The criteria specifying eligible cooperative companies are very clearly stated in the Income Tax Assessment Act 1936. Under section 120(1)(c) the loan must be sourced from a Government of the Commonwealth or a State. Section 120(1)(c) requires compliance with sections 117 and 118 of the Act. These sections restrict what constitutes an eligible cooperative for the purposes of the Act. Sections 117 and 118 are summarised as follows: they limit the number of shares that may be held by, or on behalf of, any shareholder by providing that 90 per cent of the cooperative's share capital must be held by active members; they prohibit the quoting of shares for sale or purchase at any stock exchange or in any public manner whatever; they provide that the cooperative must be established for the purpose of carrying on a business that has as its primary objective the "acquisition of commodities or animals from its shareholders for disposal or distribution"; and they provide that more than 90 per cent of a cooperative's business must be done with its shareholders. Loans must be used to acquire assets that are required for the purpose of carrying on the business of the company.

Although providing this scheme, the Government will offer no advice as to the eligibility of a cooperative. In submitting an application for a loan, applicants must certify that they have sought independent advice as to the tax implications of a loan under the scheme and that eligibility advice has not been sought from nor given by the Government. The benefit from these loans is for cooperatives to take advantage of taxation concessions under section 120(1)(c) of the Income Tax Assessment Act. Should a cooperative lose its status under that section, there will be no benefit for the cooperative to continue to borrow under this facility, as it will be cheaper to have a commercial bank fund the loan.

In establishing this scheme, the Government is providing the means by which a Western Australian cooperative company may obtain significant financial benefit for the financing of new capital assets required for the expansion of its business. Indirectly, the proposal is of benefit to regional development in Western Australia. Many of the cooperatives likely to take advantage of this scheme are based in regional and rural areas. The multiplier effect of the dollars spent by the cooperative and its members in regional communities enhances the benefit of the commonwealth concession. Existence of this scheme gives opportunity and provides motivation for small businesses to consider new cooperative ventures.

The criteria set by Cabinet in approving the establishment of this scheme are that there will be no cost to Government, with all costs recovered from the borrowing cooperatives for administration of the scheme, and there will be no impact on net state debt. Additionally, all loans must be underwritten by an unconditional bank guarantee. Administrative arrangements have been set in place that satisfy these requirements. Interest will be the rate set by the Western Australian Treasury Corporation at the date of loan establishment plus an administrative fee set by the minister to recover full administration costs.

The Bill requires that security for each loan be by a guarantee of a kind approved by the Treasurer. The Department of Treasury and Finance has assessed that such an arrangement will have no impact on the Government's credit rating. The loan liabilities owed by the State to fund the scheme would be fully offset by secured on-lending financial assets.

The Loans (Cooperative Companies) Bill 2004 provides the opportunity for eligible Western Australian cooperative companies to improve the feasibility for their capital expansion programs. It remedies disadvantage as compared with similar eastern States cooperatives. It is of considerable benefit to regional development in Western Australia, with the multiplier effect of dollars spent in regional communities enhancing the benefit of this commonwealth concession. It is at no cost to Government, and the State is fully protected from the risk of default by the cooperatives. I commend the Bill to the House.

Debate adjourned, on motion by Mr J.L. Bradshaw.

WORKING WITH CHILDREN (CRIMINAL RECORD CHECKING) BILL 2004

Introduction and First Reading

Bill introduced, on motion by Ms S.M. McHale (Minister for Community Development, Women's Interests, Seniors and Youth), and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MS S.M. McHALE (Thornlie - Minister for Community Development, Women's Interests, Seniors and Youth) [12.55 pm]: I move -

That the Bill be now read a second time.

Today our Government is introducing Australia's toughest compulsory criminal record checking regime for people working with children. People with criminal histories that put our children at risk, particularly acts of paedophilia and other sexual deviance, should not be allowed to work with children. This is clearly what our community expects. We have all been sickened by reports of people in positions of trust and authority seeking out and molesting children. Our community nationally has been rocked by the recent exposure of paedophiles who occupy positions of trust - clergy,

lawyers, teachers, coaches and counsellors. The extent of the membership of the international child pornography rings is repulsive.

