Working with Children (Indigenous Communities) Amendment

Bill 2021

Statement of Compatibility

Prepared in accordance with Part 3 of the Human Rights Act 2019

In accordance with section 38 of the Human Rights Act 2019, I, Robbie Katter Member for Traeger, make this statement of compatibility with respect to the Working with Children (Indigenous Communities) Amendment Bill 2021. In my opinion, the Working with Children (Indigenous Communities) Amendment Bill 2021 is compatible with the human rights protected by the Human Rights Act 2019.

Overview of the Bill

This Bill primarily amends the Working with Children (Risk Management and Screening) Act 2000, to provide a new Blue Card framework that empowers Indigenous communities - through Local Justice Groups - to make decisions that best serve their interests in relation to child protection and employment of community members.

A number of other Acts, including the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984, are amended however those amendments are consequential.

The health, safety and wellbeing of all children is the paramount purpose of the Blue Card system and will continue to be the number one priority of the community under these amendments.

The new framework proposed by this Bill, which is limited to Indigenous communities, is designed to addressed significant limitations in the way the current Blue Card system applies to the unique circumstances of Indigenous communities.

The current, rigid framework has and continues to result in missed opportunities for social and economic development in these communities, relegating many prospective workers and their families to a troubling cycle of long-term unemployment and generational welfare dependency.

Queensland's Indigenous communities are among the state's most economically and socially disadvantaged, with unemployment rates of around 20-25 per cent the norm in places like Doomadgee and Mornington Island.

There have been many instances where individuals have been denied access to work due to the inflexibility of the current system. In numerous cases, the local community, through community leaders, law enforcement and judicial representatives, has determined that the person poses no risk to children and their employment would have broader positive community impacts.

The existing system, whilst well-meaning in its intention, is not practical in its application to remote Indigenous communities. Numerous examples exist where individuals who have made significant progress reforming their behaviour are faced with no hope of accessing employment due to the current Blue Card system.

Feedback from community leaders, law enforcement and judicial representatives indicates that handing more decision-making power to the communities themselves would assist in opening employment opportunities whilst maintaining strict child safety standards.

Specifically, the current Blue Card system contains the following limitations in its application to Indigenous communities:

- There is no mechanism to allow the local community to have input into the issuing of Blue Cards for employment in that community;
- Further no mechanism exists that recognises behavioural improvements and the positive impact employment of an individual may have on the community;
- The current application process has no set timeframe for the issuing of a Blue Card for individuals in Indigenous communities which creates a significant barrier to accessing employment;
- The current application process does not allow an applicant to undertake work during the application process, even if it can be determined that the individual poses no risk to the safety of children. This can often result in the loss of long-term employment opportunities.

This Bill creates a framework which overcomes these limitations by enabling the local Community Justice Group (as defined in the Aboriginal and Torres Strait Islander Communities [Justice, Land and Other Matters] Act 1984) to make a binding recommendation to the chief executive to issue a *restricted working with children clearance* to an individual for work within that community even if the individual would be issued a negative notice by the chief executive due to previous criminal offences due to previous *serious offences* being committed by the applicant.

A *restricted working with children clearance* issued in this way can only be used in the specific community area as defined by the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984.

The type of *serious offences* that can be considered under the new framework are limited to the following:

- Criminal Code offences
    - Sections 409, 419 and 427, which relate to stealing with violence, burglary and unlawful entry of a vehicle;
- Drugs Misuse Act offences
    - Sections 5,6,8 and 9D, which relate to trafficking dangerous drugs, supplying dangerous drugs, producing dangerous drugs and trafficking in relevant substances or things.

No other offences that are currently classified as *serious offences* or *disqualifying offences* can be considered by the Community Justice Group under the new framework.

Further it is vitally important to note that none of the offences that can be assessed by the Community Justice Group in making a recommendation to issue a *restricted working with children clearance* are sexually-based offences. If an applicant has sexually-based offences they are considered through the standard Blue Card process and, if these offences are classified as serious offences or disqualifying offences, a Blue Card will not be issued.

Additionally the Bill allows for an *interim restricted working with children clearance* to be issued, at the bequest of the Community Justice Group, whilst the general *restricted working with children clearance* is being considered. This enables the applicant to undertake the regulated employment

immediately, provided they do not have any sexually-based or serious offences outside the scope this Bill in their criminal history and they have been deemed suitable by the Community Justice Group.

