things that can be taken into account.

CHAIR—Do you mean where they list what happens with each state and territory?

Ms Budavari—Yes, that is right. After referring to the states and territories, it says:

Working with Children Checks draw together information from various sources, but may include a primary focus on certain types of offences

So I am not sure. I am actually not familiar with what the process is in those state and territory agencies. It would seem to me that the issues arising when things do not proceed to an actual conviction may be better addressed by some other type of screening process. We would probably need to get some advice from social scientists about that. This bill is actually dealing with people who have been convicted and had their convictions quashed, or who have been pardoned, or who are eligible to have their conviction regarded as spent. In those circumstances that does fairly and squarely raise the issue of traditional protections for people whose convictions have been quashed or who have been pardoned because of some problem in the system. It is not necessarily the case that that person was in fact guilty but got off on a technicality. As you know, we have had some incredible miscarriages of justice in Australia with people like Lindy Chamberlain. So should someone like Lindy Chamberlain have her quashed conviction taken into account if she is going to do something with children?

CHAIR—But, with all due respect, I do not know enough about whether there are unusual cases or cases in the minority. From my point of view, if you suspected, for example, that someone had pornography on their computer but you could not exactly pinpoint that person to that computer, so an arrest was made but the case never got to court so the person was let off—so charges were never proceeded, but there was a question mark over it—there would be somewhere in the police files a record of, at least, that arrest. I know in the Northern Territory, for example, you have to go to the police station and fill out an application, and they do a thorough check of your police records, if there are any, or criminal offence. I do not know. I filled out one myself when I went to attend a kids school camp with my daughter two years ago. I have no idea what paperwork they look at. But I suspect that if I had been charged with speeding fines or whatever someone would look at it and go, 'That's not relevant.' There must be, at some point in the systems, a list of what is not relevant, like the shoplifting case.

Ms Budavari—Yes. I guess the problem we see with this bill is that that list is not up front in the bill. By including any offence, particularly in relation to spent convictions, you are leaving it to the discretion of the screening agency.

CHAIR—But that is the case currently. That is what I am saying. My experience in the Northern Territory is that that is currently the case. If you are filling out a request for a police check to be undertaken to get your blue card or whatever it is, I am not sure what records they look at or how that is done. Again, for me, the

focus is on the protection of the child here. I am not sure I want to protect someone who may or may not have been in question in the past or who may have a quashed conviction. I think that, even if that conviction was quashed, it would be better for the potential employer or agency to know about that than not to know about it and then be caught out in a situation. For me the core issue here is the protection of the child, not protection of somebody's past history.

Ms Budavari—In order to protect the child we need to know exactly what sorts of offences are relevant to someone possibly offending against children. There simply does not seem to be enough knowledge about that in the supporting material in relation to this bill. We also need to be careful about the distinction, which I think is also drawn out in the *Bills Digest*, between general police certificate checks and working with children checks. As I understand it the former ones, the general police checks, can include pending charges, whereas the working with children ones do not include those at present. But, as I say, the *Bills Digest* refers to the working with children checks having a range of sources of information. That may be things like character references. I do not know, but perhaps the Attorney-General's Department will have that knowledge when they give evidence before the committee.

CHAIR—I am thinking of the case of, maybe, a bus driver. If there were some sort of shoplifting or bankruptcy, I suppose it would not be relevant, but there may well be something that occurred 15 years ago that you ought to know about. I am not saying you would not employ that person or would dismiss that person. Maybe that person is trying to rehabilitate or start a new life or something, but from my point of view, if I were in charge of a group of children—as a school principal, for example—I would want to be convinced that all those boxes had been ticked so that I was not liable, was covered and had some peace of mind that the people in the presence of these children were safe.

Ms Budavari—Again, that probably reinforces the need for some more research or evidence in relation to what types of offences actually pose a risk of offending against children. I think that the committee is also hearing from the Australian Childhood Foundation.

CHAIR—Yes, we are.

Ms Budavari—Perhaps they can assist with that. Suffice it to say that the Law Council thinks that the approach of having spent convictions relating to any offence is too broad.

CHAIR—All right. Would you, then, put a list of convictions in the bill, or would they be attached to regulations?

Ms Budavari—That is a possibility. As I have said, in relation to the existing regulations it goes through a table where it looks at the particular agency that would have the interest and then what the agency would be using that information for—for our example, a common one is employing people. So a justice agency, for example, employing people would be able to find out about their spent convictions. It has a list of the prescribed offences—in some cases it is all offences; in other cases it is designated offences, which are sexual offences and offences against children; in other cases it is drug offences and in other cases it is offences involving violence. So something similar would be a lot better, it is our submission, than simply having spent convictions relating to any offence.

CHAIR—Finally, you propose that the aspects of this bill should be reviewed after a period of time.

Ms Budavari—The bill provides a review clause for a review to start no later than 30 June 2011 and to be completed within three months. We support that cause. We would not want to see that taken out of the bill.

Senator FISHER—Coming out of your answers to Senator Crossin, does it seem a little incongruous that the bill talks about spent convictions and quashed convictions but does not talk about pending charges?

Ms Budavari—I think it does not seem incongruous in terms of what the COAG resolution was. The COAG resolution just seemed to touch on those three areas.

Senator FISHER—Yes, and yet many of the concerns that you have about the use of quashed convictions and spent convictions would not necessarily apply so much in relation to pending charges, would they?

Ms Budavari—The Law Council actually does have some concerns about pending charges in the context of general police certificates, and again this arises from the experience of legal practitioners with clients who have been discriminated against on the basis of pending charges. An example that I can give of that is a young man in Western Australia who was charged with, I think it was, resisting arrest or one of those types of public order offences. The matter took several months to proceed through court and he was found not guilty. But in

that time he applied for a number of jobs which required him to have a police certificate and that pending charge came up on that certificate, and he was not employed throughout that period.

Senator FISHER—I guess what I am getting at is that if the government is going to dispense with some of the traditional niceties—and I do not want to oversimplify it—that have applied in the past in relation to spent and wrong convictions then in some ways there is more argument for doing the same in relation to pending charges, which, after all, are all about the future and may well be proven.

I have one final question coming off Senator Crossin's proper enunciation that her concern is for the children first and foremost. If your other concerns about the bill were addressed, what is the worst that could happen to a person who might otherwise get a job in whatever is defined as working with children? If the privacy concerns are looked after et cetera, is the worst that could happen, in giving primacy to children, that an individual or a group of individuals would not be able to get certain sorts of jobs? Is that the worst that will happen?

Ms Budavari—Yes. The types of discrimination that legal practitioners come across and that the Human Rights Commission has outlined do relate to not being able to obtain certain forms of employment or being dismissed from certain forms of employment. And I guess, as we all know, when such information about a person becomes public, not only can it have ramifications for certain forms of employment but it may actually lower the standing of that person generally, so it may make it difficult for that person to function in society generally.

Senator FISHER—Yes, of course, and I appreciate that. I was just trying to get to what, ultimately, may be the policy balance that we have to make. Thanks, Chair.

CHAIR—Ms Budavari, thank you very much for your time this morning.

Ms Budavari—That is my pleasure.

CHAIR—Also, please pass on our thanks to the Law Council for your submission and for responding to this as quickly as you did. Thank you very much.

Ms Budavari—Thank you.

