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12th December 2018

The Committee Secretary,
Education, Employment and Small Business Committee
Parliament House
George Street
BRISBANE QLD 4000

Attention:

Via email transmission: eesbc@parliament.qld.gov.au

**RE: WORKING WITH CHILDREN LEGISLATION (INDIGENOUS COMMUNITIES) AMENDMENT
BILL**

We welcome and appreciate the opportunity to make a submission in relation to the proposed *Working with Children Legislation (Indigenous Communities) Amendment Bill 2018*.

Preliminary Consideration: Our Background for Meaningful Comment

The Aboriginal and Torres Strait Islander Legal Service (Qld) Limited (ATSILS), is a community-based public benevolent organisation, established to provide professional and culturally competent legal services for Aboriginal and Torres Strait Islander people across Queensland. The founding organisation was established in 1973. We now have 26 offices strategically located across the State. Our Vision is to be the leader of innovative and professional legal services. Our Mission is to deliver quality legal assistance services, community legal education, and early intervention and prevention initiatives which uphold and advance the legal and human rights of Aboriginal and Torres Strait Islander people.

ATSILS provides legal services to Aboriginal and Torres Strait Islander peoples throughout the entirety of Queensland. Whilst our primary role is to provide criminal, civil and family law representation, we are also funded by the Commonwealth to perform a State-wide role in the key areas of Community Legal Education, and Early Intervention and Prevention initiatives (which include related law reform activities and monitoring Indigenous Australian deaths in custody). Our submission is informed by four and a half decades of legal practise at the coalface of the justice arena and we therefore believe we are well placed to provide meaningful comment. Not from a theoretical or purely academic perspective, but rather from a platform based upon actual experiences.

OVERALL COMMENTS

ATSILS acknowledges that since 2001 the Queensland Government's blue card system has been in place to create safe environments for children and aims to minimise the risk of harm to children receiving services essential to their development and wellbeing by prevention and monitoring of people working with children or caring for children.¹

The Blue Card system operates through a three step risk management approach (past, present and future):

- The past step 'assesses a person's eligibility for a blue card based on their known past police and disciplinary information.'²
- The present step requires Blue Card Services to: monitor 'the police information of all applicants and Blue Card holders'³ and taken appropriate action if necessary; and monitor and audit service providers with Blue Card obligations for risk compliance.
- The future step requires organisations and self-employed persons to implement and annually review child and youth risk management strategies, which is monitored by Blue Card Services.

¹ Queensland Government, Department of Justice and Attorney-General, *Understanding the blue card system* [1] < www.bluecard.qld.gov.au/pdf/infosheets/Information-Sheet-Understanding-the-blue-card-system.pdf>.

² Above n 1.

³ Ibid.

ATSILS has been involved in the Blue Card review and recognises and agrees that while the blue card system is strong, the 'system contains significant limitations in the way it applies to the unique circumstances of'⁴ Aboriginal and Torres Strait Islander Queenslanders. Limitations include:⁵

- difficulty in providing proof of identity for some Aboriginal and Torres Strait Islander Queenslanders;
- application and assessment process generates:
 - logistical and geographical barriers in assessing application correspondence sent through Australian Post;
 - disengagement with the application and assessment process due to lack of literacy skills for certain Aboriginal and Torres Strait Islander Queenslanders;
 - costs and challenges to engage with the review and appeal process;
 - reduced number of Aboriginal and Torres Strait Islander Queenslanders applying for blue card, as the assessment process does not take into account any relevant cultural aspects of the application; and
- need for greater support and marketing material which contains culturally appropriate information to ensure a better understanding of what a disqualifying offence is, as this lack of knowledge can result in Aboriginal and Torres Strait Islander people thinking they are excluded from being eligible for a blue card, which would result in them not applying.

ATSILS notes the Queensland Government has supported Aboriginal and Torres Strait Islander Queenslanders interaction with the system by:

- providing community legal education and information within community on request;
- the development of specific processes to reduce the number of applications withdrawn where further information is required;

⁴ Explanatory Notes, Working with Children (Indigenous Communities) Amendment Bill 2017 (Qld) 1.