When deciding to issue a recommendation for an *interim restricted working with children clearance* the Community Justice Group must have regard to the following:

- Any police information, investigative information or disciplinary information about the person that the group is aware of and considers relevant;
- Whether, and in what capacity, the person has previously worked with children;
- The person's social standing and participation within the community area;
- Whether, in the group's reasonable opinion, withholding the recommendation would have a negative impact on the social or economic wellbeing of the community area's inhabitants;
- Anything else the group reasonably considers to be relevant to the decision.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3 Human Rights Act 2019)

In my opinion, this Bill does not unreasonably limit any human right listed under Part 2, Division 2 and 3 Human Rights Act 2019, however I will address issues that may be perceived as potential incompatibilities below:

Protection of children

This Bill introduces two (2) new types of working with children clearances (i.e. the *interim restricted working with children clearance* and the *restricted working with children clearance*). Effectively, this means the Bill creates exceptions for certain individuals in certain communities to the safeguards protecting children enshrined within the *Working with Children (Risk Management and Screening) Act 2000*.

I accept this may create the perception of the Bill, in theory, therefore being potentially incompatible with the *Human Rights Act 2019*, section 26(b), which states that 'every child has the right, without discrimination, to the protection that is needed by the child, and is in the child's best interests, because of being a child'.

However I argue that such a view is based on a misguided and overinflated confidence that a centralised, bureaucratic process that applies a static set of wide-ranging criteria is the most effective, and only, way to implement safeguards to prevent offending against children.

This Bill is committed to ensuring the protection of children remains paramount, and therefore it only provides the option of local decision-making around a limited subset of *serious offences*. These include:

- Criminal Code offences
    - Sections 409, 419 and 427, which relate to stealing with violence, burglary and unlawful entry of a vehicle;
- Drugs Misuse Act offences
    - Sections 5,6,8 and 9D, which relate to trafficking dangerous drugs, supplying dangerous drugs, producing dangerous drugs and trafficking in relevant substances or things.

Any person who has a history of sexually-based offences, or offences involved children, would never be considered for an *interim restricted working with children clearance* or a *restricted working with children clearance* under the framework that this Bill proposes.

If it is considered acceptable that individuals from Indigenous communities who have a history of Criminal Code offences (Sections 409, 419 and 427) or Drugs Misuse Act offences (Sections 5,6,8 and 9D) be denied vital work opportunities that require a *working with children* clearance, even if it is deemed by their communities that they pose no threat to children, then there is an onus on government to ensure these individuals are not the caregivers of their own, or anyone else's, children at any time.

If government is not prepared to take this drastic step, then it should not be considered acceptable that these people are denied work opportunities on the same grounds.

It is my view that a limited history of potentially minor property or drug offending, particularly that which may be dated or may have preceded a period of significant personal and behavioural reform, should not render an individual a "lost cause" or someone who should be rejected by society as is the impact of the present Blue Card framework.

Therefore, with consideration of the afore-mentioned issues, I am confident that this Bill does not pose any real or fundamental threat to limiting section 26(b) of the *Human Rights Act 2019*.

Privacy

It may be perceived that Section 188(3)(bb), as well as new sections 231B, 231D, 231F and 594(3), impact on individuals' right to privacy, and arguably limit the human right stated in the *Human Rights Act 2019*, s 25(a), which states 'that person has the right not to have (their) privacy, family, home or correspondence unlawfully or arbitrarily interfered with'.

While I accept this perception to be genuine, the amendments to section 594 account for, and mitigate, this possible issue – as well as a possible *Fundamental Legislative Principle* issue – by a) allowing for the applicant to notify the chief executive that the application is for a restricted Working with Children clearance for a community area and b) requiring express permission from the applicant for the chief executive to supply personal documents and information relating to the application to the Community Justice Group for each community area to which the Working with Children application relates.

Therefore, I believe the limit is reasonable and demonstrably justifiable in accordance with section 13 of that Act (see ss 8[b] and 13 of that Act).

Conclusion

It is my view that the Working with Children (Indigenous Communities) Amendment Bill 2021 is compatible with human rights under the Human Rights Act 2019 because it does not unreasonably limit a human right.

Robbie Katter

Member for Traeger