[10.38 am]

PILGRIM, Mr Timothy Hugh, Deputy Privacy Commissioner, Office of the Privacy Commissioner

SOLOMON, Mr Andrew Gordon, Director of Policy, Office of the Privacy Commissioner

Evidence was taken via teleconference—

CHAIR—I welcome Mr Pilgrim and Mr Solomon from the Office of the Privacy Commissioner. Thank you both for joining us this morning. I am the chair of the committee, and with me here in Melbourne are Senator Mary Jo Fisher, from the opposition, and Senator Sarah Hanson-Young, from the Greens. You have lodged a submission with us to assist us with our inquiry, which I must say is very much appreciated and essential, given the nature of the work that this legislation instructs us to carry out. We do appreciate your submission and certainly your time in appearing before us—it is quite important. We have numbered your submission No. 6. Before I ask you to make an opening statement, do you need to change or amend your submission at all?

Mr Pilgrim—No, we do not, Chair.

CHAIR—All right. If you could perhaps talk to your submission and provide us with some comments, and then we will go to questions.

Mr Pilgrim—Thank you for the opportunity to offer some opening comments to the committee on the Crimes Amendment (Working With Children—Criminal History) Bill 2009. The Office of the Privacy Commissioner understands that this bill would facilitate the interjurisdictional exchange of criminal history information about people working with or seeking to work with children by excluding this information from the quashed, pardoned and spent conviction schemes of the Crimes Act 1914. This initiative is part of an important public interest objective aimed at protecting children from sexual, physical and emotional harm. At the same time, the office is aware of the sensitivity of individuals' criminal history information and the potential for individuals to be stigmatised, embarrassed or discriminated against if it is used inappropriately. The scheme that regulates the use of quashed, pardoned and spent conviction information provides some protection against discrimination by enabling individuals who have been convicted of a minor offences and who have either been exonerated or not reoffended for a long time to get on with their lives, basically.

The office considers that the challenge is to ensure that the bill contains appropriate privacy safeguards around individuals' criminal history information while providing strong protection for children against potential harm. In our submission to the committee the office provided detailed suggestions which are intended to ensure that screening units do not take account of the irrelevant criminal history information, handle this information securely when they do get it and do not use or disclose it for unrelated purposes. In particular, the office suggested that screening unit staff be provided with consistent, transparent and evidence based criteria to help them assess the risk a person may pose in working with children. The office also suggested that all entities handling criminal history information be subject to the Privacy Act or another state or territory's privacy law. Finally, the office suggested all screening units adopt a publicly available set of guidelines on good privacy practice and implement policies, procedures and training programs about appropriately handling individuals' criminal history information.

I understand that recently the Attorney-General's Department has advice that the Minister for Home Affairs and the implementation working group will undertake independent reviews of this after a one-year trial period. While welcoming this review, the office would expect that it would also include an examination of how personal information is handled as part of the scheme. However, we would like to further suggest that, given the nature of this scheme, an additional review period could be introduced—for example, at the three-year period, where there would be a great opportunity for further evidence about the effectiveness of the scheme to be considered. Within the first 12-month period, while this information may be available, it may be limited, and the 12-month review may only have an opportunity to focus on procedural issues, including issues relating to how organisations are complying with their privacy obligations. So we would suggest an additional review to the one that is being proposed at the 12-month point.

The office looks forward to contributing further to the development of the bill and participating in further consultation as it is progressed. Thank you.

CHAIR—Mr Solomon, do you have anything you want to say?

Mr Solomon—No, thanks, Chair.

CHAIR—Mr Pilgrim, I just want to start with something that I raised with the Law Council just a moment ago, and that is that I understand where you and the Law Council are coming from in terms of people's rights being protected in privacy matters when it comes to any quashed or spent convictions. It does not matter how long ago they were, although I suppose there is a five- and 10-year time limit on this. But if you were going to put the interests and the protection of the child at the centre of all matters important, would you not want to know and ought you not to know about a person's history?

Mr Pilgrim—Yes. This is a very important question and it goes to the nature, obviously, of what we are dealing with today. We have seen that all Australian governments through the COAG process have agreed that there is a need to have appropriate measures to protect children from the risk of serious harm. I suppose the point we are coming from is that if there is evidence that factual information from quashed or pardoned convictions is able to expose possible risks of harm to children then this would be useful in assessing the suitability of an individual to work with children in those sorts of situations. However, I would suggest that the position we are coming from in our submission is that if we do move down this path, and we are not saying that this should not happen, then as this is a move away from current practices there is a need to make sure there are strong protections in place for that additional information that will be collected which otherwise, in the past, would not have been able to be collected. So we welcome some of the privacy protections that are in the bill.

The purpose of our submission was to further enhance those protections and make them stronger, recognising the possibility that this additional information is quite sensitive. We are not saying that the information should not be collected. We are just suggesting in our submission that you need to ensure that there are strong protections for that information once it has been collected and strong protections around how it can be used, because you will be collecting information potentially, under these amendments, that relates to all quashed and pardoned convictions that a person may have that may be unrelated to their potential work with children.

CHAIR—Okay. Is there also some support from your office for the sorts of quashed convictions or spent convictions to be specified so that they are relevant? For example, I am assuming that if you were accused of shoplifting 25 years ago that would be irrelevant.

Senator FISHER—What if the charge was shoplifting material to document child pornography, for example, or something like that?

CHAIR—There has been a suggestion from the Law Council this morning that people perhaps need to limit the kind of crimes that have been quashed or spent, so that they are relevant, and also maybe to advise people what sorts of records would be looked at in doing this search.

Mr Pilgrim—This is going to pose quite a challenge, I would suggest, for the assessing units who are going to undertake that work. What we have suggested in our submission is that there would need to be a fairly strong set of criteria for the assessing units to be able to make judgments on the information they have collected. Picking up on one of the comments I think I heard one of the committee members make about shoplifting, for example, if it was someone shoplifting products or something that might be to do with pornography or child pornography, that may be relevant. So you will have some difficulty in judging, I would suggest, at the time where the information is coming from, what is going to be relevant or not. I accept that that will be a difficult call to make. That is why it is more important that, if we go down the path of these amendments, we have particularly well trained, skilled assessors who are able to make the judgment calls and are given the appropriate development or training to be able to make those judgment calls on what is relevant or not. And it is why it is important to ensure that there are strong privacy protections because if you do therefore need to collect and make a judgment on all quashed or pardoned convictions then you do need to have in place strong privacy protections so that that information, should it then be deemed irrelevant, has certain protections around it so it cannot be used for any other purposes and it is stored securely and preferably destroyed when it is determined that it is not relevant for the risk assessment process.

CHAIR—What are privacy safeguards? You are suggesting that the prescribed law should contain:

… certain privacy safeguards, including that screening units may only use criminal history information …

Is there a proforma for what would constitute privacy safeguards?

Mr Pilgrim—There are a number of ways that we can approach this, and we do have some of those set out in our submission. Just briefly, while it is not as such a proforma, we think there are areas that safeguards could be in the prescribed laws. I would like to go back a step, sorry, before I continue with that answer and

say that one of the issues we have raised in our submission is around the entities that would be prescribed under this enactment to undertake assessments. At the moment, there is a reference to the minister having to be comfortable that those entities comply with privacy laws, and we have suggested that that needs to be strengthened initially to say that they should be subject to privacy laws, which means that they have statutory obligations to comply with a set of privacy laws and principles before they are prescribed in.

