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

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Office of the President

15 July 2024

Our ref: LP-MC

Committee Secretary
Education, Employment, Training and Skills Committee
Parliament House
George Street
Brisbane Qld 4000
By email: EETSC@parliament.qld.gov.au

Dear Committee Secretary

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

Thank you for the opportunity to provide a submission to the inquiry examining the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024 (**Bill**).

The Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This submission has been contributed to by a number of QLS's legal policy committees.

Unfortunately, due to time constraints we have been unable to conduct a comprehensive review of this Bill and our comments are limited to some discrete issues identified at this time. We generally consider the reforms proposed will lead to positive change in this area and that continued engagement with relevant stakeholders is important and will assist in the successful implementation of these changes.

Removing the exemption for lawyers

The Bill amends Schedule 1 of the *Working with Children (Risk Management and Screening) Act 2000* (**WWC Act**) to remove the exemption for lawyers and require lawyers or businesses who provide legal support services to children to obtain a blue card.

Lawyers are currently exempt from this process due the requirements of the *Legal Profession Act 2007* that they be admitted to the profession by the Supreme Court of Queensland (or equivalent state jurisdiction) and hold a practising certificate that is renewed annually. To be eligible for admission, a person must satisfy the Legal Practitioners Admissions Board and the Supreme Court of their fitness to practise.[1] This suitability is assessed each year by QLS when

[1] *Legal Profession Act 2007* (Qld) section 31 Suitability for admission (section 9 outlines suitability matters)

a lawyer applies to renew their practising certificate. There are ongoing disclosure obligations and information can be obtained from, for example, the Queensland Police Service.

The removal of the exemption was a recommendation of the *Keeping Queensland's children more than safe: review of the blue cared system' report*.[2] In making this recommendation, the Queensland Family and Child Commission considered whether there were any unintended consequences and noted there would be an increase in the number of applications; however, it did not consider what that meant for the delivery of legal services to young people, nor specify the anticipated length or breadth of the delay, including any reviews or appeals.

The Bill contains a transitional period which will allow a lawyer or person operating a business providing legal support services to a child, and who is currently exempt under the WWC Act, 12 months to apply for a blue card.[3]

QLS concern

QLS supports a 12 month transition period; however, based on the drafting of section 612 this period will only apply to current lawyers, not to lawyers admitted following the commencement of this legislation. This distinction does not appear to be based on any recommendation and is concerning as it may lead to lawyers needing to wait for a considerable period of time before being able to provide the relevant legal services to clients.

There are also concerns about the removal of the exemption more broadly, even with the transition period, including that this may impede access to legal advice and representation for young people, particularly in remote centres. There is the potential that some young people will be left without advice, including in vulnerable places such as police stations and detention centres, if they are not able to access a lawyer who has a clearance (due to administrative or other delays in the process).

During the 12 month period following the commencement, a lawyer (or their employer) may decide against providing the relevant legal services if there is any uncertainty regarding their application, even where a clearance is ultimately issued. Following the transition period, processing delays could still occur when a lawyer changes practice areas or other circumstances change to necessitate them needing a clearance. There may also be difficulties experienced by lawyers seeking to volunteer in the legal assistance sector or provide pro bono services.

We are aware of previous changes to the requirements for other cohorts, such as firefighters, which led to a number of people being unable to work because they had historical police information, already disclosed to and assessed by their department, which needed to be dealt with. This caused delays of more than 12 months in some instances (including applications to the Queensland Civil and Administrative Tribunal (**QCAT**) to cancel negative notices) before these people were operational again with their positive notices.

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[2] Recommendation 24, Keeping Queensland's children more than safe: review of the blue cared system' report

[3] See new sections 612 and 617.

Further, "support services" and "legal support" in the amended section 6 of Schedule 1 could be interpreted quite broadly and it may be that a significant cohort of people will now need to apply for a clearance, further contributing to delays and an impact on service delivery.

Recommendations

1. Section 612 should be amended so that the 12 month transition period applies to all lawyers for that period, regardless of their current status.
2. Based on our concerns, QLS recommends the application processing times for lawyers and related persons be monitored during the transition period and on an ongoing basis with a view to determining whether a priority process is required to ensure there is no adverse impact on the provision of legal advice and representation.
3. QLS would be pleased to work with the Department to provide appropriate education and guidance for the legal profession.

