

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

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, Yvette D'Ath, 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 Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the *Human Rights Act 2019* (HR Act). I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The policy objectives of the Bill are to:

- implement, either in full or part, 12 recommendations arising from the Queensland Family and Child Commission (QFCC) report, *Keeping Queensland's children more than safe: review of the blue card system* (QFCC Blue Card Review Report);
- implement recommendations made by the former Legal Affairs and Safety Committee (LASC), the Women's Safety and Justice Taskforce and the Youth Justice Reform Select Committee highlighting the need to consider the decision-making framework;
- make a range of other amendments to simplify, streamline, and improve the operation of the blue card system;
- implement the first stage of the Government's response to the QFCC report, *A thematic analysis of provisionally approved kinship carers who receive a subsequent blue card negative notice* (QFCC Kinship Care Report); and
- amend the *Childrens Court Act 1992* to provide a clear legislative basis for the sharing of Childrens Court child protection court records with other Australian courts and tribunals.

Human Rights Issues

Human rights relevant to the Bill (Part 2, Division 2 and 3, *HR Act*)

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

- recognition and equality before the law (section 15);
- right to life (section 16);
- privacy and reputation (section 25);

- protection of families and children (section 26);
- cultural rights – Aboriginal peoples and Torres Strait Islander peoples (section 28); and
- right not to be tried or punished more than once (section 34).

Changes to the decision-making framework

Under the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act), the ‘best interests of children’ threshold is the statutory test that must be applied by the relevant decision-maker when deciding whether the applicant is eligible to hold a working with children authority (or otherwise referred to as a blue card).

If the chief executive is not aware of any relevant information about an applicant, such as police or disciplinary information, and no other requirements for an automatic refusal under the WWC Act exist, a blue card must be issued. However, where relevant information exists, the ‘best interests of children’ threshold guides the chief executive in consideration of the person’s application.

The Bill replaces the existing statutory test with a new ‘risk to the safety of children’ threshold. A ‘risk to the safety of children’ is defined by the Bill as meaning a ‘real and appreciable risk’.

The Bill also removes the test of exceptionality for general risk assessments (i.e. assessable information that does not involve a conviction for a serious offence) in alignment with the National Standards for Working with Children Checks (National Standards). The National Standards were jointly developed by all jurisdictions to establish nationally consistent parameters for the screening of persons who propose to engage in child-related work.

Further, the Bill adopts the specific criteria for assessing risks to children as recommended by the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) and the QFCC in the QFCC Blue Card Review Report.

Protection of children

The right under section 26(2) of the HR Act protects the right of every child, without discrimination, to the protection needed by the child and in the child’s best interests. This right recognises the special protection that must be afforded to children based on their particular vulnerability. The right requires the State to take into account the best interests of the child as the primary consideration in all actions affecting a child.

A key purpose of the reforms is to recalibrate the WWC Act to refine working with children check (WWCC) assessments, including by broadly aligning it with the approach of other jurisdictions and the National Standards.

Any legislation that regulates the ability of members of the community to engage in work will inherently require a balancing of competing rights and interests. WWCC schemes are one tool in a broader suite of practices that help to protect children from exploitation and abuse.

As highlighted by the Royal Commission, a national approach to WWCCs will ensure children receive equal legal protection against the risk of sexual abuse in institutional contexts by people

engaged in child-related work. Further, it will eliminate the risk of potential offenders ‘forum shopping’ across jurisdictions and improve information-sharing between jurisdictions.¹

Another key purpose of the changes to the decision-making framework is to improve outcomes for First Nations people. The current framework is having unintended and disproportionate impacts on First Nations people. For example, the Queensland Human Rights Commission (QHRC) has highlighted how the ‘current Blue Card system disproportionately disadvantages Aboriginal and Torres Strait Islander applicants and limits their human rights.’²

Therefore, a rebalancing of the human rights and interests under the current decision-making framework is required. Shifting from a ‘best interests of children’ test, to a ‘risk to the safety of children’ test, will result in a refinement of the decision-making process.

However, such an approach is not a limitation on the right for protection of children. The information that can be considered in making a decision will not change. Rather, a decision to issue a negative notice will need to demonstrate a clearer nexus between a person’s conduct, or alleged conduct, and the risk to the safety of children. The shift to a risk-based decision-making framework will be benchmarked against specific and nationally endorsed criteria for assessing risks to children.

The approach is consistent with common law,³ which has established that WWCC legislation should not go as far as preventing a person from working in their chosen employment, where there would be no real risk of harm to children, while also seeking to address the disproportionate impacts on First Nations people under the current system. For example, the new framework will require a higher threshold to be met by the chief executive when issuing negative notices in circumstances where an applicant has some offending, particularly if the offending is unrelated to children.