Moving on from that point, under the safeguards, as we have mentioned in our submission, we think there should be public available assessment criteria to assist the screening units to assess the individual suitability for childcare workers, which I have mentioned. There needs to be strict limitations, as I have also said, on the purpose of the information so that when it is collected it can only be used for the purpose of assessing someone's suitability so that it cannot be used for any other purpose and, in particular, where it is deemed to be irrelevant. You do not want irrelevant information becoming publicly available where in other situations it would not have been able to be. So you need to have strict limitations around the use of that information.

Senator FISHER—Can I interrupt there? Does the bill place sufficient limitations on that use? I gather from what you are suggesting, your view is no.

Mr Pilgrim—I note that the safeguard around limitation is referred to in the explanatory memorandum, but it does not appear to be in the bill as far as we can ascertain. We would suggest that those limitations should be prescribed in the bill.

Senator FISHER—So the use to which the information can be put needs to be prescribed in the bill?

Mr Pilgrim—Yes. To put it another way: the limitations, yes, on how it can be used should be prescribed in the bill.

Senator FISHER—Thank you.

Mr Pilgrim—Finally, the other two points I would mention in terms of safeguards are again clearly stating in the legislation that these purposes that the information can be used for are authorised, so the uses and disclosures are clearly authorised within the legislation, and importantly, and I note that this is picked up, that natural justice does apply and people will have a right to appeal and have a right of recourse if they want to dispute the accuracy of the information that is being used to determine their suitability. That is a general way of covering some of the safeguards we would expect.

Senator HANSON-YOUNG—I want to pick up on that last point, that surely part of the problem is that people will not know that they have been unfairly judged because they are not necessarily going to be told they did not get the job, or they did not get a promotion or they are not going to be let into a course to work with children based on something that has been delivered in this report of their past convictions. Surely the idea of natural justice only exists if people actually understand and have a very clear record of what the employer or the person referring to the report had access to?

Mr Pilgrim—That is correct, and I suppose I should have mentioned as part of that process that we think it is extremely important that, if a person is seeking or applying to work with children, as part of this process it should be made very clear at the outset that there will need to be a check done of their past. Part of that check will include a criminal history check which will go to looking for any quashed or overturned convictions. At that point it would be preferable not only to advise the person of that but to seek in some form their consent to get that information. Obviously, if they were to decline that consent, there may be some inability for the application to proceed, but there should be clear, explicit explanation upfront that these sorts of checks will be done as part of any application.

Senator HANSON-YOUNG—I guess in saying that it would need to be explicit in terms of what types of past convictions or past record they are looking at. Especially if everything that was once quashed is now available for assessment, then in the case of somebody who was convicted of shoplifting, for example, unless it was something such as pornography perhaps they would not have even thought that that would be looked at.

Mr Pilgrim—That is quite true and that is why one of the main premises of privacy legislation is that a person should be given as much relevant information upfront when their information is about to be collected. In this case we would hope that any notice going to an individual about this would clearly say that part of the process would be collecting all information about any prior, quashed or overturned convictions.

Senator HANSON-YOUNG—Is there anything in the bill that ensures that that would happen, or is there something that we need to do to strengthen that?

Mr Pilgrim—I cannot answer that directly. I am not quite sure that there is anything in the actual bill that goes to that point. However I would go back to the issue that, if all the organisations that were going to be doing the assessing had to be subject to existing privacy laws, then the premise of each of those laws have privacy principles in them that state that a person must be advised of matters of this nature when their information is about to be collected. If there was an obligation on the entities that would be prescribed in to comply with existing privacy law, then there would be an obligation on them to give that notice.

Senator FISHER—You are suggesting that the bill does need to spell out what you call limitations on the use. I suggest that others would think it should be the other way; that the bill should enumerate precisely the sorts of uses to which the information could be put, and that that list ought to be exhaustive. In that context do you think that there has been sufficient debate in Australia about the use of criminal records more broadly? Are we ready to pass a bill such as this albeit for the protection of children? Have we had sufficient debate?

Mr Pilgrim—Again I am just thinking that that is a difficult question for us from our perspective in this office to answer. I would suggest that, given the nature of these amendments, whether there is sufficient evidence to support moving down this track is something that would need to be considered by the review, which is why we would welcome an initial review in 12 months because while it is a short time, given the sensitivity of the information that is to be collected, it will provide for a fairly quick review period.

Further, repeating what I said in my opening comments, I think that an additional review, say at the three-year period, would allow further information to be collected after a slightly longer period, which would also go to assisting in answering this question. That is the way I would repond to that.

Senator FISHER—Thank you. On a different issue, given your experience with privacy issues in the past, once the information is provided to a prescribed body and then duly processed, presumably it goes to somebody or some organisation for their use. Are community organisations, small business and the potential employers that are supposed to use this information in some way or another going to get it in time to use it in the way in which it is intended? What will be the efficiency of the process, given all the checks and balances that the hands in between in the chain will have to go through to ensure that they are allowed to have what they want, that they get what they think they need, et cetera? Is it going to deliver to businesses in the business of employing at the end of the day and in time?

Mr Pilgrim—I am not quite sure that I am familiar with how the process will work in terms of timing and the passing on of the administration. I suppose that the information itself, if it is handled in a timely fashion, will go to those organisations that need it to make the decision. There are some questions that arise from what you are suggesting in terms of any information that is then provided on to an employer and what protections it will actually have under various bits of privacy legislation. As you are aware, for example, the Privacy Act does have some exemptions, and one of those exemptions is for small businesses; that is, organisations with a turnover of $3 million or less are generally not covered by the Commonwealth Privacy Act. Also, in the private sector, employee records in the course of the employment relationship, regardless of the size of the private sector organisation, are not generally covered. There may be some questions of what protections will be available for that information once it has gone to those organisations. So there is a question that arises there. Mr Solomon has something to add to that.

Mr Solomon—My understanding is that the information will go to specific prescribed assessment units in each state and that those units will not be further providing the information directly to employer organisations. The assessment process is done by a specifically trained assessment unit in a prescribed organisation for a range of other organisations, and the information is held within that assessment unit and the basic content of that information is not provided necessarily to the employer. The employer is just told that the person who has applied for employment would not be suitable for this type of employment and that the natural justice process would be between the assessment unit and the individual applying for employment, not directly with the employer. That is our understanding of how the process is to work. The Attorney-General's Department may be able to inform us if we are not clear on that, but that is our understanding.

Senator FISHER—All right. We will explore that more with the department. To go back to the earlier part of the answer, if a business wanted to know why that person was not considered appropriate for employment then you may get to the scenario that you outlined earlier in terms of exemptions being activated for small business and in relation to employment records—but we will explore that with the department.

CHAIR—We do not have any other questions. Thank you very much for your time this morning and your comments about this legislation.

[11.07 am]

TUCCI, Dr Joe, Chief Executive Officer, Australian Childhood Foundation

Evidence was taken via teleconference—

CHAIR—Thank you very much, Dr Tucci, for joining us this morning and for your submission, which we have received and which we have numbered 16 for our purposes. I am wondering if you need to make any changes or alterations to that submission?

Dr Tucci—No.

CHAIR—If you would like to make an opening statement or provide some comments about it and then we will go to questions.

Dr Tucci—The Australian Childhood Foundation works in a number of ways to prevent child abuse. We run a range of services that deal with children who have been abused. That is the capacity in which we made the submission, because I think the proposed legislation does have a very strong potential to strengthen the ability of community organisations and the community more generally to protect children by making available the information that can lead to an evaluation of risk about someone who is working with children for those people who are either employing them or putting them in positions where they are caring for children in some kind of voluntary capacity. So we think there is a lot of potential in the sharing of information between jurisdictions.