The Working with Children (Criminal Record Checking) Bill 2004 will mean that persons employed, or who volunteer to work with children, or who are in business, must have extensive checks of any criminal records. If they have certain convictions or charges assessed as putting children at risk of sexual or physical harm they will be barred from starting or continuing to work with children.

The working with children Bill is part of a suite of complementary legislation by this Government to protect children: the Children and Community Services Bill, which is twenty-first century legislation to promote the wellbeing, including the protection, of children; the Acts Amendment (Family and Domestic Violence) Bill 2004, which will afford greater protection to victims of family and domestic violence, with a particular focus on the needs and protection of children; the Community Protection (Offender Reporting) Bill, which is currently before the House and will enable the whereabouts and circumstances of child sex offenders to be monitored and conditions to be placed on aspects of their lives that bring them in contact with children; and this Bill, which will deter and prevent people who have particular types of criminal history from seeking work or volunteering in situations in which harm can be done to our children.

In developing this legislation we have assessed the strongest elements of schemes in Queensland and New South Wales. We have also consulted with the Criminal Records Bureau in the United Kingdom. The chief and deputy chief executives of the CRB shared with me their expertise particularly in the light of the Bichard inquiry into the sexual assault and murder of two schoolgirls by Ian Huntley, a caretaker in their school. This Bill is more far reaching than the legislation in Queensland or New South Wales.

The intention of the Bill is to introduce a high standard of criminal record screening into areas of child-related work. The legislation aims to protect children from harm by: deterring people from applying to work with children if they have criminal records that indicate they may harm children; preventing people with such criminal records who do apply from gaining positions of trust in certain paid and unpaid employment; establishing consistent standards for criminal record screening for working with children and the ethical use of such information; and contributing to awareness that keeping children safe is a whole-of-community responsibility.

The scope of the persons to be screened is extensive. There will always be debate about which particular groups should have compulsory checks. This Bill has sought to achieve a considered balance. The Bill responds to community concern about the abuse of children by persons who are in positions of trust, particularly if there is opportunity for the substantial contact and relationships associated with the grooming of children by paedophiles. We have learnt from the experiences in Australia and the United Kingdom that although we might want to check everyone on day one, the effectiveness of the system depends on ensuring that it is not overloaded and that the various sectors are engaged and provided with clear information.

I now turn to the details of the Bill. The meaning of "child-related work" is set out in clause 6 and includes those areas that offer opportunities for sustained contact with children in which the usual duties of the work involve or are likely to involve contact with a child in connection with a range of services and workplaces. This includes regulated child care, education institutions, boarding and accommodation, foster placements, relevant wards of hospitals, child health care, cultural or sporting activities, counselling and support services, ministers of religion and children's entertainment. People undertaking this work may be self-employed in business, in paid employment or in unpaid, or voluntary work. They may be working in the commercial, the not-for-profit, public or private sectors. This legislation will cover them all.

Division 2 provides for the issuing of three types of notice: an assessment notice, a negative notice, or an interim negative notice, and sets out what the chief executive officer must take into account prior to determining what notice can be issued.

The assessment process will examine the seriousness of an applicant's record; the nature, circumstances and pattern of charges or convictions, including spent convictions; the age at which the offences were committed; the relevance of the offence to child-related work; and anything else relevant to the decision. The paramount consideration is the best interests of the child.

The Commissioner of Police, Director of Public Prosecutions and the CEO administering the Sentencing Act 1995 are enabled to provide information to the assessing authority regarding the circumstances of the convictions or charges for the assessment and scrutiny required.

Clause 24 requires that people must be issued with an assessment notice if they undertake child-related work, subject to the provisions of clause 25. Current volunteers, ministers of religion, self-employed persons, volunteers and workers within the child-care sector will be screened within the first three years. All remaining existing employees will be screened within five years.

The requirement for retrospective screening sets this legislation apart from legislation enacted in New South Wales, Queensland and the United Kingdom, thus ensuring that this is the strongest legislation to date.

Many work situations require occasional contact with children or involve customers who are children. Examples of this could include the general retail and fast food industries, or cinemas. It is neither reasonable, nor is it the intention of this legislation, to require screening employees in general work situations.