On balance, the refinement of the decision-making framework is considered a proportionate response that continues to take into account the best interests of children with less of an impact on the rights of applicants engaging with the WWCC system.

Cultural rights – Aboriginal peoples and Torres Strait Islander people

Section 28 of the HR Act recognises the special importance of human rights for First Nations peoples, and explicitly protects their distinct cultural rights as Australia’s first people.

The right to self-determination is of particular significance to First Nations peoples of Queensland, as reflected in the preamble to the HR Act. As already identified, First Nations people are disproportionately impacted by the WWCC system because of their overrepresentation in the criminal justice system. Therefore, any changes to the decision-making framework will inevitably have a flow-on effect for cultural rights.

By requiring a clearer nexus between a person’s conduct, or alleged conduct, and the risk to the safety of children, the reforms are designed to remove barriers to First Nations people accessing the WWCC system and therefore lessening the impact on their distinct cultural rights.

¹ *Royal Commission into Institutional Responses to Child Sexual Abuse* (Working with Children Checks Report) 50.

² Queensland Human Rights Commission, Submission No. 10 to Legal Affairs and Safety Committee, Queensland Parliament, *Inquiry into the Working with Children (Indigenous Communities) Amendment Bill 2021* (22 November 2021) 2.

³ *ZZ v Secretary, Department of Justice* [2013] VSC 267 at [68]

Right not to be tried or punished more than once

Section 34 of the HR Act provides the right to not be tried or punished more than once for an offence of which a person has been finally convicted or acquitted in accordance with the law. The scope of the right applies only to criminal proceedings and does not prevent other non-penal consequences arising from the same conduct that does not seek to punish the person but rather to protect the public.⁴

The amendments establishing the new decision-making framework do not engage or limit the right not to be tried or punished more than once. The purpose and effect of preventing a person from engaging in child-related work is not to penalise persons for offending behaviour, but to assist in protecting children from harm in situations where the assessable information of a person indicates the person poses a risk to the safety of children.

Where assessable information obtained about a person leads to the issuance of a negative notice, it is considered a protective rather than a punitive measure.

It is well established in common law that the actions of a regulatory body to dismiss, disbar, de-register or cancel a professional's right to practice in various industries and professions is not viewed as a punitive measure; it is a protective measure that operates to ensure the adequate standard of services to the public and to maintain the reputation of the profession.⁵

Although the blue card system does not strictly amount to professional registration, it does seek to prohibit individuals with certain criminal histories or other relevant history from engaging in child-related work where the person poses a risk to the safety of children.

International jurisprudence also suggests that this sort of consequence, (i.e. restrictions regarding work for individuals with certain types of offending), does not constitute punishment. For example, the New Zealand Court of Appeal has held in relation to a corresponding right in the New Zealand Bill of Rights, that it would be erroneous to treat the word 'punished' as 'embracing punishment outside the ambit of criminal processes and its associated enforcement of the public law.'⁶

Removing the requirement for kinship carers to hold a blue card

The Bill amends the WWC Act and the *Child Protection Act 1999* (CP Act) to remove the requirement for kinship carers to hold a blue card in response to the QFCC Kinship Care Report. The commencement of these amendments will be delayed to enable consultation on the development of a new screening framework for this cohort that is fit-for-purpose and culturally safe.

⁴ *Psychology Board of Australia v Ildiri (Occupational and Business Regulation)* [2011] VCAT 1036 [34]-[35]; *Sim v Business Licensing Authority (Occupational and Business Regulation)* [2011] VCAT 583 [41].

⁵ *Ziems v Prothonotary of the Supreme Court of NSW* [1957] HCA 46; *Clyne v NSW Bar Association* [1960] HCA 40; *New South Wales Bar Association v Evatt* [1968] HCA 20. See also *Queensland College of Teachers v TSV* [2015] QCAT 186 for an application of these principles in relation to teacher registration.

⁶ *Daniels v Thompson* [1998] 3 NZLR 22.

Protection of families

Section 26(1) of the HR Act provides that families are the fundamental group unit of society and are entitled to be protected by society and the State. Families take many forms and the right accommodates the various social and cultural groups in Queensland, including where understanding of family may differ.

The CP 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 and community and, if placed in care, to be placed with a member of their family group.

The QFCC Kinship Care Report found that blue card screening is not designed for kinship care, and that its processes create additional barriers for Aboriginal and Torres Strait Islander kinship carers. Removing the requirement for kinship carers to obtain a blue card is supportive of the right of families to be protected by society and the State and reduces the impact of barriers to family caring for family.