We have been calling for this kind of more open transfer of information between jurisdictions for a long time on the basis that the more information an employer has and the more information a system has the more able that system and the individuals working within it are to protect children from individuals who seek to expose or exploit children's vulnerability. From our point of view, we wholeheartedly support the legislation in terms of its focus on opening up the boundaries between jurisdictions around these sorts of issues. That is probably the summary.

CHAIR—Thank you. You raise something in your submission that I have been talking about this morning. Certainly the Law Council have raised with us that they believe that the provision in the bill that specifies that a conviction, even if quashed or spent, needs to be identified and known is too broad and that somehow there need to be offences under the Crimes Act only or some specified parameters so that there is a limit on what is known about a person. Your submission also raises an interesting point—that is, people who have in the past been either convicted of or charged with child sex offending and abuse may well have behaviour that is recidivist, and knowing about this might not only protect children and people working with children but also protect the person themselves.

Dr Tucci—That is right. Information is an empowering source of protection for children. From our point of view, we see adults who were sex offenders a long time ago who basically go underground or do not come to the attention of any authorities, not because they are not necessarily not engaging in sexual assault against children but because they have learnt how to avoid being caught. Over the period of time in which convictions can become spent it does not necessarily follow that they are not engaging in that kind of sexual assaulting and behaviour; it is just that we do not know about it. An early conviction can point to the ongoing risk that this person might pose to children. That kind of information needs to be made available across jurisdictions. It will also help those authorities that are responsible for making decisions around a working with children check or something similar so that they are able to make some evaluation of whether that person is fit to work with or support children. I do not think that we should just let that information slide by. It should be made available and then contextualised by the people who are in the decision-making position.

CHAIR—So you do not believe the legislation is too broad.

Dr Tucci—No. This information is not being made available necessarily to members of the public, as I understand it. It is being made available within the parameters of decision makers who have to assess a criminal record or assess risk in order to provide a working with children check or something similar.

CHAIR—Do you believe there is a need for a definition of 'working with children' to be inserted in the bill?

Dr Tucci—I think it would be helpful, because I think then you give some purpose to what the legislation is about, and you can find some common dimensions across all of the jurisdictions. As you would know, many of the jurisdictions do have some form of working-with-children check now, and if they do not they are actively

working on developing it, so I think having a definition of it would definitely give a focus to why this information needs to be exchanged.

CHAIR—Thank you.

Senator HANSON-YOUNG—I am about to dash off. I take your point that you believe the bill is not necessarily too broad, but there was the example of somebody who in their younger years did something silly, such as got involved with shoplifting. At what point do we say, 'These things are not relevant and these other types of convictions are'? Is there any evidence—and this is a genuine question, because I am just not aware of it—that suggests that people who perhaps have been caught drink-driving or shoplifting are in some way more likely to be in a category of high risk to children?

Dr Tucci—To me it just depends on the role that that person is about to fulfil. For example, you might say that shoplifting when you are a teenager does not really come into effect; what is its impact on the ongoing risk that that person when they have grown up poses to a child? I would agree with you about that, but equally, if there were a drink-driving conviction that was serious and that person were taking on a role of driving children around, I would want that to be considered in relation to whether that person had been able to address those concerns. That might not prevent them from doing it, but it would at least provide some context for the employing body, the authorising body, to evaluate the role against their history. That is how I see it. When you start to define which acts you keep in and which ones you do not, you do not provide the opportunity for someone in an authorising position to make that assessment themselves. There is still privacy. All the principles are still associated with who this information is made available to and under what circumstances. I do not believe that people will be disadvantaged by having that information made available to an authorising body, but I do think that children can benefit if the past conviction has something to do with the role that that person is seeking to fulfil with children.

Senator HANSON-YOUNG—Are you aware of any research or evidence that suggests that people such as somebody who is involved in shoplifting, being drunk and disorderly or those types of activities when they are in their teenage years or as a young adolescent, who years and years down the track has sorted out their life and now wants to go and work with children, are in a category of higher risk to children than anybody else?

Dr Tucci—Not that I am aware of. If you are talking about those maybe more insignificant or property related type crimes, I would not say that there is a necessary link, but once you start to get into some of the more interpersonal type crimes then I would say that, depending on the nature of the crime itself, there is some evidence about the continuing risk that an adult poses to a child based on their history.

Senator HANSON-YOUNG—That is the interesting point, isn't it. You said those kinds of convictions or crimes or acts that are interpersonal related as opposed to perhaps property or other things.

Dr Tucci—Yes.

Senator HANSON-YOUNG—I think you are probably right with that distinction. I do not know, but that would be my assumption.

Dr Tucci—Yes. I think, whilst I would argue for not restricting the free flow of information, if you were going to restrict it then I would want the bill to focus on interpersonal violence and other related crimes that do have that link. I think alcohol and drug related crimes do show some potential link between history and currency.

CHAIR—In the current state and territory jurisdictions where they do a police check on you before you work with, associate with or supervise children—in some cases I think they issue a blue card or whatever it is—those authorities use their discretion, no doubt, if you have a police check before, say, you are employed in a childcare centre. From your knowledge of those jurisdictions, have you found that that works well, or are there flaws in that system?

Dr Tucci—I think different jurisdictions are effective in different ways. In general, where the system is set up for the authorising body—such as, in Victoria, the Department of Justice—to take into account all of the information and then make a determination, I think they make those decisions conservatively and in children's interests. So I think that making the information available is a good way of those jurisdictions making good decisions. I think some of the flaws come with not necessarily the information but how the system has been set up.

In New South Wales, as an example, it is a very different standard. In Victoria, pretty much all volunteers have to have a working-with-children check. In New South Wales you do not actually have to have one; you

sign a form to say that you do not have any convictions that could prevent you from obtaining one, and that is all, whereas in Victoria a volunteer is treated in exactly the same way as a prospective employee and the same process is undertaken for them. So the effectiveness of the system is not in the determination of the information; it is whether people are presented to those authorising bodies in ways that enable that information to be sought in the first place.

CHAIR—Senator Fisher, you had a question?

Senator FISHER—I do, on one subject area. I do not know a lot other than what I read in your submission, Dr Tucci, about the Childhood Foundation, but your focus is helping abused children and protecting children, is it?

Dr Tucci—Yes. We provide therapeutic services to children who have been abused.

Senator FISHER—After the very tragic event?

Dr Tucci—Yes.

Senator FISHER—I want to ask you about whether in your view the very well intended processes and machinery to implement the bill that might be put in place if this bill were passed might unintentionally hamstring the recruitment of staff in organisations that work with children. But, from what you are saying, given that your organisation does not really go there, you probably do not have the background to venture a view on that, do you?

Dr Tucci—No, I do. We also do a lot of community education. One of the programs that we run is called the Safeguarding Children Program, and that is all about how organisations can be strengthened to become more child friendly and protective of children. So we engage, and we have that background as well.

Senator FISHER—I see that in your submission, yet you are saying that that is not a key focus of your organisation but you are doing it anyway.

Dr Tucci—We have a range of different aspects to what we do, and that is just one.

Senator FISHER—So use your experience with that program to venture an opinion on how the bill would work in practice.

