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10 December 2018

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

By email eesbc@parliament.qld.gov.au

Dear Committee Secretary,

Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018

The Queensland Teachers' Union (QTU) and the Independent Education Union of Australia – Queensland and Northern Territory Branch (IEUA-QNT) welcome the opportunity to provide feedback to the Education, Employment and Small Business Committee regarding the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018*.

1. Executive Summary of Joint Submission – Amendments sought by QTU & IEUA-QNT

The QTU and IEUA-QNT support, unequivocally, the Government's No Card No Start policy. There are a number of areas where the QTU and IEUA-QNT seek to have input to ensure appropriate implementation of this policy.

In this section we set out a summary of points of concern the QTU and IEUA-QNT seek to raise and in the subsequent sections, we set out the detailed reasoning for the submission.

The QTU and IEUA-QNT ask the Government to consider the following amendments to the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018*:

Proposed amendment 1: The need for a public register

It is submitted that policy implementation would benefit from a public register of working with children cards. The Bill could be amended to insert a requirement for the chief executive to maintain a public register of "working with children cards", equivalent to the Register of Teachers kept by the Queensland College of Teachers under section 288 and 289 of the *Education (Queensland College of Teachers) Act 2005*. Child safety is in the public interest. The information should not be restricted to certain organisations. Members of the public ought to be able to access the same level of information about "working with children card" holders as they are able to access about doctors, lawyers, teachers and health practitioners. The limited information currently available which requires a "full name + card number" to search is open to manipulation and error.

Proposed amendment 2: Criminalisation of paperwork errors is inappropriate

The criminalisation of paperwork errors by school staff should be limited. While it may be justifiable to impose obligations at the point of first engagement, for which a jail term may be imposed if the obligation is breached, there should be no penalty when an employer "continues to

employ” a working with children card holder in breach of the section. Our proposal is that the Act should provide that “a person (the employer) must not continue to employ [a person without a working with children card]...” and shift the “continue to employ” obligation to a new subsection 175(3) with no criminal penalty for breach. This covers situations where school staff by error fail to identify the correct date of expiry of a card. A criminal penalty would attach to the card holder who failed to renew their card, but not to the employer.

Proposed amendment 3: Renewal of exemptions is unnecessary for registered teachers

Registered teachers are currently entitled to indefinite validity on their working with children exemption. The proposal to reduce the validity to 3 years is not necessary to achieve the purposes of the Bill. We propose that card validity for registered teachers should only be limited by the length of time they remain registered teachers. A high level of scrutiny and reporting obligations are imposed on teachers under the *Education (Queensland College of Teachers) Act 2005* and they ought to remain the primary source of obligations on teachers.

Proposed amendment 4: The need for simplified expiry dates

It is proposed by the QTU and IEUA-QNT that all working with children cards should expire on 31 March each year, with a pro rata card fee for new applicants who apply within the year. The 31 March expiry date will allow schools (as well as community organisations) to readily predict when a card will expire and allocate resources in March of each year to undertake audit of all worker's cards.

2. Background to QTU & IEUA-QNT position

The Queensland Teachers' Union represents over 46,000 teachers and principals in Queensland State Schools across primary, special and secondary schools, as well as TAFE teachers. The Queensland Teachers' Union provides a voice for educators on a range of industrial and professional matters impacting on schools today.

The IEUA-QNT represents over 17,500 teachers, support staff and ancillary staff in non-government education institutions in Queensland and the Northern Territory and consistently engages in education debate in both State and National levels through its Education Committee (a group of registered and practising teachers) and through its national counterpart, the Independent Education Union Education Committee, which receives input from teachers in all States and Territories.

The QTU and IEUA-QNT are making a collaborative submission in this matter as their interests and concerns in relation to blue card matters are largely identical.

3. Considerations informing QTU & IEUA-QNT position and explanation of proposed amendments

3.1 Proposed amendment 1: The need for a public register

- (a) Historically, Blue Card Services has not provided timely access to information.
- (b) The QTU can provide examples of Blue Card Services posting negative notices to schools, which arrive many weeks after posting. One example saw a Blue Card letter personally addressed to a principal and marked “Private & Confidential”. The principal had commenced long leave and school staff, believing the letter to be personal, posted it on to the principal's residence, where it was collected a month later.

