

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

Submission No: 4
Submitted by: Legal Aid Queensland
Publication:
Attachments:
Submitter Comments:

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Submission by Legal Aid Queensland

09 July 2024

Introduction

Legal Aid Queensland (LAQ) welcomes the opportunity to make a submission in relation to the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024* ("the Bill").

LAQ provides input into State and Commonwealth policy development and law reform processes to advance its organisational objectives. Under the *Legal Aid Queensland Act 1997*, LAQ is established for the purpose of "giving legal assistance to financially disadvantaged persons in the most effective, efficient and economical way" and is required to give this "legal assistance at a reasonable cost to the community and on an equitable basis throughout the State". Consistent with these statutory objects, LAQ contributes to government policy processes about proposals that will impact on the cost-effectiveness of LAQ's services, either directly or consequentially through impacts on the efficient functioning of the justice system.

LAQ always seeks to offer policy input that is constructive and is based on the extensive experience of LAQ's lawyers in the day-to-day application of the law in courts and tribunals. LAQ believes that this experience provides LAQ with valuable knowledge and insights into the operation of the justice system that can contribute to government policy development. LAQ also endeavours to offer policy options that may enable government to pursue policy objectives in the most effective and efficient way.

Submissions

Removal of exemption for lawyers

Schedule 1, section 28A of the *Working with Children (Risk Management and Screening) Act 2000* provides for Australian lawyers who engage in legal practice in Queensland under the *Legal Profession Act 2007* to be exempt from requiring a blue card. Clause 135 of the Bill removes this exemption and will require lawyers providing child-related services to be assessed under the Working With Children Check standard.

LAQ's position is that the exemption for legal practitioners should be retained, given the suitability requirements for legal practitioners to obtain a practising certificate in Queensland, and the impact that the removal of the exemption would have on the provision of critical legal services.

Suitability requirements for lawyers

The admission and practising rules relating to lawyers impose stringent disclosure obligations that do not apply to other professions or vocations. The existing regulatory framework requires lawyers to establish that they are a 'fit and proper person' prior to admission. Thereafter, while practising as a lawyer, ongoing disclosure obligations apply.

An applicant seeking admission is required to disclose to the Admitting Authority any matter which might be relevant as to whether the applicant is of good repute and character and is a fit and proper person. Relevant matters include whether the applicant has been convicted of an offence in Australia or a foreign country and, if so, the nature of the offence and when it

was committed, whether the applicant is subject to an unresolved complaint, investigation, charge, or order, and whether the applicant is the subject of a disciplinary action in another profession or occupation in Australia or overseas or has been the subject of a disciplinary action in another profession or occupation in Australia or overseas that involved a finding of guilt.

The Disclosure Guidelines for Applicants for Admission specify:

You may also need to disclose general misconduct which occurred, say, in your workplace, educational institution, volunteer position, club, association or in other circumstances, if such conduct may reflect on whether you are a fit and proper person to be admitted to the legal profession. This is so, even if the misconduct does not directly relate to your ability to practise law.

General misconduct may include, but is not limited to, offensive behaviour, workplace or online bullying, property damage, sexual harassment or racial vilification.

You also need to disclose any misconduct relating to dishonesty on your part, whether or not that conduct may have amounted to an offence; and whether or not you were charged with or convicted of an offence. This includes conduct that involved misappropriating any sort of property in any way, or making false or misleading statements of any kind.

You should disclose any criminal conviction for any offence whatsoever.

You may also need to disclose any criminal charge, as distinct from a criminal conviction - even if the charge was subsequently withdrawn or you were acquitted. This will, however, depend on the circumstances. If the charge did not proceed for a technical reason, such as the expiration of a time limit, you should disclose it.

On the other hand, if the charge was denied and the matter did not proceed because of an acknowledged lack of evidence, you need not disclose it, unless your underlying conduct itself warrants disclosure. You should carefully consider whether the facts giving rise to a criminal charge might reasonably be regarded as relevant when assessing your suitability for admission.

You should also carefully consider whether it might be prudent to disclose an offence, even if spent convictions legislation applies to that offence. Where spent convictions legislation does not apply, you should declare any offence of which you have been convicted.

Applications for admission are also required to be advertised. This allows a person to object to an admission if the person considers the applicant does not meet the criteria for admission, including that the applicant is not of good character, or good repute or is not a fit and proper person.

