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Committee Secretary
Community Support and Services Committee
Parliament House
George Street
BRISBANE QLD 4000

By email only to: CSSC@parliament.qld.gov.au

Dear Committee Secretary

Child Protection Reform and other Legislation Amendment Bill 2021

Thank you for the opportunity to provide this submission to the Community Support and Services Committee in response to the *Child Protection Reform and other Legislation Amendment Bill 2021* (**Bill**).

Background

LawRight is a not-for-profit, community-based legal organisation, which coordinates the provision of pro bono legal services to disadvantaged Queenslanders.

LawRight's Court and Tribunal Services (**CTS**) assist clients who apply (or intend to apply) to the Queensland Civil and Administrative Tribunal (**QCAT**) for a merits review of certain government decisions. The two most common reviews we assist with are reviewable decisions made under the *Child Protection Act 1999* (**CPA**) and the *Working with Children (Risk Management and Screening) Act 2000* (**WWCA**).

In the last three financial years we have assisted 253 people with reviews under the WWCA and 24 under the CPA. A significant number of these clients experience financial hardship, live with disability or experience other forms of disadvantage.

LawRight Submission

In the first instance we voice our concern about the short and disconnected consultation period provided for the Bill. The *Working with Children (Indigenous Communities) Amendment Bill 2021* (**Indigenous Communities Bill**), recently introduced, has a much longer consultation period and the amendments it proposes intersect with matters raised under the Bill. Accordingly, a consultation phase that allowed stakeholders to provide holistic submissions on the totality of the amendments proposed would have been preferable.

Given the constraints mentioned above, this submission is limited and suffers accordingly. We intend to make more substantive submissions in response to the Indigenous Communities Bill.

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Amendments to the Child Protection Act 1999

We are generally in favour of strengthening the Aboriginal and Torres Strait Islander Child Placement Principle and any framework that allows Aboriginal and Torres Strait Islander children to remain with their kin and stay connected with culture. We note however, that it is a requirement of section 135 of the current CPA that an approved foster or kinship carer must have a blue card.

Our Aboriginal and Torres Strait Islander clients experience multiple barriers when accessing the blue card system, including when making the initial application and during the submission and external review phases. The Department of Justice and Attorney General recently acknowledged this in their *Safe Children and Strong Communities* publication.[1]

While it appears that the Indigenous Communities Bill seeks to address some of these barriers, any changes to the CPA that aim to improve outcomes for Aboriginal and Torres Strait Islander Peoples will be meaningless without major changes to the blue card system. We will comment further on this in our submission on the Indigenous Communities Bill.

Amendments to the Working with Children (Risk Management and Screening) Act 2000

The inclusion of "domestic violence" information as relevant information in section 221

We support the inclusion of "domestic violence" information in the sense that this will allow the Chief Executive to have a copy of a Police Protection Notice (**PPN**) or Application for a Domestic Violence Order (**Application**) made by the Police before making a decision to issue a negative or positive notice. However, we hesitate to fully support the inclusion as allegations contained in a PPN or an Application will not have been tested by a Court, and so may not always represent the full circumstances of any particular case. We note well-documented abuses of the DVO system used by perpetrators of violence as well as limitations in training or resources for police which may lead to inappropriate applications. For this reason, we submit that the Chief Executive should exercise caution when using this information to decide on an application.

Participation in the WWC NRS

[1] Department of Justice and Attorney General, *Safe Children and Strong Communities: A strategy and action plan for Aboriginal and Torres Strait Islander peoples and organisations accessing the blue card system 2021-2025*, 2021

We do not support the insertion of the proposed section 303A, which would allow the Chief Executive to cancel a person's positive notice if they become aware of 'an adverse interstate WWC decision'. In particular, we do not support that power being exercised without a right of review.

Information sharing between states on matters of child safety is to be encouraged and we agree that an adverse interstate decision could be a relevant factor that should be considered by the Chief Executive. However, and in particular for applicants who already experience a range of capability and structural challenges, the limitations of the Queensland blue card framework demonstrate the need for review mechanisms. Some of these limitations, include:

- a person can be issued with a negative notice without the full merits of their position having been considered (eg insufficient information provided by the applicant due to literacy or resource constraints).
- a person's means, or a change in their circumstances (such as a decision to move interstate), may lead them to let a negative notice stand.
- not everyone who receives a negative notice is capable of or decides to apply for a review.
- adverse decisions made by Chief Executives can be flawed.

Unfortunately, these limitations are frequently experienced by LawRight clients. In research currently being conducted by LawRight, which we will comment on further in response to the Indigenous Communities Bill, early data indicates that of 39 clients who applied for a QCAT review of their negative notice, eleven had the decision overturned, a process that mostly took two years or more. Nine elected not to continue with a review (for a range of reasons including lack of understanding or feeling overwhelmed by the process) and 16 are currently awaiting a decision. Only three had the decision of the Chief Executive affirmed. It is logical to assume that that processes and decisions in other states may be similarly limited.

As a matter of procedural fairness and despite the obvious time and cost-cutting benefits, the Queensland executive should afford applicants a right of review if their positive notice is cancelled in another state, unless a disqualifying offence is involved. We note that in Queensland, the only other circumstance where a person does not have a right of review under the WWC in relation to having their negative notice cancelled is when they are convicted of a disqualifying offence.

Amendments to the Adoption Act 2009

We have no comments on the proposed changes in this Bill to the *Adoption Act 2009* (**AA**) but note that this Bill is a missed opportunity to amend an anomaly that exists in the current AA.

When assessing the suitability of a prospective adoptive parent under the AA, the Chief Executive must be '*satisfied that the person has good health to provide stable, high level care for a child into adulthood*'.[2] It goes on to state that the person does not have good health if they have a 'disqualifying condition'[3] which is then defined as 'a condition prescribed under a regulation to be a disqualifying condition for this section'.[4]

There is no reference in the *Adoption Regulation 2009* (**the Regulation**) to 'disqualifying condition', therefore it appears that there is no legislated definition of a 'disqualifying condition' for the purpose of the AA.

This leaves applicants (and their legal advisors) with uncertainty about whether their diagnosed health conditions will automatically prevent them from being considered eligible to adopt. We recommend 'disqualifying condition' be defined in the regulation.

Contacting us

We appreciate the opportunity to provide feedback on this important Bill.

Please contact us on [redacted] or by email to [redacted] if you have any questions about this letter.

Yours faithfully

Nikki Hancock
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[2] Section 122 (1) *Adoption Act 2009*
[3] Section 122 (2), Ibid
[4] Section 122 (4), Ibid