Dr Tucci—I think that those organisations that have a role with children understand—and if they do not they should—that part of their obligation and their application of risk management is to properly screen staff and/or volunteers that come into contact with children. I think the industry—the childcare or child welfare industry or any of the related organisations that have some kind of supporting role with children—are coming to understand that it is a normal part of their business to ensure the safety of children during their involvement with that activity. Therefore the culture is changing, to the point where it is not having an impact on organisations in terms of recruitment because it is more of a clear expectation.

Senator FISHER—I would not for one moment think that those organisations would want to do anything other than what you have suggested, but my question is whether, in trying to achieve that intent, the process could so hamstring the operation of those organisations that they are stuck in finding skilled staff to help them do their jobs.

Dr Tucci—I do not think that happens.

Senator FISHER—The question, though, is whether the bill might make that happen given how it might work.

Dr Tucci—My sense is that it would not have a detrimental impact on organisations being able to recruit skilled staff into roles with children because that is now the expectation that everyone has.

Senator FISHER—Thank you.

Dr Tucci—I think the issue is cost. That is part of it. The most significant barrier is where those state governments do not subsidise the working with children checks. If it is free for volunteers then more volunteers are encouraged to undertake it in order to fulfil their role. Prospective employees know that it is part of their work commitment, just as becoming a member of an affiliated body is.

Senator FISHER—Thank you, Dr Tucci.

CHAIR—Dr Tucci, thank you very much. We have finished with our questions of you today. I thank you on behalf of this committee for your submission and for making your time available today.

Dr Tucci—Thank you very much.

Proceedings suspended from 11.28 am to 11.36 am

CHIDGEY, Ms Sarah, Assistant Secretary, Criminal Law and Law Enforcement Branch, Attorney-General's Department

FIELD, Miss Autumn, Acting Principal Legal Officer, Criminal Law and Law Enforcement Branch, Attorney-General's Department

CHAIR—I reconvene this public hearing of the Senate Standing Committee on Legal and Constitutional Affairs. I welcome representatives from the Attorney-General's Department. I remind you that the Senate has resolved that an officer of the department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to the minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about how and when policies were adopted. Any claim that it would be contrary to the public interest to answer that question must be made by a minister and should be accompanied by a statement setting out the basis for the claim. You have lodged a submission with us, which is labelled No. 17 for our purposes. Thank you very much for the submission. Do you need to make any changes to it before we start?

Ms Chidgey—No.

CHAIR—Do you want to start with an opening statement or an explanation of your submission?

Ms Chidgey—Yes, I would like to take the opportunity to make an opening statement. Thank you for inviting the department to appear before the inquiry. The Crimes Amendment (Working With Children—Criminal History) Bill 2009 implements the November 2008 agreement by COAG to enable the interjurisdictional exchange of further criminal history information for people working with children. This bill creates new exceptions to provisions in the Commonwealth Crimes Act that currently prevent the disclosure of pardoned and quashed convictions for the purposes of child related employment screening and it also expands the range of spent convictions that can be disclosed for this purpose.

The bill operates on the basis that the nature and circumstances of the offence of which a person is convicted may be relevant in assessing the person's suitability of work with children even if the offence is not a violent or sexual offence. For example, convictions for a range of offences where the victim is a child may be relevant as offences potentially, such as drug trafficking or menacing or harassing another person. The bill has been designed to strike an appropriate balance between protecting children from harm and providing individuals with opportunities to find gainful employment. The disclosure and use of information under the bill is permitted for the limited purpose of assessing a person's suitability to work with children. The information obtained cannot be used for general employment suitability or probity screening. There are stringent safeguards in place to ensure the information is used appropriately. The bill provides that the Minister for Home Affairs must be satisfied that a screening unit complies with privacy and records management legislation in the relevant jurisdiction before it can become a prescribed body under the regulations and, to ensure that the changes implemented by the bill are working effectively and fairly, both the Minister for Home Affairs and the COAG working group will undertake independent reviews after a 12-month trial period.

It might be helpful for the committee if I briefly address a couple of issues which came up in the hearings this morning. It could be useful to quickly set the context for this bill in the COAG agreement setting. It would be useful to understand that this bill simply affects three categories of criminal history information in the sense that most jurisdictions already have screening assessments in place for those working with children and risk assessment frameworks operating in accordance with each jurisdiction's privacy requirements. This bill simply allows these three categories of Commonwealth convictions to be provided to other jurisdictions. It is the case at the moment that a number of jurisdictions, in their own jurisdictions, already take into account their own pardoned and quashed convictions. The idea behind the COAG agreement was to ensure that jurisdictions exchange that same level of information with each other.

The issue had come up about pending and withdrawn charges and why the bill does not cover those. The answer is that this bill is simply designed to remove existing legislative barriers for pardoned convictions, quashed convictions and spent convictions. As there are no legislative barriers to pending charges and withdrawn charges, there is no need for legislative amendment to enable that level of information to be exchanged—that can occur already. Our understanding is that, under the existing regime—which will continue in this new regime with an expanded range of information—employers will simply receive a yes or no about

somebody's suitability for employment. They are not given a person's criminal history. None of that information goes beyond the qualified screening assessment units.

The question about the relevance of different offences was also raised. It is probably useful to point out that even at the moment a person's current criminal history could include things like shoplifting charges, et cetera. The bill does not change that; it simply says that, if it is a quashed or pardoned shoplifting charge, that can also be provided. It is the job of the screening units, with skilled staff, to assess the relevance of those convictions. Our position would be that it is hard just to include certain categories of offences because you always run the risk that there will be other offences where the circumstances of that offence may make it relevant to assessing somebody's suitability for working with children. For instance, in a shoplifting context it is possible to imagine a situation where someone shoplifted, say, alcohol and cigarettes in order to provide them to minors, which might be some of the relevant factual circumstances surrounding that offence. We would also accept that there may be such offences where they may not be relevant and the job of the screening unit is to properly filter relevant offences from non-relevant offences. There is a full natural justice process that each of them comply with where individuals who are the subject of screening have the opportunity to respond to any adverse information and most processes have both their merits review and a judicial review of findings of screening units in place. So there is a full process for that to be worked through with the screening unit.

Issues were raised about why our bill does not have very detailed privacy requirements that all jurisdiction screening units have to comply with and why it does not have a detailed definition of 'working with children'. The reason is that this bill is very much fitting into screening processes that exist in every jurisdiction. Most jurisdictions have their own privacy legislation that governs the operation of their screening units and legislation under which those screening units operate on their own definitions of 'working with children'. We examined those very closely and in fact circulated to states and territories a possible draft of the definition of 'working with children'. States and territories informed us that including that in a Commonwealth bill would create real difficulties for them because each of their jurisdictions has a slightly different definition and imposing our definition on them could create difficulties with the operation of their existing screening processes. They advised us quite strongly that they would prefer a system in which we pick up their existing legislative arrangements, basically, and have general requirements that our minister has to be satisfied of, but if we in our bill drafted a whole set of privacy requirements which applied to them, they could potentially conflict with their own definitions of 'working with children' and our own separate privacy requirements and create real difficulties for a workable system.

As a practical example of what might occur if we had a different definition of 'working with children' to a state, rather than a state making a request to the Commonwealth for its information when it was screening an individual, it would have to provide to the Commonwealth a whole series of details about that person's employment and the Commonwealth would then make its own assessment about whether it fit the parameters of the separate and different Commonwealth definition. That is why we adopted the approach we have in the bill. Hopefully those comments are useful.

CHAIR—Yes, they are very useful. So the Minister for Home Affairs must be satisfied that a screening unit complies with privacy and records management legislation. Who will assess that compliance?