Protection of children

Section 26(2) of the HR 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.

The CP Act is administered under the principle that the safety, wellbeing and best interests of a child, both throughout childhood and for the rest of the child's life, are paramount. If a child is removed from their family, the CP 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 CP 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 QFCC Kinship Care Report 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 purpose of removing the requirement for 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 is expected to encourage more families to care for family and to remove barriers currently experienced by kinship carer applicants in the blue card system.

The Department of Child Safety, Seniors and Disability Services has a target to increase the proportion of children and young people in kinship care to 70 per cent by 2026. Replacing the

requirement to hold a blue card with a more appropriate screening framework will support progress towards this target.

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 QFCC Kinship Care Report and recommendations are specific to Aboriginal and Torres Strait Islander kinship carers, however, the Bill broadens the scope to all kinship carers. The broader scope recognises the importance of a nuanced screening and assessment process for people caring for children who are kin.

The right of children to be protected is promoted not only by proper safeguards in the approval process for 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 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 HR Act recognises the distinct cultural rights for Aboriginal and Torres Strait Islander peoples. Section 28(2)(c) of the HR Act 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 Bill will support more Aboriginal and Torres Strait Islander children to be cared for within their kinship, community and cultural group. This will support the cultural rights to maintain kinship ties between the child and their family and community.

Establishing an exemption for emergency services workers deployed to Queensland

Right to life

Section 16 of the HR Act provides that every person has the right to life and the right not to be arbitrarily deprived of life.

The concept of arbitrariness in the context of the right to life carries a human rights meaning of 'capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought'.⁷ The right imposes both negative and positive obligations on the State, which can never be derogated under any circumstances.⁸

The United Nations Human Rights Committee (UNHRC) has said that the protection of the right to life also imposes positive obligations on the State, including a protective obligation to take appropriate steps and adopt positive measures to protect life, including, for example mechanisms to protect the health and safety of its citizens.

⁷ *WBM v Chief Commissioner of Police* (2012) 43 VR 466, 472 (Warren CJ, Hansen JA agreeing).

⁸ Human Rights Committee, General Comment No. 6.

The Bill provides an exemption for emergency services workers from interstate or overseas from the requirement to obtain a blue card. It will enable these workers to be deployed as quickly as possible to respond to a declared significant fire event or a disaster situation to limit the potential harm to human life and, in some instances, limit damage to property.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13, HR Act)

Expanding regulated employment and regulated business categories

Privacy and reputation

(a) The nature of the right

The right to privacy and reputation protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal), and reputation. The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally. Only lawful and non-arbitrary intrusions may occur upon privacy and reputation.

The concept of arbitrariness in the context of the right to privacy carries a human right meaning of 'capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought.'

As a result of the intrinsic connection between employment, dignity and the private life of individuals, especially in regard to their relationships with other people, international jurisprudence has established that the right to work also forms part of the right to privacy. Specifically, the European Court of Human Rights has found that private life 'encompasses the right for an individual to form and develop relationships with other human beings, including relationships of a professional or business nature.'⁹

The proposed amendments will expand the scope of regulated employment and regulated business under the WWC Act. Specifically, changes are proposed to blue card screening requirements that will expand and refine the scope of who requires a blue card to:

- include all entertainment, beauty and photography services for children (and remove the exemption for amusement park workers to obtain a blue card);
- clarify that gyms and play facilities are captured under the sport and active recreation category;
- include lawyers who provide legal services to children (and remove the current exemption for lawyers to obtain a blue card);
- include new categories of regulated employment and regulated business for justice and detention services to clarify that workers providing services to children in detention or subject to an order under the *Youth Justice Act 1992* must hold a blue card;
- clarify that overnight camps and excursions are captured under the child accommodation service category; and

⁹ *ZZ v Secretary, Department of Justice* [2013] VSC 267, [85]-[92].

- clarify that a person engaging in decision-making in relation to children as a member of an executive committee of an association, church or club will be captured under the churches, clubs and associations involving children category.

The requirement for overnight camps and excursions will also apply to parent volunteers who are engaged to assist at the camp or excursion, such as an overnight school camp.

The expansion of the scope of regulated employment and regulated business will allow the chief executive to require, disclose, and request personal information from more people to support the assessment of their suitability to obtain or hold a blue card, thus limiting their right to privacy and may potentially limit their right to work as part of the right to privacy.

