

Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024

Statement of Compatibility

For

Amendments to be moved during Consideration in Detail by the Honourable Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence

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

In accordance with section 38 of the *Human Rights Act 2019* (Human Rights Act), I, Yvette D'Ath MP, Attorney-General and Minister for Justice and Minister for the Prevention of Domestic and Family Violence, make this statement of compatibility with respect to the amendments to be moved during consideration in detail (the amendments) of the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024 (the Bill).

In my opinion, the amendments are compatible with the human rights protected by the Human Rights Act. I base my opinion on the reasons outlined in this statement.

Overview of the amendments

On 12 June 2024, the Bill was introduced to Parliament. The Bill was referred to the Education, Employment, Training and Skills Committee (the Committee) for consideration.

On 2 August 2024, the Committee tabled its Report, *Report No. 8, 57th Parliament – Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024* (the Report). The Report contained two recommendations: that the Bill be passed; and that the Bill be amended to remove the requirement that adult household members of kinship carers hold a blue card.

The Queensland Government supports the recommendation to remove from the Bill the requirement for adult household members of a kinship carer to hold a blue card. Removing these requirements will avoid any unintended consequences of the broader reforms to establish

a more nuanced scheme for the screening of kinship carers in a way that is culturally safe and responds to the unique needs of Aboriginal and Torres Strait Islander families caring for kin.

Consistent with the reforms already in the Bill relating to kinship carers, the amendments will commence on a date to be fixed by proclamation and automatic commencement under the *Acts Interpretation Act 1954* will not apply. This is to provide sufficient time for the Queensland Government to consult with stakeholders on the development of a new, fit for purpose and culturally safe screening framework for kinship carers and their adult household members.

Human Rights Issues

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

In my opinion, the human rights that are relevant to the amendments are:

- protection of families and children (section 26);
- cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28).

Protection of families

Section 26(1) of the Human Rights Act states that families are the fundamental group unit of society and are entitled to be protected by society and the State.

The Child Protection Act recognises the importance of maintaining ongoing, positive relationships with a child's family and provides that in circumstances where a child is removed from the care of their parents, the first option should be to place the child in the care of kin.

The Aboriginal and Torres Strait Islander Child Placement Principle recognises the right of a child to be raised within their own family, culture and community and, if placed in care, to be placed with a member of their family group. Removing the requirement for adult household members of kinship carers to obtain a blue card is supportive of the right of families and reduces the impact of unnecessary barriers to family caring for family that the blue card system currently imposes.

Protection of children

Section 26(2) of the Human Rights Act protects the right of every child, without discrimination, to the protection that is needed by the child and that is in the child's best interests. This right recognises the special protection that must be afforded to children and requires the best interests of the child to be taken into account as the primary consideration in all actions affecting a child.

If a child is removed from their family, the Child Protection Act provides that consideration should be given to placing the child, as a first option, in the care of kin. Kinship care is preferred over foster care and residential care because it maintains a child's connection to family, kin, community and culture. The Child Protection Act also provides that an Aboriginal or Torres Strait Islander child has the right to be brought up within the child's own family and community and has a right to be supported to develop and maintain a connection with the child's family, community, culture, traditions and language.

The Queensland Family and Child Commission report, *A thematic analysis of provisionally approved kinship carers who receive a subsequent blue card negative notice* noted that the blue card system continues to contribute to the displacement of Aboriginal and Torres Strait Islander children from their kin, culture and country. It further highlighted ‘fundamental problems that result from applying a screening system that is not designed for kinship care.’ The Committee also made similar findings in its report and stated that caring for children and supporting family connection is not employment and that the blue card system is not suitable for kinship care.

The purpose of removing the requirement for adult household members of kinship carers to hold a blue card is to promote family caring arrangements and remove or reduce barriers experienced by kinship carer applicants. Removing the blue card requirement and developing a fit for purpose screening framework for kinship carer applicants and their associated adult household members is expected to encourage more families to care for family. It is not intended that the removal of the blue card requirement would reduce the safety of children in kinship care. Rather, it is intended the new screening framework will provide sufficient safeguards, whilst enabling a nuanced assessment of risk for kinship carers.

The right of children to be protected is promoted not only by proper safeguards in the approval process for kinship carers and adult household members of kinship carers, but also by recognising that a child’s best interests are protected through the promotion of other rights, including the right to be brought up safely within their family and culture. Further, the right of children to protection will be maintained by delaying commencement of the amendments to enable sufficient time for the Department of Child Safety, Seniors and Disability Services to establish a new screening framework. As above, the new framework is intended to provide sufficient safeguards whilst enabling a more nuanced risk assessment.

Cultural Rights - Aboriginal and Torres Strait Islander peoples

Section 28 of the Human Rights Act recognises the distinct cultural rights for Aboriginal and Torres Strait Islander peoples. Subsection (2)(c) states that Aboriginal and Torres Strait Islander peoples must not be denied the right, with other members of their community, to enjoy, maintain, control, protect and develop their kinship ties.

The right to self-determination is of particular significance to Aboriginal and Torres Strait Islander peoples, as reflected in the preamble to the Human Rights Act, and in the context of kinship care, relates to Aboriginal and Torres Strait Islander families and communities being able to care for their children and be involved in decisions about their care.

The amendments will support cultural rights to maintain kinship ties between a child and their family and community.

Conclusion

In my opinion, the amendments to the Bill are compatible with human rights under the *Human Rights Act 2019* as they do not limit human rights.

YVETTE D'ATH MP
Attorney-General and Minister for Justice
Minister for the Prevention of Domestic and Family Violence

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