All practising lawyers have ongoing disclosure requirements. Practising lawyers are required to inform their regulatory bodies of any conviction of an offence or charge of a serious offence within 7 days of that conviction or charge. Practising lawyers are also required to renew their practising certificate annually and make a declaration regarding the existence of any suitability matters.

With respect to LAQ specifically, all new staff are subject to a serious disciplinary history check and a mandatory pre-employment criminal history check. Further, existing staff who change roles and have not been subject to a criminal history check within the previous two years are required to have a new criminal history check conducted.

Having regard to this regulatory framework, in which lawyers appear to constitute a low risk for working with children, LAQ believes the current exemption for lawyers is not inappropriate and it is not a necessary conclusion that the exemption ought to be removed.

Impact of removal of the exemption

LAQ notes that the decision to remove the exemption has been made to bring the Queensland system into alignment with other jurisdictions.

Having regard to this, LAQ wishes to point out the financial and other potential consequences of removing the exemptions.

Firstly, removal of the exemption for lawyers will require lawyers to make an annual application under the Working With Children Checks (WWCC) framework. This will be a significant financial cost and administrative impost on legal assistance organisations such as LAQ, community legal centres (CLCs), the Queensland Indigenous Family Violence Legal Service (QIFVLS) and the Aboriginal and Torres Strait Islander Legal Service (ATSILS). For LAQ, most likely QIFVLS, ATSILS, and at least some CLCs, it will be prudent if not necessary to require all lawyers to comply with the WWCC framework due to the nature of the work conducted by these organisations and the need for these organisations to move lawyers across areas often with little notice. This cost for LAQ (including the cost of additional administrative work) is not currently covered in LAQ's funding.

Secondly, removal of the exemption for lawyers has the potential to further reduce private solicitors willing to undertake legal aid work (preferred suppliers) in matters involving children if they are required to apply annually under the WWCC framework. This will particularly impact on the limited number of preferred suppliers that undertake child protection, family law and youth justice work. LAQ's payment rate to preferred suppliers undertaking legal aid work in Commonwealth family law matters and State children's matters is the lowest of all legal aid commissions, except for the Northern Territory. LAQ is deeply concerned that imposing a further financial cost and administrative burden on preferred suppliers may cause more preferred suppliers to cease undertaking legal aid work.

Amendments to definition of "support services"

The current *Working with Children (Risk Management and Screening) Act* defines "support service" as "a service that provides emotional support, mentoring or pastoral care, but does not include a legal advice or legal advocacy service."

Clauses 127 and 132 of the Bill seeks to amend the definition of “support service” to specifically include “*legal support*”. However, it is noted that the term *legal support* is not defined in the Bill.

It is noted that, in the existing legislation, a regulated business and regulated employment include an employee providing a support service to a child –

- If the employee is physically present with the child while no-one else is present; or
- If the employee is not physically present with the child.¹

Given the amendments to the definition of “support service” to encompass *legal support*, it appears that a broad range of administrative and support staff may fall within the scope of the Bill. A Litigation support officer or a Client information officer speaking to clients who are young people over the telephone (i.e. being “not physically present with the client”) to arrange appointments or complete intake details may trigger the provisions of the Act under the proposed amendments. If administrative staff were subject to the WWCC framework, the financial impact would be significant and ongoing. It is noted that this cost is not currently covered in LAQ’s funding.

LAQ position

LAQ’s preferred position would be to exclude legal practitioners from the WWCC framework given the suitability requirements for legal practitioners to obtain a practising certificate in Queensland.

However, if the scheme is to apply to legal practitioners, given the likely impact on LAQ, CLCs, ATSILS and QIFVLS, and the potential resultant impact on availability of legal services to children, LAQ suggests:

- An implementation period of at least 12 months to allow compliance with any change in the legislation.
- The legislation should provide an application fee exemption for lawyers, and non-lawyer support workers, from LAQ, CLCs, ATSILS, QIFVLS or private lawyers undertaking legal aid work. It should be noted that private lawyers undertaking legal aid work receive very modest remuneration for this work. This exemption would be similar to that given to volunteers/unpaid workers for not-for-profit organisations.

LAQ also submits that the term “*legal support*” should be excluded from the definition of “*support services*”, or alternatively that the definition specifically state that administrative staff are not subject to the WWCC framework.

¹ Section 6 and section 16, *Working with Children (Risk Management and Screening) Act 2000*

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