(b) The nature of the purpose of the limitation to be imposed by the Bill if drafted and enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of expanding the scope of regulated employment and regulated business under the WWC Act is to increase safeguards for children by requiring screening of sectors that may have direct and, at times, unsupervised contact with children. The Bill will also result in Queensland moving closer to a nationally consistent approach to worker screening, while reducing uncertainty about regulated activities and services.

The ability of the chief executive to require, disclose, and request information about an individual is specifically authorised by the WWC Act. Such information exchanges are necessary to enable the chief executive to identify and robustly assess the assessable information of these individuals, to ensure that they do not pose a risk to the safety of children in child-related environments.

(c) The relationship between the limitation to be imposed by the Bill if drafted and enacted, and its purpose, including whether the limitation helps to achieve the purpose

Any interference with a person's privacy arising from the amendments regarding the disclosure of personal information will be neither unlawful nor arbitrary. The WWC Act only applies to individuals who undertake particular child-related activities.

The use of personal information for this purpose is consistent with the objectives and paramount principles of the WWC Act, which is the promotion and protection of the rights, best interests and wellbeing of children and young people. Consequently, the limitation on an individual's right to privacy is considered justified and proportionate in the broader context of the protective nature of the WWC Act.

(d) Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill

Given the purpose of expanding the scope of regulated employment and regulated business under the WWC Act is to increase safeguards for children, there are no less restrictive and reasonably available ways to achieve this. Specific exceptions have been provided, where appropriate (for example, employment will not be considered regulated employment under the new entertainment and party services category where the employee's functions are limited to providing food, beverages or equipment and there is no further contact with children).

Further, any personal information provided to the chief executive for the purpose of a screening decision is subject to stringent confidentiality requirements and safeguards under sections 384 and 385 of the WWC Act.

(e) The balance between the importance of the purpose of the Bill, which, if drafted and enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

The amendments recognise the fundamental importance of protecting the safety of children. Therefore, on balance, any limitations on an individual's right to privacy (and by extension, the right to work) caused by the expanded scope of regulated employment and regulated business under the WWC Act are reasonable and demonstrably justifiable.

Parent volunteer exemption

Recognition and equality before the law

(a) The nature of the right

The right to recognition and equality before the law encompasses the right to recognition as a person before the law and the right to enjoy the person's human rights without discrimination. Section 15(3) of the HR Act provides a right to equal and effective protection against discrimination and section 15(4) of the HR Act entitles every person to a separate and positive right to be effectively protected against discrimination.

The proposed amendments will establish a consistent parent volunteer exemption across all categories of regulated employment. Parental status, a protected attribute under the *Anti-Discrimination Act 1991*, is within the scope of discrimination under the HR Act.

Discrimination on the basis of parental status happens where a person is treated less favourably because of their parental status than someone without the same parental status in similar circumstances or vice versa.

Creating an exemption that only applies based on parental status will limit individual rights to recognition and equality before the law, as the exemption will not apply to non-parents including other significant persons in a child's life who are not exercising parental responsibility for the child.

(b) The nature of the purpose of the limitation to be imposed by the Bill if drafted and enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation recognises the unique status of parents and the important role they play in participating in activities and services for their children. This unique status and role of parents was expressly acknowledged by the Royal Commission.

(c) The relationship between the limitation to be imposed by the Bill if drafted and enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation will achieve its purpose of preserving the unique status of parents by specifically providing that a parent providing a service or activity on a voluntary basis to children where the children to whom the service or activity is provided include the person's own child are not required to hold a blue card. The proposed exemption for parent volunteers is limited to that required to meet the intended policy objectives and does not discriminate against persons who are not parents in an arbitrary way. For example, where the parent is engaged in a high-risk environment, such as overnight camps or excursions, the parent will not be able to rely on the parent volunteer exemption.

(d) Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill

An alternative to the approach taken in the Bill would be to establish a broader exemption for other significant persons in a child's life. However, this would not be as effective in achieving its purpose and would limit important protections afforded to children through the blue card screening process.

Importantly, the amendments will provide that a person cannot rely on the exemption if they are providing services that involve close personal contact with a child, who is not their own, such as where they are assisting a child with toileting or dressing.

(e) The balance between the importance of the purpose of the Bill, which, if drafted and enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, the limitation on the rights to recognition and equality before the law impacted by the new consistent parent volunteer exemption is reasonable and demonstrably justifiable. This is because the limitation is for the purpose of recognising the unique status of parents and the integral role they play in their child's development. While the limitation on human rights for non-parents is significant, the irreplaceable role of a parent and the nuanced context of the exemption's applicability mean that such a limitation is considered necessary and proportionate.