- (c) Information about working with children checks is time sensitive. Access to accurate information quickly is essential.
- (d) Current practice of making access to information complex is out of date by reference to other public facing professions such as doctors, lawyers, teachers and health practitioners, who all have public registers, fully searchable by name only, rather than the “name + card number” requirement to search the Blue Card register.
- (e) A public register would enable school staff to undertake a search on the status of a job applicant or employee and receive the result immediately.

3.2 Proposed amendment 2: Criminalisation of paperwork errors is inappropriate

- (a) In 2018, three school leaders in State schools were investigated by police, accused of criminal offences under the *Working with Children (Risk Management and Screening) Act 2000*.
- (b) One school leader was issued with a formal Notice of Caution by police for a delay of only a couple of days between his school's officer receiving a negative notice from Blue Card Services and the school leader actioning it by removing the worker from the school. The letter was addressed to the school's officer, not the school leader, yet the school leader now has a police record due to the failure of the staff member to bring the matter to his attention.
 - (i) A similar factual scenario could occur with the No Card No Start policy if a worker does not renew their Blue Card on time.
- (c) Another example involved a Blue Card applicant who did not pay the application fee. The person was permitted to work with children for two months before Blue Card Services advised by post that the application was withdrawn (the limited information provided by Blue Card Services meant further investigation by the school was necessary to establish that the reason was failure to pay the fee). There was a gap of some days before the school arranged for the person to make a new application. The principal is currently under police investigation for the gap, effectively, for not knowing the applicant failed to pay the Blue Card fee.
 - (i) A very similar factual scenario could occur under a No Card No Start policy, because the school will not know when a worker fails to pay a renewal fee.
- (d) While QTU and IEUA-QNT recognise there must be a higher bar upon initial employment to fulfil the No Card No Start promise, for ongoing employment, we propose:
 - (i) From the proposed section 175(1), delete the words “or continue to employ”;
 - (ii) Insert a new section 175(3):
 - (A) *A person (the employer) must not continue to employ another person (the employee) in regulated employment unless the employee holds a working with children clearance;*
 - (iii) Make equivalent changes in section 176C.

- (e) This change would allow for a criminal penalty for failure to do appropriate checks and notification at the initial employment.
- (f) It would remain a breach of the law to continue to employ a person who has not renewed their working with children check, but would not impose a criminal penalty.

3.3 Proposed amendment 3: Renewal of exemptions for teachers are unnecessary

- (a) The Bill proposes a requirement that registered teachers renew their exemption every three years.
- (b) Teachers currently have Blue Card exemptions with unlimited expiry while they are a registered teacher.
- (c) The Bill Explanatory Memorandum states the change will allow the chief executive to:
 - (i) monitor and maintain quality assurance;
 - (ii) modernise and strengthen the identity check process for this cohort through the inclusion of a photograph; and
 - (iii) obtain up to date information about the person and whether they are still engaged in regulated employment.
- (d) It is our submission that a renewal process, required to be undertaken every three years, is simply an additional burden of "paperwork" (noting it may be online paperwork) placed on registered teachers and is not necessary to achieve the above purposes:
 - (i) Successfully completing a renewal form does not meaningfully amount to "quality assurance" in any real sense;
 - (ii) Drivers' licence and passport photographs can remain unchanged for 10 or 15 years without any loss of quality in policing or border control. There is no reason why Blue Card photographs need to be updated every 3 years;
 - (iii) Obtaining information about regulated employment once every 3 years cannot be described as maintaining "up to date" information.
- (e) It is submitted that it is appropriate to allow registered teachers to maintain their working with children card indefinitely. The drafting solution would require amendment to the proposed section 289(1) as underlined below and a new 89(3) added to address the question of the photograph:
 - (1) *A working with children exemption has an indefinite term, unless any of the following things happens earlier...(a)...(b)...(c)...*
 - (2) ...
 - (3) *A person holding a working with children card by exemption must obtain a new card every 10 years and pay a card replacement fee.*

3.4 Proposed amendment 4: The need for simplified expiry dates

- (a) School staff have excessively onerous responsibilities in relation to the Blue Card process.