The legislation provides also for certain exemptions either in the Bill - clause 6 - or to be detailed in regulations. These exemptions include informal arrangements entered into for private or domestic purposes, an example of which is a person receiving token payments for babysitting a friend's children; children who do volunteer work; employers of young people whose functions are governed by industrial relations and equal opportunity legislation; and situations in which employment screening is already prescribed and is sufficient.

A balance needs to be struck between ensuring that the best child protection mechanisms are applied and a sensible, workable approach is taken to the application of this far-reaching legislation. Therefore, parents who volunteer for activities with their children will not be required by law to undergo the comprehensive checks provided for in this Bill. It was not considered appropriate to legislate for parents who support their children's development. Legislating to check parents who operate the tuckshops in schools, who read to children in class or who coach their children's football or netball team would surely limit the capacity of schools and voluntary organisations to function effectively. A similar exemption for parents is in place in Queensland.

However, we should be mindful also that some sex offenders are parents. Services and organisations are encouraged to develop policies or practices that promote the protection of children and complement the stringency of this legislation. Of course, the Offender Reporting Bill will add strength. For example, the Department of Sport and Recreation has extensive material on strategies to protect children, including police checks and supervision, that can be used by other organisations. The Department of Education and Training welcomes parents into schools and ensures that qualified teachers are present during activities. Policies also provide for self-declarations and can require police record checks for all volunteers, including parents, for higher-risk activities.

Clause 7 of the Bill creates a class of offences for which convictions will result in an automatic bar on child-related work. These are known as class 1 offences. Assessment of such blatant sex offenders is not considered necessary. A negative notice will be automatically issued for class 1 offences. Examples of such offences are sexually penetrating a child under the age of 13 and procuring, inciting or encouraging a child under the age of 13 to engage in sexual behaviour.

Furthermore, another set of serious convictions of a sexual or violent nature - known as class 2 offences - will result in a bar on a person obtaining child-related work, unless assessment of the criminal record, including submission by the applicant, indicates that exceptional circumstances exist and the applicant does not pose a likely risk of harm to children. These class 2 serious offences include a much broader range of behaviours in which the context and what has happened since the offence occurred may need to be considered. Examples of class 2 offences are indecent dealings with children under 13 years of age, aggravated indecent assault, and murder. Class 1 and 2 offences are contained in schedules 1 and 2.

Convictions outside of class 1 or 2 offences will usually result in an assessment notice being issued, unless the offence is assessed as having particular circumstances relevant to the likely harm of children. During the assessment period an interim negative notice may be issued if it is considered necessary for the protection of children.

The Bill provides that certain charges are to be checked. Not all offences against children result in convictions. Therefore, the Government has resolved that charges will be assessed also. We will not tolerate paedophiles who have escaped conviction for various reasons working with our children.

Charges related to class 1 and 2 offences will be assessed. These include those charges that did not result in a court conviction - known as non-conviction charges - and pending charges yet to be decided by a court. This will enable consideration to be given to sexual and violent offences that have been dismissed on a technicality or have not proceeded because of the impact on the victim - particularly children - and the reliability of the evidence. It includes also cases that are awaiting a decision, during which time the risk is too high to allow persons to work with children. Queensland, New South Wales and the United Kingdom also assess charges for child-related work.

With regard to non-conviction charges, the onus is on the assessing authority to show cause as to why particular circumstances exist and why an assessment notice should not be issued.

At this stage it is not intended to consider records other than criminal convictions and charges. Consideration can be given to other types of records when the basic building blocks are in place. The minimum requirement is for consistent, reliable access to national convictions and charges.

The Bill contains provisions for natural justice. Persons applying for an assessment notice will have an opportunity to make a submission to the assessing authority to argue against the proposed issue of a negative notice. The applicants will be able to apply to the proposed State Administrative Tribunal to review any subsequent issue of a negative notice.

Submissions and reviews of a negative notice issued under the automatic bar - class 1 sexual convictions against young children - can be made only on the grounds that the person's criminal record is inaccurate. Applicants who receive a

negative notice for offences for other than class 1 convictions may apply to have a negative notice cancelled after three years. This will be assessed with the same rigour as a new application. A screening unit will be established to undertake these complex assessments that are critical to the safety of children.