Protection of children

(a) The nature of the right

Section 26(2) of the HR 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.

The Bill provides for a broad exemption for parent volunteers to not require a blue card where they are engaging in a form of employment voluntarily and the service provided includes their own child. There are some limitations to the exemption where the parent volunteer will be required to obtain a blue card where they are engaged to provide services at an overnight camp or excursion or the has activity involves close personal contact with a child other than their own child.

- (b) *The nature of the purpose of the limitation to be imposed by the Bill if drafted and enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom*

The purpose of the limitation is to minimise the intrusion into a child's development and family life. Enabling parent volunteers to be exempt from holding a blue card seeks to achieve an appropriate balance between what is in the best interest of children and the risk of harm to the child.

Under the Convention on the Rights of the Child, the best interests of the child should be the primary consideration. This includes supporting the parent's participation in activities for the child as this is intrinsic to being a parent and should be encouraged.

- (c) *The relationship between the limitation to be imposed by the Bill if drafted and enacted, and its purpose, including whether the limitation helps to achieve the purpose*

The limitation imposed by the Bill achieves its purpose by limiting any barriers that might intrude or hinder a child's development through restricting their ability to engage or participate in activities with their parents.

- (d) *Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill*

There are no less restrictive and reasonable available ways to achieve the objective.

The provision of a legislated exemption is required to ensure that a parent volunteer is not required to obtain a blue card unless they are employed or engaged in an overnight camp or excursion, such as a school camp, or have close physical contact with a child other than their own child.

- (e) *The balance between the importance of the purpose of the Bill, which, if drafted and enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation*

On balance, the limitation on the right to protection of children is reasonable and demonstrably justifiable. This is because the limitation is to support the integral role that a parent plays in their child's development. While the limitation on human rights may be considered to lower the protection provided to children, the limitation is considered to be balanced against the best interests of the child. Therefore, as the limitation is reasonable and justifiable, the amendments are compatible with human rights.

Establishing an exemption for emergency services workers deployed to Queensland

- (a) *The nature of the right*

Recognition and equality before the law

The right to recognition and equality before the law encompasses the right to recognition as a person before the law and the right to enjoy the person's human rights without discrimination. Section 15(3) of the HR Act provides a right to equal and effective protection against

discrimination and section 15(4) of the HR Act entitles every person to a separate and positive right to be effectively protected against discrimination.

The right to recognition and equality is not limited to the rights prescribed in the *Anti-Discrimination Act 1991* but whether a right is captured under section 15 of the HR Act may also be found in consideration of the rights recognised under international law and jurisprudence. For example, the UNHRC, in a series of cases, has expanded the list of protected attributes to include nationality and place of residence.

The amendment limits the right by applying the special exemption only to emergency services workers from interstate or overseas.

Protection of children

Section 26(2) of the HR 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.

The amendment limits the child's right to protection by not requiring emergency services workers from interstate or overseas to obtain a blue card.

(b) The nature of the purpose of the limitation to be imposed by the Bill if drafted and enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to support an increase in the number of available emergency services workers during emergency situations to support the right to life and protection of the public and, in some instances, limit damage to property.

(c) The relationship between the limitation to be imposed by the Bill if drafted and enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation will achieve its purpose by allowing emergency services workers to be deployed from interstate or overseas without encumbrance to respond to a significant fire event or declared disaster situation. This approach balances the needs to deploy emergency services workers to respond to an emergency with the risks of harm to children arising from these emergency response activities.

The proposed exemption for emergency services workers from interstate or overseas is limited to that required to meet the intended policy objectives and does not discriminate against persons who are emergency services workers or other persons who are required to obtain a blue card in an arbitrary way. The exemption will only apply in clear significant fire or disaster management events and will not extend to other environments that may involve contact with children in Queensland. As a result, any limit on the protection of children is considered to be very minor.

(d) *Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill*

There are no less restrictive and reasonable available ways to achieve the objective.

As the WWC Act requires emergency services workers to obtain a blue card under the health, counselling and support services category in Schedule 1, it is necessary to prescribe an explicit exemption for emergency services workers from interstate or overseas who are responding to a declared significant fire event or a disaster situation.

(e) *The balance between the importance of the purpose of the Bill, which, if drafted and enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation*

On balance, the limitation on the right to recognition and equality before the law and the protection of children is reasonable and demonstrably justifiable.

This is because the limitation is appropriately balanced to ensure that the special exemption only applies in relation to specific circumstances to respond to a declared significant fire event or a disaster situation and does not extend to other forms of regulated employment involving children.