Ms Chidgey—The minister will obviously have the formal statutory responsibility, but the department will provide him with advice on that. I can advise you that there is a COAG working group set up to look at the implementation of this agreement. One thing that that working group is developing is a standard checklist with information which each jurisdiction will provide that will provide every other jurisdiction with a lot of detail on its processes are and privacy requirements. It is our understanding that all of the existing screening units are subject to state and territory privacy laws, so there are privacy requirements that apply to each of them, and we are now in the process of each jurisdiction gathering that information from every other jurisdiction.

CHAIR—So, as an applicant, if I am going to work with children so I fill out the form, there is a police check, or whatever check is done, and I am then told, 'I am sorry; you don't have the job,' I may or may not be told it is because of a prior conviction or a quashed conviction. Are you telling me that each state and territory jurisdiction would allow me to see what information they had accessed—that is my right?

Ms Chidgey—Yes, and that should be before you receive the final yes or no from the prospective employer. The screening unit, before they provide that information to the prospective employer, should directly contact the individual concerned and provide them with any adverse information.

CHAIR—And they would say, 'I'm sorry but you are not going to get a blue card because of X'?

Ms Chidgey—Yes—'We have this information on you about this conviction; would you like to provide a response about why it should not be considered relevant?'

CHAIR—Then, if I do not end up getting the job or I think the information has been used incorrectly, can I make any appeal?

Ms Chidgey—All of this, again, is provided for under state and territory legislation. I think every jurisdiction has both a merits review process, where they can ask for an internal review, and an external judicial review.

Senator FISHER—Is that state and territory legislation identical?

Ms Chidgey—No, each currently has its own slightly different processes.

CHAIR—So all jurisdictions have agreed to undertake a comprehensive review of the program following the trial period. Will that happen through SCAG, through this working group?

Ms Chidgey—Through COAG, through the working group.

CHAIR—Driven by the Commonwealth department?

Ms Chidgey—No, Queensland currently chairs the working group but all jurisdictions will participate.

CHAIR—Okay, so it will not be outsourced to a consultant or something.

Ms Chidgey—No.

CHAIR—The Privacy Commission in their key recommendations suggested it might be appropriation to repeal item 15 in schedule 4 of the Crimes Regulations 1990. I do not know if you saw that in there.

Ms Chidgey—Yes.

CHAIR—It contains an exclusion applying to screening for child related work. Would you do that or not? What is your response to that?

Ms Chidgey—No, our feeling is that we would not repeal that. It certainly overlaps to a degree with this bill. That covers a narrower range of convictions but a slightly broader category of people, and it just covers spent convictions. It is important that that be there if there are jurisdictions—Victoria, for instance—where they do not necessarily want the full range of pardoned or quashed convictions. It also covers some categories that the bill will not pick up. So, if we remove that, we could inadvertently limit some of the existing flow of information.

CHAIR—With regard to the definition of 'working with children', I understand that every state and territory would obviously have a different slant on that, or view about that, but surely some must do it better than others. I understand what you are saying but there must be a best case definition so that if, for example, Victoria did not meet the mark, or the Northern Territory's definition was deficient, they should lift their game to get to that mark. Wouldn't you look at the best-case scenario in the country and get other jurisdictions to get on board with that?

Ms Chidgey—We did look closely at all of them in considering this issue about a definition of 'working with children' in the Commonwealth bill. We were looking at something along Victoria lines. The difficulty is that each jurisdiction for quite some time has had its own processes in place. It is certainly an issue that could be further considered, but I see it as a separate issue to this one, which simply expands some ranges of criminal history information—the exchange of those between jurisdictions. It is a separate and possibly useful thing to consider harmonising the jurisdictions' existing regimes completely, but at the moment it is simply not the case that they are the same. So this would be introducing a slightly different Commonwealth definition. I think it would hamper it around the edges, where there might be some differences. It would require each jurisdiction to make its own assessment, according to its own definition, before it could pass information on in relation to a request, which would just have some effect in potentially creating some limits or delays in the exchange.

Senator FISHER—Let us start with 'working with children'. Don't we have to define 'working with children' in this bill? In a practical sense, don't we have to define 'working with children' when that is the whole endpoint of the bill?

Ms Chidgey—I understand what you are asking. We believe the way it is drafted at the moment will work perfectly appropriately. The bill is certainly limited to working with children—

Senator FISHER—But you cannot say what that means. You cannot point to a provision in the bill that says what that means.

Ms Chidgey—No. It would be open, and ultimately it would be interpreted by a court if someone challenged the provision of information. It is an inclusive definition. It would be subject, of course, to the ordinary meaning of that term and to common sense. The way we have done it is to put in an inclusive definition of 'work' in an effort to make sure we encompass all of the definitions in state and territory legislation, whereas if we provided a very detailed and restrictive definition, we would run into issues with having differences with the existing state and territory definitions.

CHAIR—Take us through that. What you are essentially saying is that each state and territory has a different definition, you are satisfied that those—

Senator FISHER—Do they actually have a definition?

Ms Field—Not all of them, no. Some of them do not define 'working with children'.

CHAIR—Do you believe, then, that the ones that do have it are all comprehensive?

Ms Chidgey—They are all different. We had particularly looked at the Victorian one as a useful extended definition.

CHAIR—Are you saying that, in the bill, there is a clause that picks that all up and does not impose a Commonwealth definition on them?

Ms Chidgey—Yes.

CHAIR—What clause is that?

Ms Chidgey—The way we ended up doing it—and the states and territories indicated to us that they were not happy with this option rather than a detailed definition—was that the disclosure has to be for the purpose of screening individuals who work with, or seek to work with, children. In section 85ZZGF we have put an inclusive definition of 'work', so it will carry its ordinary meaning but, in addition, just in case the ordinary meaning does not encompass it, we have included these other categories in (a)(i) to (a)(v).

CHAIR—So you do not actually define 'working with children'; you define 'child'—

Ms Chidgey—No. We define 'child' and we define 'work'.

CHAIR—and then you define 'work'. We are talking about a work contract for a leadership role in religions or in any other capacity, as an officer of a body corporate, as a volunteer or as a self-employed person, so would that include a scout leader, a childcare worker or a teacher?

Ms Chidgey—Yes. It begins with the words 'but includes the following', so it encompasses all the categories that might ordinarily be considered, but then we have specifically listed ones where we thought there might be any doubt.

Senator FISHER—There is no reference in the bill to definitions utilised in the states, is there?

Ms Chidgey—No, that is right.

Senator FISHER—The bill defines the word 'child' and the word 'work' but the phraseology used in the bill is 'working with children'.

Ms Chidgey—It is 'persons who work or seek to work with children'.

Senator FISHER—Okay. 'Work with children' is the phraseology. I do not want to be pedantic, but in respect of the meaning of the word 'with', for example, in this context, as Senator Crossin has said in an aside, categories (a)(i) to (a)(v) are very comprehensive. Everybody potentially works with children. Does 'works with children' mean 'works in physical contact with children'? Yes or no?

Ms Chidgey—Possibly. This bill really works from the state and territory regimes, so the circumstances in which—

Senator FISHER—But there is nothing in the bill that says it does.

Ms Chidgey—It does because—

CHAIR—It is pretty broad, though.

Ms Chidgey—it refers in all of the provisions to a person or body required or permitted by or under a prescribed state or territory law.

Senator FISHER—Which section are you referring to there?