The CEO of the department principally assisting the minister in the administration of the Act will have the responsibility for undertaking criminal record checks of persons involved in child-related work. The current proposal is to implement this function through the establishment of a screening unit within the Department for Community Development. However, when the Government introduces legislation to establish the children's commission in its second term, serious consideration will be given to the screening function being assigned to the children's commission.

The screening unit will employ people with the child protection and legal expertise needed to make the complex decisions about whether a person's criminal history indicates likely harm of children. The assessment process will build on expertise developed in Western Australia as well as the experience of colleagues in the United Kingdom, Queensland and New South Wales. This is a growing area and the screening authority will incorporate and contribute to new research and knowledge. The Bill provides for the chief executive officer of the screening authority to delegate a power or duty to a public sector employee or, with the approval of the minister, another person. It is proposed that approved screening agencies will have delegated authority to undertake the criminal record checking process.

The government agencies that currently screen large numbers of employees who work with children are the Departments of Education and Training, Justice and Health and the Department for Community Development. It is expected that these departments will meet the standards required and be delegated to operate as approved screening agencies in the second year of operation of the legislation. This is cost effective, builds on existing capacity and demonstrates that protecting children does not reside with one department and is a whole-of-community and whole-of-government responsibility.

The phasing in of the working with children check is based as far as is possible on the relative risks to children of different ages, the extent to which screening is in place and the opportunity for unsupervised, substantial contact with children. An employer can at any time notify the screening unit if he or she has a reasonable suspicion that a person has a criminal record or history of concern. The unit can then require an application for a working with children check.

Employers and the public will want to know whether people working with children have had their criminal records checked. An assessment notice card, which will be valid for three years, will be issued to persons who have no criminal record or whose record is assessed as not posing a likely risk of sexual or physical harm to children. This is user friendly and cost effective. Without such a system, it would be necessary for checks to be repeated with every position change, as occurs in New South Wales. The card will not endorse the person as suitable for particular positions. Advice and information from the screening unit will ensure that the criminal record checks are seen as only one of the practices that responsible employers put in place to achieve safe environments for children. We have ensured that safety measures have been built into the Bill to avoid people fraudulently obtaining an assessment notice. Security measures will be built into the card to minimise its misuse. Advice from the police and the Department for Planning and Infrastructure indicates that such a critical notice must be issued in a way that inhibits as far as is possible fraudulent use or counterfeiting. The card will be issued with a photograph and other security features. The screening unit will also make the registration number of valid assessment notices available on the web site so that employers can check that the notice is current and has not been withdrawn.

We have also taken advice from experts in the United Kingdom and Queensland and from the police that scrutiny of the person's identity will be critical to ensure the safety of children. There is evidence that people have used assumed names in order to prevent detection of their criminal record. The tragic Soham murders in the United Kingdom brought this issue to light. Ian Huntley used his mother's maiden name to obtain a criminal record check that did not reveal his past history. He was employed as a school caretaker and sexually assaulted and murdered Holly Wells and Jessica Chapman. For this reason we are not placing responsibility on employers to check identity, but will ensure that an objective third party assesses the 100-point identification information required. There are also substantial penalties of up to two years imprisonment and a $24 000 fine for persons who provide false information. There are also safety measures in the Bill to ensure that information about offending is continually updated.

The legislation makes provision for the WA Police Service to advise the screening authority if a person with an assessment notice offends or is charged during the three years. The police will also notify the screening authority if a person they believe to be working with children who does not yet hold a card is charged with a class 1 or 2 offence. The screening authority can also be notified by employers who know or have a reasonable suspicion that a person working with children has a criminal record of concern. This provision is not intended to capture vexatious "dobbing in" and the substance of the report will be assessed. The screening authority can then require application for a working with children check. There will be a reasonable fee for this thorough assessment and registration process, which will recoup but some of the costs. There is a nominal $10 fee for volunteers and $50 for paid workers. Those in paid employment and those running businesses may seek tax deductions. The fee is comparable with the over-the-counter police check, which currently stands at $44 and does not include assessment of the range of records or a secure card that can be used for three years.