⁵ Queensland Government, Queensland Family & Child Commission, *Review of the blue card system – Discussion Paper* (23 December 2016) [18] <<https://www.qfcc.qld.gov.au/sites/default/files/Review-of-the-blue-card-system-Discussion-Paper.pdf>>.

- providing information about where additional support can be accessed; and
- working to establish relationships within the community and providing tailored additional support where possible.⁶

SOLUTIONS OFFERED BY THE INDIGENOUS COMMUNITIES AMENDMENT BILL

We note the proposal in the *Working with Children Legislation (Indigenous Communities) Amendment Bill 2018* to create an additional type of blue card for indigenous communities taking into account their unique circumstances. A common problem under the existing blue card system is that some people cannot work even though it is considered by their local community that they pose no risk to children and that their employment would have a positive impact on their community.

The proposal contained in the *Working with Children Legislation (Indigenous Communities) Amendment Bill 2018* is a practical one, and clearly has had the input of the local stakeholders to identify what would work best in rural and remote communities.

Public Hearings were held with three communities: Yarrabah, Doomadgee and Hopevale to discuss the impact of the Blue Card scheme as it is currently implemented and the proposed amendments. Although each community is different, several strong themes emerged from those hearings:

- In communities where job prospects are very limited, a huge proportion of jobs in the community require a blue card;
- Lower level convictions are standing in the way of some potentially very good young people and older people getting jobs;
- A settled and responsible person in their mid-thirties or forties, well respected and trusted in the community, may never get a blue card because of convictions from their late teens and early twenties;

⁶ Queensland Government, Queensland Family & Child Commission, *Review of the blue card system – Options Paper* (31 March 2017) [38] < www.qfcc.qld.gov.au/sites/default/files/Review-of-the-blue-card-system-Options-Paper.pdf>.

- Many young persons ignore legal advice to challenge charges that are not correct and elect to plead guilty to 'get it over and done with' without realising the impact these offences will have on their future work prospects.

The Proposed Restricted Positive Notice

The amendments contained in this Bill only address blue cards for employment in the local community and only create an "interim restricted positive notice" and an "restricted positive notice."

It is proposed that the community justice group would be able to make a binding recommendation to the chief executive to issue a restricted positive notice to allow an individual to work with a specific community even if the blue card application would not be approved under the current system due to previous criminal offences.

The Community Justice Group, would consider whether a person in the community is a suitable person to obtain a restricted positive notice, and if so satisfied, would make that recommendation to the chief executive.

The restricted positive notice could be recommended where an applicant had some types of offences in their history, for example street offences or serious offences such as certain offences involving stealing with violence, burglary and unlawful entry of the vehicle and drug offences, however the applicant would not be eligible for consideration if they had any prior criminal offences that were sexually based

A restricted positive notice issued by the chief executive would then allow the holder to work only in the specific community to which the notice relates.

The Role of the Community Justice Group

The special role of the Community Justice Group is recognised in the *Penalties and Sentences Act 1992 (Qld)* in assisting the sentencing Judge or Magistrate to make submissions that are relevant to sentencing Aboriginal and Torres Strait Islander persons, including the offender's relationship to the offender's community, any relevant cultural considerations, or any considerations relating to programs and services established for offenders in which the

community justice group participates.⁷ There is therefore a logical extension to the role of the Community Justice Group to make recommendations based on whether an applicant is suitable for a restricted notice taking their previous criminal history into account.

The reliance on Community Justice Groups would bring greater knowledge of the applicant and greater cultural capability into the risk assessment undertaken for the blue card system.

As noted several times during the public hearings, the Community Justice Group members are capable of making tough decisions and prepared to make them.

Any amendments that have the potential to impact on the safety of a child or children must be implemented in a way that ensures any potential risks are identified and managed. We would recommend the implementation of the 10 child safe standards that the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) recently recommended. Organisations, such as the Community Justice Groups, should be obligated to implement these child safe standards and monitor their ongoing compliance with them.