- (b) A simplified expiry date of 31 March for all working with children cards would enable schools to allocate resources and complete audits appropriately.
- (c) Currently, school staff are responsible for applying for Blue Cards for paid employees, or notifying Blue Card Services if the person already holds a blue card or exemption card. School staff are required to make sure that the applicant's identification documents are sighted by the appropriate person within the organisation and verify that the signature on the application card matches the signature on their identification documents. School staff are then required to complete a range of paperwork. To provide an insight into the many responsibilities imposed on school staff in connection with the Blue Card regime, the Department of Education (for State schools) and private school employers (such as Brisbane Catholic Education) for non-State schools require school staff to undertake the following time intensive duties:
- (i) Ensuring they are aware of their requirements, and do not contravene the requirements set out in the *Working with Children (Risk Management and Screening) Act 2000* (Qld);
 - (ii) Ensuring that all paid employees who are commencing employment and who require a Blue Card, undergo a Working with Children Check, by completing and submitting:
 - (iii) **For employees without a blue card**
Complete and submit an application form.
 - (iv) **For employees starting child-related employment who already have a current and valid Blue Card, or employees who recently have applied for a Blue Card**
Complete and submit a linking form in order to ensure the employee is linked on the Blue Card Services database to their new school or workplace.
 - (v) Often, maintain a register of blue card information for each and every other individual, business or contractor that regularly provides services at the school for students.
 - (vi) School staff must ensure that all volunteers and trainees (including volunteer student teachers and practical placement teachers) have a valid Blue Card before performing duties directed towards a child or children.
 - (vii) School staff must take immediate and appropriate action on a case-by-case basis when they are notified that an employee or volunteer has had their Blue Card suspended or cancelled, or if the employee has been issued with a negative notice. School staff must ensure that any employee, volunteer or individual issued with a negative notice, or suspended or cancelled Blue Card, is not engaged in child-related employment.
 - (viii) School staff must immediately notify internally with the Department or their school system as soon as they become aware that an employee or volunteer's police information has changed, or if the employee has been issued with a negative notice, or had their Blue Card cancelled or suspended.
 - (ix) School staff must advise applicants that it is an offence for a disqualified person to sign a Blue Card application form.

- (x) School staff must sign the declaration on the application form stating that the applicant has been warned of offences and verifies that the applicant has signed the declaration confirming they are not a disqualified person, before the application is lodged.
- (xi) School staff must sight and verify the Blue Card applicant's identifying documents and ensure the name on the form matches their identification.
- (xii) School staff must ensure Blue Card applications are managed in accordance with the *Information Privacy Act 2009 (Qld)* by ensuring that:
 - (A) The application forms have a covering sheet while being processed in the school/business unit;
 - (B) If an application is faxed to Blue Card Services, the original is posted immediately;
 - (C) The school updates the employee's records and payroll data noting the date the application has been made, however copies of the application must not be retained.
- (xiii) School staff must manage Blue Cards in accordance with the Blue Card Risk Management strategy.
- (xiv) School staff must advise Blue Card Services that an applicant or cardholder is no longer undertaking child-related activities with their school by submitting an applicant/cardholder no longer with organisation form.¹
- (f) We understand there is an intention to convert some of the above forms into online forms or to have the forms completed through a portal. Online forms and portals may reduce data entry workload in Blue Card Services, but they do not reduce the workload for school staff as the forms still need to be completed.
- (g) Blue Card obligations impose disproportionate time demands on already stretched school staff, who are already required to manage a range of organisational functions, including:
 - (i) providing educational programs to students in accordance with national curriculum, managing student achievement and improvement, pedagogical practice, teacher feedback, quality assessment and quality curriculum;
 - (ii) managing financials;
 - (iii) structuring and providing comprehensive inductions;
 - (iv) dealing with student issues on a daily basis; and
 - (v) liaising with parents.

¹ Extracted from the Department of Education, Working with Children Check – Blue Cards implemented on 24 August 2018, available at <http://ppr.det.qld.gov.au/corp/hr/management/Procedure%20Attachments/Working%20with%20Children%20Check%20-%20Blue%20Cards/Working-with-Children-Check-Blue-Cards.pdf>

We thank the Education, Employment and Small Business Committee for allowing the QTU and IEUA-QNT to make submissions and we would welcome the opportunity to engage in further discussion.

Yours sincerely

A handwritten signature in black ink, appearing to read 'BC', with a horizontal line extending to the right from the end of the signature.

Brendan Crotty
Deputy General Secretary