There are stringent obligations on those working and volunteering in child-related work and their employers. Employees, self-employed persons and volunteers will be required to apply for an assessment notice, including consent for criminal history checking, and renew it three yearly; advise their employer immediately of any relevant change in their criminal record; cease child-related work immediately if they are convicted of a class 1 offence committed as an adult; and not start or continue in child-related work if they hold an interim negative notice or a negative notice. Employers will be required to not employ or continue employing a person in child-related work unless the person has applied for or already holds a current assessment notice; not employ or continue to employ in child-related work any person who has a current interim negative notice or negative notice or whose application has been withdrawn; and advise the authority administering the legislation immediately when notified about an employee's relevant change of criminal history.

Reasonable flexibility is needed to deliver services in an unforeseen circumstance such as the illness of a worker. Employers and employees will have a defence if work with children has been undertaken on no more than five days in a calendar year. Similar flexibility exists in Queensland and New South Wales. The Bill provides for a series of penalties for employers and employees, with the maximum being a $60 000 fine or five years imprisonment. Protection from liability is provided for the State in administering the legislation; persons undertaking the criminal record assessments; and employers, including the State, in complying with their obligations under the Bill but not limiting procedural fairness requirements or access to employee entitlements.

The public is demanding that action be taken to screen people who work with children. This Government will not tolerate persons who prey on innocent children, and this legislation will put in place the tough measures that are needed to protect children from persons with criminal histories from seeking out workplaces in which there is access to children. The consideration of charges that have not been proved in court or are still under consideration is essential to the safety of children. With the passage of the Working With Children (Criminal Record Checking) Bill and the Community Protection (Offender Reporting) Bill 2004, this Government will have put in place legislation to protect children, which will monitor the movements of people who molest children, place conditions on their movements and where they live, and bar or deter them from working with children.

Finally, I thank all those who have been involved in the research, development and drafting of this significant and highly complex Bill. I commend the Bill to the House.

Debate adjourned, on motion by Mr B.J. Grylls.

LIMITATION BILL 2004

Introduction and First Reading

Bill introduced, on motion by Mr J.C. Kobelke (Leader of the House) on behalf of the Attorney General, and read a first time.

Explanatory memorandum presented by the Leader of the House.

Second Reading

MR J.C. KOBELKE (Nollamara - Leader of the House) [1.18 pm]: On behalf of the Attorney General, I move -

That the Bill be now read a second time.

The purpose of the Limitation Bill is to update and modernise Western Australia's law in relation to time limits for commencing civil legal proceedings and arbitrations. Currently, the most significant statute in this State related to limitation periods is the Limitation Act 1935, a statute which largely reflects, in language and substance, English limitation statutes dating back to the sixteenth century. The Act is antiquated. Some of its language is archaic, a number of its provisions are obsolete or anomalous, and some aspects of the Act are unnecessarily complex. Most importantly, its provisions are unfair and represent the harshest provisions in Australia. It is therefore proposed to overhaul the Act and associated legislation that contain limitation or notice of action provisions. The objective is to achieve a modern limitations regime which is fairer and more flexible than our current law and which delivers a large measure of certainty.

The basis for these reforms stems from May 2002 when a discussion paper entitled "Limitations Law Reform" was released for public comment. The discussion paper took into account the recommendations of the Western Australian Law Reform Commission's 1997 report titled "Limitation and Notice of Actions". A number of comments and submissions were received in response to the discussion paper.

Since the release of that paper, the issue of limitations law has been the subject of further consideration in the context of reform of the law governing civil liability generally, both in the "Review of the Law of Negligence" report - commonly referred to as the Ipp report, which was released in September 2002 - and in the report of the Australian Health Ministers Advisory Council chaired by Professor Marcia Neave, which was also released in that month. The issue has also been canvassed in detail at a national level and a number of States and Territories have introduced legislation to amend their limitation laws. Generally, the concern in those other States and Territories has been to narrow, from a limitations perspective, the typically very broad circumstances in which proceedings in respect of personal injury may