



Law Society House, 179 Ann Street, Brisbane Qld 4000, Australia
GPO Box 1785, Brisbane Qld 4001 | ABN 33 423 389 441
P 07 3842 5943 | F 07 3221 9329 | president@qls.com.au | qls.com.au
Office of the President

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Our ref: MC-LP

Committee Secretary
Health, Communities, Disability Services and Domestic and
Family Violence Prevention Committee
Parliament House
George Street
Brisbane Qld 4000

By email: health@parliament.qld.gov.au

Dear Committee Secretary

Disability Services and Other Legislation (Worker Screening) Amendment Bill 2020

Thank you for the opportunity to provide a submission to the inquiry into the Disability Services and Other Legislation (Worker Screening) Amendment Bill 2020. The Queensland Law Society (**QLS**) appreciates the opportunity to contribute to this inquiry.

QLS is the peak professional body for the State's legal practitioners. We represent and promote over 13,000 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.

QLS has not had the opportunity to undertake a comprehensive review of all of the legislation and documents relevant to this bill, but we note the *Intergovernmental Agreement on Nationally Consistent Worker Screening for the NDIS (IGA)*, the *National Disability Insurance Scheme Act 2013 (Cth) (NDIS Act)* and the *National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules (WS Rules)* have all been considered by the drafters.

In the time available, we have briefly reviewed some of the bill's provisions with a view to determining whether these are reasonable in the circumstances and whether there are likely to be any unintended consequences. Our comments below are restricted to a couple of issues. There may be other areas covered by the bill which require review and scrutiny by the Committee that we have not referred to.

While we support the objectives of the bill, its provisions need to strike an appropriate balance between the protection of vulnerable people (as well as families and other workers), the ability of providers to comply with their obligations in relation to screening, clearances and exclusions and the individual rights of workers, including privacy rights.

The Explanatory Notes state that the bill will provide nationally consistent worker screening. We submit that where provisions are not reasonable, infringe upon cornerstone legal principles or on the provisions of the *Human Rights Act 2019*, the Parliament should amend

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the bill, even if doing so means that the Queensland legislation detracts in part from other laws.

Therefore we recommend that the following changes be made to the current drafting:

1. The ability to provide a “reasonable excuse” should be inserted into the offence provisions under Clause 11; and
2. The information required to be provided to, and used by, the chief executive should be clearly defined and reasonable in all of the circumstances.

1. Inserting “reasonable excuse” into offences provisions under Clause 11

Clause 11 inserts a new Part 5 to replace the existing Part 5 in the *Disability Services Act 2006* ('DSA') and establishes a new NDIS and state disability worker screening framework. The new sections introduced by clause 11 of the bill contain a number of offence provisions which carry both civil penalties and terms of imprisonment where there are aggravating circumstances. Some of these sections require knowledge or deem knowledge, such as sections 55, 56, 60 and 71, while others such as 53, 54, 57, 61, 64 and 70 do not require this element. None of these provisions include a provision to allow for a reasonable excuse to be provided. We note section 62(2), which applies to those offences in Division 1 states, “A court may not find that the person contravened the provision unless the person was given notice about the cancellation of the clearance or interstate NDIS clearance held by the person or the issue of the exclusion or interstate NDIS exclusion to the person.”

Despite the presence of section 62(2), without the ability for a provider or worker to offer a reasonable excuse such as mistake, delay or administrative error, a penalty could be imposed which both the provider or worker may be unable to afford, in circumstances when there was no intent to breach the provision. These offences essentially become *strict liability* offences which should only be introduced where there is sufficient justification. QLS does not object, necessarily, to a breach attracting a penalty, but we are concerned about liability attaching to an unintentional act or omission. We consider that education and compliance will be more effective focuses.

The drafters have contemplated that the provision of a reasonable excuse can be appropriate in some cases, such as in proposed section 107, and we consider the other offences in clause 11 should be reviewed to ensure the correct balance is struck between safety and the rights of the provider or worker.

The Explanatory Notes discuss whether the penalties are proportionate, but they do not consider these issues. If the Committee determines these sections are reasonable in all of the circumstances, then we recommend that the Explanatory Notes be amended to reflect this consideration.

2. Information to be provided to, and used by, the chief executive needs to be clearly defined and reasonable in all of the circumstances.

The bill introduces a number of provisions into the DSA to facilitate the provision and use of information by the chief executive so as to enable a comprehensive review of applications for clearances and other related processes. QLS agrees that there should be appropriate risk assessments of people working in these roles where there are vulnerable people who are at

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risk of harm. Again, the critical consideration is whether this bill has struck the right balance between this and a worker's privacy and other rights, such as the presumption of innocence.

This issue is specifically referred to in the Explanatory Notes at page 13 where it states:-
"This framework includes assessment of a person's criminal history information to enable the chief executive to decide whether the person poses an unacceptable risk of harm to people with disability." However, *criminal history information* is not the terminology used in the bill.

Proposed section 88 states that the chief executive must consider information including:

- (b) domestic violence information;
- (c) disciplinary information.

These terms are not defined in the bill or in the DSA. A definition for each term should be provided to ensure that a worker knows what information they are required to provide and/or what information the chief executive is able to obtain and, so that Parliament can ensure that the personal information obtained for these purposes is fair and reasonable in the circumstances.

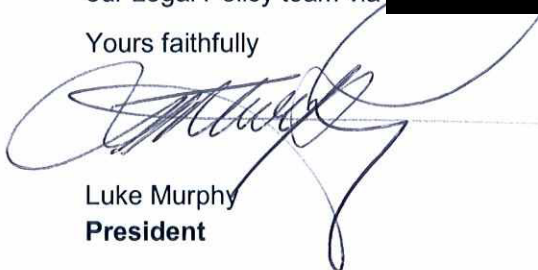
"Police information", which is also required to be considered under proposed section 88, is currently defined in the DSA, however, we note that not all of the sections of the bill consistently refer to this term. For example, in proposed section 104 a person is required to notify the chief executive of a change in their *police information* if, under subsection (2) a criminal history event happened. Pursuant to the existing definition in the DSA, "police information" includes a person's criminal history but is also broader than this. Further, proposed section 94 refers to a person's "offending conduct" which is also separate from the term "police information". The Committee should review the drafting of the bill in conjunction with the existing legislation to ensure there is clarity and certainty with respect to a person's obligations to notify the chief executive.

This same scrutiny should be applied to proposed sections 138C to 138E (inclusive) and the subsequent ancillary provisions to ensure that the legislation and explanatory material correctly identify the information that can be requested by the chief executive and provided by the police commissioner.

Ensuring these provisions are appropriate is also important due to the information and disclosure provisions in the legislation.

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

Yours faithfully



Luke Murphy
President