Regulated businesses

The Bill also amends section 16 of Schedule 1 of the WWC Act to include "legal support" within the meaning of *support services* so that, with the removal of the exemption for lawyers, businesses such as law firms will now be regulated businesses under the WWC Act.

There is a similar transition period of 12 months for business where, previously, a lawyer was exempt for needing a clearance.

This change will not only apply to law firms, but to community legal centres (CLCs), who already face resourcing issues. There is a concern that compliance requirements will lead to increased costs and administrative burdens for firms and CLCs which could impact upon service delivery in the legal assistance and pro bono sectors.

Consideration should be given to what assistance may be provided to assist with compliance. QLS would be pleased to engage further with the Department on these issues.

Improving information sharing arrangements - Queensland College of Teachers

We query whether the Chief Executive should be tasked with determining what is relevant to another statutory body's discretion.

QLS has previously submitted its views on the potential harm caused by providing untested information (without a finding or an admission) to decision-makers in another jurisdiction. We also note that the Queensland College of Teachers (**QCT**) already has a power to obtain police information. Any new information-sharing provisions must balance the need for the information against the impact on the individual.

We note that the Bill does not amend the *Education (Queensland College of Teachers) Act 2005* (**QCT legislation**) and as a result, we are unsure whether there are meaningful consequences for how QCT could receive this information if it is not, under its statute, able to receive it.

While we understand this change will bring this provision in to line with section 344 of the WWC Act, we query whether the provision would be better left unchanged and instead, a provision inserted to allow Chief Executive to provide additional information upon request by QCT, so that QCT is able to determine what information it reasonably believes may be relevant to its determination of suitability.

If these changes are to progress, proactive advice should be given to all teachers prior to the commencement.

Recourses for QCAT

While we broadly support the amendments to Chapter 8 concerning reviewable decisions, this change, together with many of the other amendments in this Bill, will likely create significant additional work for QCAT. Due to QCAT's current workload and resourcing needs, it is critical that support is provided to the Tribunal as these amendments are implemented.

Guidelines

The Bill provides that the Chief Executive must make guidelines, consistent with the WWC Act, about how a risk assessment is conducted. These guidelines should be prepared following consultation with relevant stakeholders and, importantly, published and accessbile by the community.

Transitional regulation

The Bill provides for the making of transitional regulations, including ones that would have retrospective application. Given the potential impacts of these regulations, appropriate consultation should be undertaken before they are made.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [redacted]

Yours faithfully

[redacted]

Rebecca Fogerty
President

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17 July 2024

Our ref: KB-MC

Committee Secretary
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George Street
Brisbane Qld 4000

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Dear Committee Secretary

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

The Queensland Law Society (**QLS**) seeks to provide a supplementary submission to the Committee's inquiry examining the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024 (**Bill**).

In this submission, we raise two additomal issues for the Committee's consideration.

1. **Timeframes for issuing a decision**

The current *Working with Children (Risk Management and Screening) Act 2000* (**WWC Act**) does not provide adequate timeframes for decision making and notification. This is not rectified by the amendments proposed in the Bill. Without express timeframes for decision-making, the new framework introduced by these amendments will be far less effective than desired.

At present, our members are reporting that it can take several months (in some cases) for an initial decision or notification to be issued and during this time, their clients have no mechanism through which to complain or seek recourse due to the absence of timeframes in the legislation prescribing when Blue Card Services (**BCS**) need to respond. The delays can cause significant impacts for the applicant, their employer, their children and/or related parties. Without a *working with children clearance* these people are often unable to start work or placement or be involved in activities relating to their children.

These issues were raised in Chapter 5 of the *Keeping Queensland's children more than safe: Review of the blue card system* report[1] where it was noted that processing timeframes for blue card applications, particularly where further information is requested, are significant. The report

[1] Queensland Family & Child Commission, *Keeping Queensland's children more than safe: Review of the blue card system Blue Card and Foster Care Systems Review*: https://www.qfcc.qld.gov.au/sites/default/files/2022-08/Review%20of%20the%20foster%20care%20system.pdf

referenced the Royal Commission's recommendation about reducing processing times to five business days for people without assessable information, and no longer than 21 business days for more complex applications. It these timeframes are not appropriate based on the average time to receive information from the QPS Police Information Centre (**PIC**), then another reasonable timeframe should be selected. The report, howeve, notes that 70% of applications to PIC are returned within 24 hours and that 85% do not have a relevant history,[2] so it would appear the Royal Commission's timeframes are likely appropriate.