New suspension power

Recognition and equality before the law

(a) *The nature of the right*

The right to recognition and equality before the law encompasses the right to recognition as a person before the law and the right to enjoy the person's human rights without discrimination. Section 15(3) of the HR Act provides a right to equal and effective protection against discrimination and section 15(4) entitles every person to a separate and positive right to be effectively protected against discrimination.

Notably, the right to protection from discrimination in the HR Act may include additional characteristics that are not covered by the *Anti-Discrimination Act 1991*. This is because 'discrimination' is defined in the HR Act in a non-exhaustive way.

Given a person's eligibility to work with children under the WWC Act is assessed based on information, including their criminal record, it is possible that such criminal history could come within the scope of discrimination under the HR Act. Some groups are over-represented in the criminal justice system, including Aboriginal and Torres Strait Islander peoples.

The proposed amendments in the Bill include a new suspension provision to provide the chief executive with the ability to suspend a blue card (rather than giving a negative notice) where:

- the chief executive becomes aware of assessable information not known to the chief executive at the time of issuing the blue card, which the chief executive reasonably believes is relevant to deciding whether the person would pose a risk to the safety of children; and

- the chief executive considers that, if a person were permitted to continue to engage in child-related work pending determination of the reassessment, the person would pose a risk to the safety of children.

The proposal will result in a limitation on the right to recognition and equality before the law as the new power may have an indirect and disproportionate impact on First Nations people, who are overrepresented in the criminal justice system.

(b) The nature of the purpose of the limitation to be imposed by the Bill if drafted and enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The limitation is for the purpose of immediately mitigating risks to children.

(c) The relationship between the limitation to be imposed by the Bill if drafted and enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation on the right will achieve its purpose by providing the chief executive with greater flexibility to act after becoming aware of new assessable information about a blue card holder and ensuring that a cardholder cannot undertake child-related work until any identified risks to children can be appropriately mitigated.

(d) Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill

The approach taken by the Bill is less restrictive than any alternative option, such as the immediate cancellation of a blue card.

Importantly, the suspension power can be exercised only if the chief executive considers, based on the new information, that there is a risk to the safety of children if the person was permitted to continue to engage in child-related activities while the reassessment is conducted.

(e) The balance between the importance of the purpose of the Bill, which, if drafted and enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, while the limitation on human rights for the blue card holder are significant, children are a particularly vulnerable cohort where, should risks to their safety be realised, they may experience irrevocable and lifelong harm. Given the fundamental importance of protecting the safety of children, the limitations are considered necessary and proportionate.

Privacy and reputation

(a) The nature of the right

As a result of the intrinsic connection between employment, dignity and the private life of individuals, especially in regard to their relationships with other people, international jurisprudence has established that the right to work also forms part of the right to privacy. Specifically, as noted above, the European Court of Human Rights has found that private life ‘encompasses the right for an individual to form and develop relationships with other human beings, including relationships of a professional or business nature’.

On this basis, the new suspension power will inherently result in a limitation on the right to work, given that people will be immediately prevented from engaging in child-related work.

(b) The nature of the purpose of the limitation to be imposed by the Bill if drafted and enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The limitation on the right to privacy and reputation, and by extension, the right to work, is for the purpose of immediately mitigating risks to children. As identified above, the prerequisite conditions for the chief executive to exercise the suspension powers means that the limitation remains consistent with a free and democratic society based on human dignity, equality and freedom.

(c) The relationship between the limitation to be imposed by the Bill if drafted and enacted, and its purpose, including whether the limitation helps to achieve the purpose

By providing the chief executive with greater flexibility to act after becoming aware of new assessable information about a blue card holder, any immediately identified risks to children can be appropriately mitigated.

(d) Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill

The approach taken by the Bill is less restrictive than any alternative option, such as the immediate cancellation of a blue card.

(e) The balance between the importance of the purpose of the Bill, which, if drafted and enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, the limitation on the individual right to privacy and reputation, and by extension, the right to work, caused by the new suspension power is reasonable and demonstrably justifiable. For the reasons outlined above in relation to the fundamental importance of protecting the safety of children, the limitation is considered necessary and proportionate. Therefore, as the limitation is reasonable and justifiable, the amendments are compatible with human rights.

Self-disclosure framework

Privacy and reputation

(a) The nature of the right

The right to privacy and reputation protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal), and reputation. The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally. Only lawful and non-arbitrary intrusions may occur upon privacy and reputation.

The concept of arbitrariness in the context of the right to privacy carries a human right meaning of ‘capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought.’

The Bill engages with the right to privacy and reputation as it requires a person to disclose personal information that may be necessary to assist in making a determination about whether a person is, or remains, suitable to hold a blue card.