Ms Chidgey—Each of the exclusions which allow the disclosure of information contains those words, so 85ZZGB, 85ZZGC and 85ZZGD—

Senator FISHER—Which bit are you referring to?

Ms Chidgey—The reference to the person or body being required or permitted by or under a prescribed state law or prescribed territory law to deal with information about persons who work or seek to work with children. So we will only be able to prescribe bodies that operate in accordance with a regime that is prescribed under a state law. Any state which makes a request of the Commonwealth—it could be for Commonwealth conviction information—will have to make that request in accordance with its own legislation on working with children checks.

Senator FISHER—Would someone working in physical contact with children working with children as defined under the bill?

Ms Chidgey—The Victorian definition is the one I am most familiar with. If Victoria made a request of the Commonwealth, it would be the case that that would be covered if they had direct, unsupervised access.

Senator FISHER—Only in Victoria?

Ms Chidgey—I guess our answer would have to be given by going through every state and territory definition.

Senator FISHER—Yes, it would, I would imagine.

Ms Chidgey—Yes, that is right.

Senator FISHER—What is a person in work under 85ZZGF(a)(i) to (a)(v)—and take it for granted that this person that I am going to ask you about satisfies one or other of the conditions listed, so they fulfil the definition of work under the bill—does not necessarily come into physical contact with children, but works about children or in the vicinity of children? Are they in or out? Are they seeking to work with children as defined in the bill?

Ms Chidgey—Again, that answer is different for each jurisdiction, depending on that jurisdiction's definition of 'working with children'.

Senator FISHER—And it cannot be answered on the face of the bill.

Ms Chidgey—No, that is right. We could answer it, which would mean that we would have to go through other legislation and tell you whether it met those definitions.

Senator FISHER—What do you think the government intends to be the answer? What is the policy intent of that answer?

Ms Chidgey—The intent is to very much enable the existing screening arrangements, that are already in place across jurisdictions in Australia, to be expanded in the way that they already work for certain categories of individuals, to cover these new categories.

Senator FISHER—Thanks. I need to ask the question another way. You are answering the question as it seemed to be, but it is not what I meant. A person is in work as defined under the bill. They do not necessarily come into physical contact with children. However, they work in places where they may be in the vicinity of children. Will that constitute seeking to work with children, or not?

Ms Chidgey—It could in some jurisdictions. I think one element of Victoria's definition is unsupervised access within line of sight of a child.

Senator FISHER—So the answer to that question, at the very least, will vary from state to state, won't it?

Ms Chidgey—That is right.

Senator FISHER—It will depend upon, in part, the state in which the person is seeking work, whether or not their quashed conviction, for example, will be the subject of this legislation. Is that correct?

Ms Chidgey—Yes. Our definition does set some outer parameters, obviously, but they are quite broad.

Senator FISHER—What definition?

Ms Chidgey—The definition of 'work' in 85ZZGF.

Senator FISHER—But all that does is specify the nature of the medium by which a person may be in work or not.

Ms Chidgey—Yes, that is correct.

Senator FISHER—It does not touch the nature of the work vis-à-vis a child or children. You are saying, 'We are leaving that to the states.' That will be a patchwork quilt, depending upon how each state has seen fit to define, or not, the phrase 'working with children', which brings me to the other area of questioning that I will go to in a minute, which is: how is this going to work in practice? How is there going to be any certainty nationally? This is supposed to be a national initiative. How is there going to be any certainty nationally about the potential evil that we are trying to police? What do you think is the government's policy intent of the answer to my question? The scenario is: a person is a worker as defined under the act. I am sorry, Ms Chidgey. You guys are just the messengers—and very good ones. The scenario is: a person satisfies the definition of work under the bill. They are seeking a job at a place where they may be, from time to time, in the vicinity of children. That person has a quashed record. Is that person's record subject to this legislation or not? What do you think the government intends to be the answer to that question? Does the bill mean that the government is saying, 'Yes, that person needs to be in the purview of this bill' or not?

Ms Chidgey—The government I think is saying that if that person is currently subject to a check within the jurisdiction where they are seeking that employment, then they should also be able to have these additional categories taken into account as part of that existing state check.

Senator FISHER—So then the government is saying, 'We'll implement a national system' but it really just farms everything back to the states. And, 'We're not going to answer this question because it is too hard.' And do you know what? It is really hard.

So I totally empathise with the department in not being able to come up with one definition of 'working with children' or 'seeking to work with children'. But, given that that is the whole purport of this labyrinth of very well-intended administration that is going to be created as bodies from state to state work from the end of a patchwork quilt of answers, isn't it something we have to attempt?

Ms Chidgey—The system works like that currently. To my knowledge there is no particularly—

Senator FISHER—But there currently is not a national system. So why bother?

Ms Chidgey—There is currently national sharing of all criminal history information with the exception of some spent convictions and obviously quashed and pardoned convictions. That happens nationally already in accordance with each jurisdiction's existing checks. This maintains the existing national system but allows additional categories to be added to that existing system. It is national; it is just not uniform on a national basis.

Senator FISHER—Isn't it the case that almost every one of us potentially works with children?

Ms Chidgey—No, it is not. This bill does not change in any way the circumstances in which an individual needs to obtain such a check. All it does is say that if you already have to obtain such a check that check will now also encompass pardoned and quashed convictions and a further category of spent convictions information from other jurisdictions. That is all it does. So if you are currently needing a check in New South Wales this changes nothing about that. The check, as it always would have happened, will continue to happen. Now, in addition to the information that would have previously appeared on your criminal history record, the check might also pick up pardoned, quashed and some additional spent convictions.

Senator FISHER—If you work behind the counter at McDonald's, if you are seeking a job working behind the counter at the golden arches, are you seeking to work with children?

Ms Chidgey—It potentially would be different in different jurisdictions. I think it is unlikely that would be encompassed just because—

Senator FISHER—Unlikely?

Ms Chidgey—Yes. My sense of that work is that you would not have direct unsupervised access to children.

Senator FISHER—Where does the legislation say that is relevant?

Ms Chidgey—It says that in state and territory legislation. If an employee at McDonald's currently required a criminal history check in any jurisdiction then this bill would not change that.

Senator FISHER—Does it say that in every state and territory bit of legislation?

Ms Chidgey—I do not know.

Senator FISHER—No, you do not know. So McDonald's is potentially going to have to go through a different sort of check—

Ms Chidgey—No.

Senator FISHER—or the check to be gone through for McDonald's is going to be different state by state, isn't it?

Ms Chidgey—No, this bill does not affect that in the slightest. I do not know what McDonald's currently has to do. This bill will change nothing about McDonald's requirements for checks.

Senator FISHER—What if McDonald's seeks to employ someone behind the counter? After all, a child may want to go to the loo and ask a member of McDonald's staff for assistance.

Ms Chidgey—The difficulty with that is that it is just not relevant to this bill, in the sense that whether anyone currently needs a check will not be changed by this bill. The requirements for a check are currently set in state and territory legislation, and they will continue.

CHAIR—Isn't it the case that that might be the current situation?

Ms Chidgey—Yes, exactly.

CHAIR—This bill simply coordinates information nationally and allows states to access Commonwealth convictions. This does not suddenly say, 'As of the day of the assent of this bill, even McDonald's have to run criminal checks on people.'

Senator FISHER—No, I understand that.

CHAIR—I think there is a bit of a hypothetical here. If it is currently happening, it is happening; if it is not happening, this bill will not make it happen. It simply shares information and provides access to convictions, quashed convictions or possible offences under Commonwealth legislation. Is that right?