ATSILS would recommend that increased funding and training be provided to community justice groups and that child safe standards are implemented with ongoing compliance and reporting so that community justice groups will be appropriately qualified to make binding recommendations to the Chief Executive of Blue Card Services.

The Exempted Offences

The proposed exempted offences include low level street offences and more serious offences such as stealing with violence, burglary and unlawful entry of the vehicle and drug offences, Numerous examples were provided at the public hearings of low level offences that occurred early in the persons history and impacted their ability to get a blue card.

The example of Clarence Walden is illustrative and has prompted this Bill. Clarence Waldron has an extensive but old history. Clarence Waldron in his own words was a big madman going back 30 odd years but he had his last drink 30 odd years ago and his last cigarette 20 odd years ago. He went to the Doomadgee school and lifted the school attendance rate from 60 per cent

⁷ *Penalties and Sentences Act 1992* (Qld), s 9(p).

to 90 per cent. To follow the narrative of his local Member of Parliament, when he got the job, the local police officer in charge said, 'This is a terrific outcome. Clarry's in great shape. He's turned up to school. Everyone in town thinks he is doing a wonderful job going and getting these kids to school.' Clarry was as proud as punch. He was looking as healthy and fit as I had ever seen him, because he had this job. He said, 'I've turned over a new leaf and I want to give something back to these kids.' People around town, who were not friends of Clarry, were saying, 'Clarry's going terrific in this job. He is doing a good job.' Everyone in Doomadgee—it was their kids he would be working with—wanted him to work there, but even on appeal, he was rejected. To this day he still does not have a blue card.

However, the proposed bill is not confined to the particular circumstances of Clarry Waldron; this bill is about a lot of people like him, in very similar positions in the communities. It is not proposed that the Clarry Waldrons and others like him get general blue cards but the creation of a restricted positive notice would be a practical solution, protecting the safety of children and reaping the benefits to the community, not least of which, in the case of Clarry Waldron, is the increased benefits of children attending school.

A number of different offences are listed in the Bill. We note the Committee's concern about the most serious example of someone convicted for trafficking drugs. We consider it highly unlikely that a Community Justice Group would ever consider such a person for a restricted positive notice. There may be circumstances although very rare where even for a conviction for trafficking, a Community Justice Group may consider that a person is deserving of a restricted positive notice. One example came from the Yarrabah public hearings, of an 18 year old girl who took the rap for her boyfriend who was trafficking drugs in the community. By the time the situation came to light, it was too late in the court process for him to take responsibility for his offending instead of her. She is now a convicted trafficker. She would not be able to apply for a blue card, but the community justice group, being there through the initial court process and aware of that information and the true state of affairs would be able to provide that information in relation to a restricted notice. Another example is a trafficking conviction in Queensland of a couple selling sports supplements that contained ingredients that were in fact (and in law) scheduled drugs. They knew of the ingredient but were not aware that they were breaching the law. Provided that they understood the impact of what

they had done and had disavowed any further activity of that sort, it would not be unreasonable after a while to consider them suitable for a restricted positive notice.

Other Issues – Delayed or Missing Post

Our clients in rural, regional and remote areas repeatedly experience delays in the post. One example of unfairness arising from this was an example given in the Hopevale public hearings. A school attendance officer was sent a notice to renew his blue card but that notice did not arrive in the post. He only became aware of it when he was charged by police for failing to hand in his blue card. He lost his job as a result of that.

Similarly, our office has been told of correspondence concerning applications going astray. While the situation may sometimes be rescued, if it isn't, a negative notice arising from an incomplete process means that an applicant must wait another twelve months before reapplying. This result causes enormous hardship without enhancing the safety of children.

CONCLUSION

ATSILS supports in general terms the proposed amendments in that they empower Aboriginal and Torres Strait Islander communities to be involved in decisions relating to them and their communities. As the safety of the child is always paramount, we recognise that any amendments that have the potential to impact on the safety of a child or children must be implemented in a way that ensures any potential risks are identified and managed and would seek the appropriate supports to be put in place.

ATSILS thanks the committee for this opportunity to provide feedback and wishes it every success with its deliberations.

Yours faithfully,



Shane Duffy
Chief Executive Officer