Where a person provides information about a disclosable matter to the chief executive, the chief executive may verify that information and use it to consider whether an applicant poses a risk to the safety of children and should have their application approved or refused or whether a cardholder should continue to hold their blue card.

The Bill requires a person to indicate in their WWCC application whether any disclosable matter exists. Cardholders will also be required to advise the chief executive if a disclosable matter arises while they are a cardholder. A disclosable matter is defined as:

- a domestic violence order made, or police protection notice issued, against the person under the *Domestic and Family Violence Protection Act 2012*;
- an adverse interstate WWCC decision;
- an allegation of harm substantiated by the chief executive (child safety) or the chief executive of the department of another State administering a child welfare law of the State;
- a type of disciplinary action taken against the person that is prescribed by regulation; and
- another matter relevant to whether the person poses a risk to the safety of children prescribed by regulation.

Failure to provide information about a disclosable matter to the chief executive is an offence with a maximum penalty of 10 penalty units.

(b) The nature of the purpose of the limitation to be imposed by the Bill if drafted and enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to increase protections for children and support the chief executive to be aware, as quickly as possible, of any matters that may impact on a person’s suitability to hold a blue card.

(c) The relationship between the limitation to be imposed by the Bill if drafted and enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation will achieve its purpose by placing an onus on the applicant or cardholder to notify the chief executive of a disclosable matter, thereby enhancing the chief executive’s awareness of any assessable information that may relate to the person.

(d) Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of the amendment. The limitation on the person's right to privacy and reputation is considered to be appropriate given the risk that a failure to report a disclosable matter may result in a person posing a risk to children, which is not able to be properly considered and assessed.

(e) The balance between the importance of the purpose of the Bill, which, if drafted and enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

While the requirement infringes on the right to privacy and reputation, the risks to children where a person does not disclose information which may be relevant to whether the person poses a risk to the safety of children and relates to domestic violence, disciplinary matters, adverse interstate WWCC decisions or other types of disclosable matters may be significant.

On balance, the limitation on the right to privacy and reputation caused by the requirement to report a disclosable matter to the chief executive is reasonable and demonstrably justifiable.

Sharing information for approved research

Privacy and reputation

(a) The nature of the right

The right to privacy and reputation protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal), and reputation. The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally. Only lawful and non-arbitrary intrusions may occur upon privacy and reputation.

The concept of arbitrariness in the context of the right to privacy carries a human right meaning of 'capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought.'

The Bill limits the right to privacy as it will provide for the sharing of information to a person or public sector entity for the purposes of conducting research that is consistent with the objectives of the Act or a function of the chief executive under the Act.

(b) The nature of the purpose of the limitation to be imposed by the Bill if drafted and enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to allow the chief executive to provide information to support research being conducted to identify improvements that can be made to the blue card system and to increase public confidence and transparency in the scheme.

(c) The relationship between the limitation to be imposed by the Bill if drafted and enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation will achieve its purpose by enabling the chief executive to share information that may lead to the identification of key trends, including any improvements that can be made to ensure the system is able to provide greater protection for children in Queensland.

(d) Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of the amendment as the powers to enable the chief executive to share information must be provided in legislation.

Safeguards are provided for in the Bill, including enabling the chief executive to impose any conditions on the disclosure of the information. A person who fails to comply with a condition, without a reasonable excuse is subject to a penalty.

(e) The balance between the importance of the purpose of the Bill, which, if drafted and enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, any limitations on an individual's right to privacy and reputation caused by the new provisions relating to the sharing of information for the purposes of research is considered very minor and, as such, reasonable and demonstrably justifiable.

Requirement for responsible person to keep a register

Privacy and reputation

(a) The nature of the right

The right to privacy and reputation protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal), and reputation. The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally. Only lawful and non-arbitrary intrusions may occur upon privacy and reputation.

The concept of arbitrariness in the context of the right to privacy carries a human right meaning of 'capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought.'

The Bill requires an employer who employs people in regulated employment to keep a register that must include various matters, including the:

- name and date of birth of each employee who has made a WWCC application;
- details of the blue card held by each employee;
- where a person is employed in restricted employment, whether or not the employer considered the employee is a restricted person; and

- name of each employee who is not required to apply for a blue card.

The recording, use, and disclosure of information, particularly information relating to applicants and cardholders, is a fundamental component of the WWCC system and inherently involves a limitation on the right to privacy and reputation for individuals to whom the information relates.

(b) The nature of the purpose of the limitation to be imposed by the Bill if drafted and enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to enable effective monitoring and compliance with the requirements of the WWC Act.