When there is relevant information returned by PIC, there should still be explicit timeframes dictating when the next steps are to be taken. The current WWC Act and Bill outline processes where an applicant is provided with certain timeframes to respond, but there is often no correlative time for BCS. There should be some flexibility to account for unexpected delays, but equally, there needs to be be certainty for applicants.

It is critical these timeframes are not aspirational, but rather expressed as a requirement in the legislation and guidelines (we refer to our previous submission calling for these guidelines to be published) to ensure compliance. Timeframes for decision-making are an important feature of other regulatory and licensing schemes.

We recommend that the new chapter part 4, division 9 be amended to insert an appropriate timeframe for each step required to be taken by the chief executive.

2. Disclosure of information

We also raise concerns about the new self-disclosure obligations which will now extend to police protection notices (**PPNs**) or protection orders (**DVOs**) under the *Domestic and Family Violence Protection Act 2012* (**DFVP Act**).

Applications for DVOs and PPNs often contain allegations of a criminal nature but do not always lead to criminal investigations, charges or convictions. This can be for myriad reasons but is often because the complainant does not wish to bring a criminal complaint or because the police exercise their discretion against charging the person. The test for bringing an application for a DVO is lower than bringing a criminal charge and therefore should not be treated the same as one. Furthermore, respondents to applications of this nature often consent without admissions to avoid findings being made. Applications can also be withdrawn.

In addition, although there has recently been a change to the DFVP Act stating that, unless exceptional circumstances exist, only one protection order naming the person 'most in need of protection' should be made, this was not the case for the past decade of the DVFP Act's operation. In some cases, people who would now be regarded the 'true aggrieved' and most in need of protection would consent without admissions to cross-orders to avoid the prospect of a hearing. This gives rise to the possibility of BCS considering a material relating to an application that may itself constitute systems abuse, but which was consented to for practical or self-preservation purposes.

We are aware of cases of this nature where a mother has an order in place, which references children being exposed to domestic violence, and is then denied a blue card needed for work or training purposes. This outcome is contrary to the purpose of this legislation and other

[2] Refer to page 114

government policies and is particularly concerning given blue cards are more often required in feminised industries such as childcare.

Given the issues identified, it is not reasonable or appropriate that all of this information is disclosed to or obtained by BCS to use in a risk assessment. The applications for these orders often contain highly prejudicial and untested material which could lead to a decision being made which is not fair to those affected. Accessing this type of information may also not be consistent with the Bill's new 'risk to the safety of children' test which is defined to mean a 'real and appreciable risk'. The Explanatory Notes state that risks that are "negligible or fanciful" will not satisfy this threshold.

QLS considers the better course would be for BCS to obtain the domestic violence history in the first instance. If there is relevant information in this history, follow-up enquiries can be made to QPS etc.

In addition to this change, we recommend that the guidelines that are to be prepared for use by BCS should outline how domestic violence information is created to better inform the assessment process.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [redacted]

Yours faithfully

[redacted]

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Office of the President

22 July 2024

Our ref: KB-MC

Committee Secretary
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By email: EETSC@parliament.qld.gov.au

Dear Committee Secretary

Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024 – further supplementary submission

We write again in response to the Committee's inquiry examining the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024 (**Bill**) following the publishing of submissions and the public hearing held on 17 July 2024 where a number of stakeholders raised concerns with the new self-disclosure obligations.

Our previous submission objected to certain types of information being used by Blue Card Services (**BCS**) to determine applications; however, upon reviewing the other stakeholder submissions and the public hearing transcript, we consider it is important to raise concerns about the self-disclosure obligations more broadly.

The Bill amends the form of application to introduce a requirement for applicants to disclose particular police information and disclosable matters. If a person fails to do so, the Bill proposes penalty provisions. This is a substantial departure from the current form of application which provides a "consent to employment screening" that is used by the Chief Executive to undertake employment screening checks.

