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

Submission No: 13

Submitted by: First Nations Women's Legal Services Qld Inc

Publication:

Attachments:

Submitter Comments:

First Nations
Women's Legal Services Qld Inc.

A.B.N. 42 109 450 961
Townsville: PO Box 1062, Townsville Qld 4810
Palm Island: 1st Floor, Council Administration Building, The Esplanade, Palm Island Qld 4816

Phone: (07)4721 6007 **Freecall:** 1800 082 600 **Fax:** (07)4724 5112
Email: admin@fnwlsq.org.au

Our reference : cp

10 July 2024

Committee Secretary
Education, Employment, Training and Skills Committee
Parliament House
George Street
Brisbane Qld 4000

By Email: EETSC@parliament.qld.gov.au

Dear Secretary

RE: *Working with Children (Risk Management and Screening) and other legislation Amendment Bill 2024*

Thank you for the opportunity to provide feedback in relation to the *Working with Children (Risk Management and Screening) and other legislation Amendment Bill 2024* ("the Amendment Bill"; "the Bill").

About FNWLSQ

The First Nations Women's Legal Services Queensland ("FNWLSQ") is a community-controlled community legal centre located in Townsville and Palm Island. FNWLSQ provides assistance, advice, legal representation and advocacy to First Nations women in Queensland, predominantly in North and North-West Queensland.

FNWLSQ practises in key civil areas of law dominated by Domestic Violence, Victim Assist, Child Protection, Family Law and Anti-discrimination. FNWLSQ is funded to provide a Domestic Violence duty lawyer and casework service on Palm Island, a North Queensland discrete community.

In its civil law practice, FNWLSQ provides legal advice and representation to women in relation to Working with Children ("Blue Card") applications and provides representation for reviews of decisions by Blue Card Services ("BCS"). We provide legal representation up to and including QCAT review hearings.

FNWLSQ has an interest in the Amendment Bill as, when passed into legislation, it will have a significant impact on a great many of our clients. Due to limited resources and time, we have provided only a brief response.

Opening remarks

FNWLSQ congratulates the Queensland government on its introduction of this Bill which will address long standing problems that have, since the inception of the *Working with Children (Risk Management and Screening) Act 2000* (Qld) ("the Act") presented an obstacle to First Nations children being able to be cared for by kin.

The obstacles for First Nations people and families are the legacy of inter-generational trauma, arising from colonial dispossession and child removal policies and legislation. The intergenerational impacts have often led to

adult family members having personal histories of trauma, historic minor criminal offences and poverty. This Amendment Bill significantly restores a level of balance by recognising the rights of Aboriginal and Torres Strait Islander children to family, community and culture.

The Amendment Bill

The inclusion in s.6(b), the principles for administering the Act, represent a welcome recognition that the "wellbeing" of Aboriginal and Torres Strait Islander children includes recognising the importance of their connection to family, community and culture. This is consistent with the provisions of the *Human Rights Act 2019* (HRA) recognising the family as the fundamental unit group of society (s.26(1) HRA) coupled with the child's right to safety (s.26(2)). Importantly, it gives effect to the cultural rights of Aboriginal and Torres Strait Islander children and families (s.28 HRA) which is at the core of the child's identity and sense of being.

Sections 232 – 234 of the Bill provide greater clarity for the purpose of assessing risk to children, replacing a general "best interests" test with a more targeted risk assessment. This is likely to be of benefit to First Nations children and families by providing a more nuanced approach to assessment. In the experience of FNWLSQ, Blue Card applicants under the current legislation are frequently required to "show cause" or may be refused a Blue Card for historical offences, including childhood convictions that have no relevance to caring for children and did not involve children. Public resources are often wasted in contesting such applications, aside from the trauma and disempowerment experienced by individual applicants.

The provisions of s.234(2)(c) will require consideration of how long ago relevant conduct occurred. Section 234(2)(d) further contextualises relevant conduct by considering, for example, the person's vulnerability, age differences and the relationship of a person to the victim, as well as other issues such as whether there was a pattern of behaviour (as compared with a one-off incident). The Bill demonstrates an understanding of situational social factors influencing behaviours. In the case of First Nations peoples, the Bill takes into consideration the effect of inter alia, systemic disadvantage and inter-generational trauma.

The Bill proposes to strengthen privacy provisions, for example requiring notice and consent before sharing information with an advisory committee (s.245). In addition, the Bill expressly delineates fairness provisions and protects privacy in relation to sharing information with another public entity. There is a presumption against sharing information about criminal history and where it is shared and advice given, the Bill provides for a written notice to the effect that no adverse inferences about the criminal history or suitability for employment are to be drawn from the advice.

Potential for negative impacts

We hold concerns about the impact of the issue of a negative notice upon receipt of assessable information. This has the potential to lead to injustices, where the information is later determined not to warrant charges, where the person was not legally proceeded against, or where the person is the victim of domestic violence (for example gas lighting, coercion or malicious accusations).

The impact of disclosure of assessable information is particularly concerning in relation to First Nations women named as Respondents in Protection Orders pursuant to the *Domestic and Family Violence Act 1999* (Qld). First Nations women are frequently misidentified as the perpetrator or primary perpetrator of domestic violence in police applications. This information then becomes relevant information in the context of Working with Children applications. In the absence of legal advice, First Nations women may "consent without admission" to a Protection Order without knowing the consequences for holding or applying for a Blue Card. The immediate issue of a negative notice has the potential to unjustly target a person, causing loss of employment prior to any action being taken to remedy the situation.

We are concerned that the provisions for notice periods in relation to providing submissions on risk assessments (s,236(1)(d) and in relation to providing notice of changes in personal details are likely to unfairly prejudice First Nations people living in regional, rural and remote areas. Notice of change of circumstances are particularly unreasonable, setting a statutory period of 7 days for notification. It fails to take into consideration remoteness, which may delay the person becoming aware of a change of details or being in a position to provide notice. It

does not consider the variability of internet reception in remote communities or the inconsistency of postal services. As the Bill sets mandatory periods, it is likely to lead to unfair impositions of penalties.

Finally, in relation to the s.246E provision for Risk Assessment Guidelines, we trust that these guidelines will be readily available to the public for the purpose of understanding the basis of negative notice decisions. We appreciate that reasons are required to be given for the decision.

Should you require further information or clarification of this brief submission, please do not hesitate to contact the writer on [redacted]

Yours sincerely,

[redacted]

Cathy Pereira
Principal Solicitor / Co-ordinator
FNWLSQ Inc.