(c) The relationship between the limitation to be imposed by the Bill if drafted and enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation achieves its purpose by requiring employers keep a register. The register will serve as a key auditing tool for the chief executive to ensure employers are adhering to the requirements of the WWC Act in respect of individuals they employ.

(d) Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill

An alternative to the approach taken in the Bill is to adopt a voluntary approach to compliance. However, this would not be as effective in achieving the purpose of the limitation and would undermine the importance of keeping and maintaining a register.

(e) The balance between the importance of the purpose of the Bill, which, if drafted and enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, any limitation on an individual's right to privacy and reputation caused by the requirement to keep a register is considered reasonable and demonstrably justifiable as it facilitates the effective oversight of the blue card system.

Confidentiality protections and provision of information to the Minister to support the administration of the disability worker screening system

Privacy and reputation

(a) The nature of the right

The right to privacy and reputation protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal), and reputation. The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally. Only lawful and non-arbitrary intrusions may occur upon privacy and reputation.

The concept of arbitrariness in the context of the right to privacy carries a human right meaning of ‘capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought.’

The Bill inserts a new part 5, division 8, subdivision 8A of the *Disability Services Act 2006* (DS Act), which aligns the confidentiality requirements under the DSA with those that apply for the blue card system.

In particular, the amendments limit the right to privacy by giving the chief executive the power to provide a report to the Minister relating to the administration of Part 5 of the DS Act, including the performance and exercise of the chief executive’s functions and powers under this part. The report may include confidential information about a person.

(b) The nature of the purpose of the limitation to be imposed by the Bill if drafted and enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

The purpose of the limitation is to provide the responsible Minister with appropriate oversight of the disability worker screening scheme.

(c) The relationship between the limitation to be imposed by the Bill if drafted and enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation achieves its purpose by providing the chief executive with the express ability to provide a report, which may relate to matters generally or a particular matter, to the Minister if the Minister requests it or the chief executive considers it to be appropriate.

(d) Whether there are any less restrictive and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to effectively achieve the purpose of providing the responsible Minister with appropriate oversight of the disability worker screening scheme.

However, the Bill adopts various safeguards including applying the confidentiality requirements of the DS Act under section 138ZLA and 138ZLB, as inserted by the Bill, to the Minister or a member of the Minister’s staff who is given a report under the new power.

(e) The balance between the importance of the purpose of the Bill, which, if drafted and enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, any limitations on an individual’s right to privacy and reputation associated with sharing reports with the Minister that may include confidential information about a person are considered reasonable and demonstrably justifiable as the amendments will facilitate and enable effective Ministerial accountability of the system.

Amendments to the *Childrens Court Act 1992*

Privacy and reputation

(a) The nature of the right

The right to privacy and reputation protects the individual from all interferences and attacks upon their privacy, family, home, correspondence (written and verbal), and reputation. The scope of the right to privacy is very broad. It protects privacy in the sense of personal information, data collection and correspondence, but also extends to an individual's private life more generally. Only lawful and non-arbitrary intrusions may occur upon privacy and reputation.

The concept of arbitrariness in the context of the right to privacy carries a human right meaning of 'capriciousness, unpredictability, injustice and unreasonableness – in the sense of not being proportionate to the legitimate aim sought.'

The proposed amendments to the *Childrens Court Act 1992* impact on an individual's right to privacy as they will facilitate the sharing of court records relating to child protection proceedings with an Australian court or tribunal.

The amendments will support the operation of the National Strategic Framework for Information Sharing between the Family Law Courts and Family Violence and Child Protection Systems (National Framework).

(b) The nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

This purpose of the limitation is to promote the safety and wellbeing of adults and children affected by family violence, child abuse and neglect and enhance judicial decision-making. For example, the new provision will facilitate, amongst other things, the sharing of interim and final child protection orders and records disclosing a history of family violence, child abuse or risk of abuse with the Federal Circuit and Family Court of Australia to assist in its decision-making in family court proceedings.

(c) The relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The limitation achieves its purpose by enabling the registrar or clerk of the Childrens Court to give an Australian court or tribunal access to a child protection court record.

(d) Whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive and reasonably available ways to achieve the purpose of the amendment.

(e) The balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

It is considered that any potential impact on the privacy of individuals is mitigated by the safeguards outlined in the National Framework. Any limitations to human rights are justified, proportional, and in line with the purpose and objectives of the National Framework.

Conclusion

In my opinion, the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024 is compatible with human rights under the *Human Rights Act 2019* because it limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the Act.

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

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