The justification for this change is that the effective and timely disclosure of information is crucial to the operation of the blue card system and its objective of promoting and protecting the rights, interests and wellbeing of children. However, for the reasons outlined below, the processes will create a number of unintended consequences.

The self-disclosure obligations require that applicants are providing truthful and accurate information to the Chief Executive. Long experience suggests that what members of the community consider appropriate to disclose will differ from applicant to applicant and will depend on a number of factors such as time passed since the disclosable event. As a result, consent to criminal history screening has long been considered critical to the effective consideration of risk, character and fitness.

Further, the creation of an offence provision relating to a failure to disclose will likely lead to significant consequences for an applicant even if there is a general intention, as expressed by the explanatory notes, that those who make an honest mistake will not be penalised. We are also concerned that, if an applicant is required to make the disclosure at the time of submitting, this could also inadvertently lead to some information not being provided.

The Bill proposes self-disclosure of particular police information. To mitigate the risk that a person does not disclose their criminal history, the Chief Executive already accesses the QPS Police Information Centre to conduct police information checks. The requirement for self-disclosure in these circumstances will not lead to the provision of any further information and will likely only create delays as investigations in relation to failures to disclose are conducted. Rather than improving the risk assessment process, this requirement may only prove to penalise a person who considers 'particular police information' not relevant to a working with children employment screen, particularly where many individuals in the working with children space have police information which is decades old and, on its face, unrelated to working or volunteering with children.

Secondly, the Bill proposes self-disclosure of 'disclosable matters'. Our members, and we note the discussions with other stakeholders throughout the public hearing,are concerned about this aspect of the self-disclosure process in two primary respects:

1) Domestic violence orders and police protection notices are not necessarily relevant to the risk assessment process and their disclosure and disclosure of other related information may serve only to delay the assessment process; and
2) In some cases, disclosable matters are not known to or remembered by applicants and criminalising a failure in those circumstances is unlikely to lead to any improved outcomes for Queenslanders in the working with children space.

Our previous submission raised concerns in relation to the proposal for domestic violence protection orders and police protection notices to be the subject of self-disclosure. As a result of this information being assessed by the Chief Executive, there are assessments being made of incidents of domestic violence which have previously not been the subject of any findings or evidence. The stated facts contained within applications are often disputed allegations. There are often no sworn statements from witnesses in police material if matters are finalised without admissions. Seeking those statements from applicants may, by itself, re-traumatise victim survivors in cross-order circumstances. Further, in many cases, the existence of a protection order or police protection notice is not conclusive that an applicant caused harm to any child or exposed any child to domestic violence.

In some cases, disclosable matters are not known to or remembered by applicants and criminalising a failure in those circumstances is unlikely to lead to any improved outcomes for Queenslanders in the working with children space. The proposed definition of disclosable matter includes 'another matter relevant to whether the person poses a risk to the safety of children prescribed by regulation'. It is not appropriate that factors relevant to an offence provision are left to a regulation.[1] Further, we are unable to comment on reasonableness of this broad aspect

[1] Section 4(5)(c) of the *Legislative Standards Act 1992* states that subordinate legislation should contain only matters appropriate to that level of legislation. QLS submits that factors relevant to an offence provision ought to be placed in primary legislation.

of the definition where the regulation is not able to be viewed. However, for the same reason that reservations are expressed about the self-disclosure of police information, in that it relies on applicants volunteering information that they may not consider relevant to the Chief Executive's employment screening processes, we are concerned that making 'disclosable matters' a requirement for self-disclosure will not improve the Chief Executive's risk assessment process and will lead to a number of unintended consequences. We also have concerns about how the information that is disclosed could be used if it is not relevant to assessment process.

Recommendation

QLS strongly recommends that the current form of application in section 188, which includes a consent to obtain employment screening information, be retained. Employment screening information would include the police information and could include a domestic violence history in the first instance. If there is relevant information in this history, follow-up enquiries can be made to the Queensland Police Service and submissions sought at that time.

Given the issues identified with the proposed self-disclosure process by QLS and by other stakeholders, we ask that the Committee recommend the legislation is not passed until the issues are reconsidered and potentially, further consulted on. While QLS is pleased to see reform in this area, a review and re-drafting of these new provisions will ensure that a more efficient and effective system is created.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [redacted]

Yours faithfully

[redacted]

Rebecca Fogerty
President