Ms Chidgey—Yes, that is exactly right.

CHAIR—This does not mean that suddenly the Commonwealth is the controller of all criminal history checks.

Ms Chidgey—No, and I think there has been some misunderstanding that this sets up a sort of national scheme for the Commonwealth controlling all checks to do with working with children. All this bill does is remove Commonwealth legislative barriers to the provision of some categories of Commonwealth conviction information. It does not regulate any state or territory conviction information. We have carefully avoided trying to impose a Commonwealth checking regime over the top of the existing state and territory ones. We have left state and territory checking regimes intact. The idea is that we simply prescribe those regimes so that we can give them our pardoned, quashed and additional categories of spent convictions—Commonwealth convictions—information.

Senator FISHER—Fair point. I am thinking through, and I will think after this, whether that addresses the concerns. It does in some part. You talk in your submission, on page 3, about the Law Council's submission that the bill should set a causal link between the offence and the type of employment applied for. You are very clearly saying—and you did say this, Ms Chidgey, in your opening statement—that there are no limits on the criminal history that ought to be able to be accessed. A person's full criminal history must be able to be accessed so that those doing the screening can assess whether it is relevant or not. Senator Crossin volunteered shoplifting as an example of something that would not be relevant, but of course it may be, depending upon the situation. You are saying that the bill says the full criminal history is relevant and then it is over to the screening unit to, in your words, 'undertake a rigorous process to assess the relevance of each conviction'. But what do you think each screening unit will be doing when they assess whether a conviction is relevant or not?

Ms Chidgey—They will be operating under their own existing legislation. They have been making those kinds of assessments for a long time, even about convictions that are not spent. For instance, they have to assess the relevance currently of a shoplifting conviction as to whether someone should be able to work with children. They will continue to make exactly that kind of assessment. It will now just encompass pardoned, quashed and more types of spent convictions. What we aim to do with the bill is to allow those existing state and territory systems to continue to operate but set out certain standards that we have to be satisfied of before we prescribe them to receive our additional categories of information. So the minister will be conducting this review of all the privacy human rights record management requirements and making an assessment of the risk assessment frameworks each of those units have in place and the requirement for appropriately skilled staff.

Senator FISHER—So why, in the bill, can't the government add to those criteria that you just enumerated essentially what the Law Society is suggesting must be the criteria—that is, a causal link between the offence and the type of employment sought? You say that the screening units will undertake a 'rigorous process' to assess the relevance of each conviction. Surely a conviction is only relevant if a causal link is able to be established between the offence or the conviction and the type of employment sought. So why can't the bill expressly specify that?

Ms Chidgey—Because that is dealt with under the state and territory laws.

Senator FISHER—That can be the only acceptable entry point. I guess I am again finding myself not necessarily convinced of that. Can you, on notice, provide the committee with the provision in each state and territory legislation that achieves that.

Ms Chidgey—Yes, we can do that.

Senator FISHER—Thanks, Ms Chidgey, I know that that is an amount of work for you. So at this stage all criminal history is potentially relevant, okay. You said in your opening statement that a potential employer will not be provided with a record that is subject of this legislation, per se. They will be told a simple yes or no.

Ms Chidgey—Yes.

Senator FISHER—What if a potential employer gets told no and decides, 'Well, blow it, I am going to employ them anyway'?

Ms Chidgey—I am not aware of the consequences under the state and territory legislation. My colleague knows what occurs. My assumption is that state and territory legislation contains some restrictions on employment of individuals in those positions—

Ms Field—No, I am not aware. We can certainly look at that and—

Senator FISHER—Can you provide that state by state and by territory on notice, because it does come back to the well-intended purport of this bill vis-a-vis its actual nuts and bolts consequences and perhaps in an attempt to do the right thing by everybody we hamstring with practicalities or with red tape, if you like, the very good majority. If so, we need to think about whether this is an appropriate way to proceed.

CHAIR—The ACT has no relevant act and it released a discussion paper in only August this year. Tasmania is the other place that has no relevant act and their discussion paper was released in 2005. So has the ACT or Tasmania given any commitment through SCAG to do something about this to get some legislation in place?

Ms Chidgey—The ACT has, and it is my understanding that they are working on provisions at the moment—

Ms Field—That is right. I think they are planning on introducing them next year. The ACT and Tasmania have both undertaken to remove any barriers that they have in place to the provision of the information to the other states and territories that have the appropriate screening unit set up. It is my understanding that at this stage Tasmania is not planning to set up a screening unit

CHAIR—Tasmania is not planning to do that?

Ms Field—No.

CHAIR—So they will have no state based screening process for people working with children?

Ms Field—That is right. I think that agencies undertake it by consent. A person will get a criminal history check but they will not have a centralised agency, which is the case at the moment.

CHAIR—What is their reason for that?

Ms Chidgey—They have not provided a reason for that.

Senator FISHER—And the effect of that would obviously be that they would not have a body that we could prescribe, which would mean that we would not be able to provide them these extended categories of information and they would continue to rely on that provision that sits in the crimes regulations at the moment, which is one of the reasons why we keep that.

Coming out of your attempted reassurance that all this bill does is add to the sorts of records that state and territory authorities are already using in assessing a person's suitability for working with children, in attempting that reassurance in the explanatory memorandum, for example, does the minister say that, or where in his second reading speech does the minister say that?

Ms Chidgey—Sorry, Senator, can you clarify that?

Senator FISHER—Is it the purpose of the bill to provide for information about certain Commonwealth offences to be provided to states for them to take into account in doing what they already do to assess a person's suitability for working with children?

Ms Chidgey—Yes, although some jurisdictions will be setting up new screening units as a result of this.

Senator FISHER—On notice, you might let us know which ones.

Ms Chidgey—Yes.

Senator FISHER—Okay. Now, if that is the aim of this bill, where does the minister say that either in his second reading speech or the explanatory memorandum? Where does the minister say that clearly and succinctly?

Ms Chidgey—I cannot answer that at the moment. I can take that on notice and see whether the second reading speech or the explanatory memorandum does contain his statement.

Senator FISHER—Thank you, because if that be the purpose it has taken a while for it to become clear through this process. Call me silly—I can do that myself quite well, can't I!—but I cannot see it. I have not heard it from the witnesses either.

Ms Chidgey—I think there has been a lot of misunderstanding about the bill. We clearly describe the legal effect of the bill. The reason for it is simply to remove current restrictions in the Crimes Act that would have prevented the full implementation of the COAG agreement, even aspects of that COAG agreement.

Senator FISHER—In very good and well-intended bureaucratic-speak, that is so, but it begs the real practical aim that you agreed was the aim a little earlier.

Ms Chidgey—We thought that that was clear, but obviously it has not been as clear as we had hoped.

Senator FISHER—You have been doing this for a while and you know your stuff, which is very good, but you are dealing with the public and kids and people's jobs.

CHAIR—There are no further questions, so can I thank you both for your submission and also for being here this morning and listening to the evidence of the other witnesses. It certainly assists us to work through the issues when you appear before us at the end of our inquiry if you have been here and listened to what has happened beforehand.

Senator FISHER—Yes, indeed. Thanks, ladies.

CHAIR—So thank you for giving up all the morning for us.

Ms Chidgey—Thanks, Chair, and thanks for the opportunity.

CHAIR—That concludes the committee's hearings in relation to this piece of legislation.

Committee adjourned at 12.22 pm