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13 August 2017

Committee Secretary
Parliamentary Committee for Legal Affairs and Community Safety
Parliament House
George Street Brisbane QLD 4000

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

Dear Committee members,

Working with Children Legislation (Indigenous Communities) Amendment Bill 2017

We would like to make the following SUPPORTIVE submissions in respect of the above Bill.

The current system, albeit undoubtedly well-intended and laudable in its objectives, has a number of devastating (but probably unintended) consequences for applicants from remote indigenous communities such as ours. We believe that these are the result of the fact that the system was never set up with those communities in mind and is executed by officers who have no understanding of the realities of those communities. The Bill seeks to address this deficit by introducing a process that will allow discretionary decisions to be made by those who have the full understanding of their communities and the people in it, without creating a precedent whereby it would be simpler for indigenous people to obtain a Blue Card. This is achieved by introducing a special Blue Card category, which has force only in the community of the applicant who has been subject to the new process.

One of the objectives of the Bill is to remove what is a very significant hurdle for employment of indigenous people, especially for work in social services, which is, in reality, often the major source of work in the indigenous communities.

We believe the proposed bill will achieve its purposes and we think that Community Justice Groups are the correct agency for the role considered in the Bill. They are statutory bodies with members that have been vetted through a formal process. They are Government supported and funded, are subject to Governmental oversight and regular reporting, and most importantly, they are well-established local bodies comprised of community elders and leaders. They are therefore in exactly the right position, and they have the appropriate knowledge and standing to perform this additional role.

In what follows we attempt to paint a picture of the issues that are in our view relevant to your considerations. We focus on the situation on Mornington Island, but from our experience working in Doomadgee the issues are very much the same there, as they are in the other remote communities.

These submissions follow the general format of information we provide to Blue Card Services in support of applicants from our community.

Our organisation includes the Community Justice Group on Mornington Island and the Community Legal Centre. One of our activities is to assist all people that become involved with the criminal justice system (victims and offenders alike), and we therefore have a very good insight in offending patterns and behaviour on Mornington Island, as well as of the relative levels of offending. As you may or may not know, Mornington Island is one of the poorer places in Queensland in respect of crime statistics, particularly in respect of (domestic) violence.

As a Community Justice Group, we are also involved with victim support and offender programs, with the support of victims and offenders in court, and with conflict resolution. Our organisation is built around a core group of the local Elders and has wide community support. Almost the entire adult population of the Island are a member of our organisation. As a result, we know the community and the people that comprise it. We know their backgrounds, their parents and their families, their kinship ties, their cultural background and their stories. We are very well aware of any transgressions within the community and have direct access to all the “gossip and yarn karting” through us being a real part of the Mornington families. As a result we know very well which people are suspect when it comes to their engagement with children, or any other deviant tendencies they may have. In a small and isolated community there are not many secrets for the Elders who have lived there for their entire lives. It is from that perspective that we provide our references to the Blue Card agency, and these submissions.

In addition, we are involved in mediation and peacekeeping on Mornington. We undertake more than 150 mediations every year. These vary from disputes between individuals to large disturbances involving dozens of people. We have held mediation meetings in people’s homes between families and have had mediations involving up to 60 people in the Mornington festival grounds. As a result we are well aware of the community dynamics and some of the longer lasting feuds between individuals and families, sometimes also including tribal differences. This provides yet another indirect source of information on which we rely when making our assessment whether we support an individual’s application for a Blue Card. We will not provide this support to people of whom we know they have tendencies that would conflict with the objectives of the Child protection legislation.

Some general observations, criminality on Mornington Island in context

To give you an idea of the discrepancy between Mornington Island and the rest of “mainstream” Queensland, the level of violent offending that leads to hospital admission is high on Mornington compared to the Queensland average. Virtually every indigenous person of adult age on Mornington has a criminal record. Mornington Island has an adult population of about 750 permanent residents. In the last 18 months more than 500 of them appeared in court. The number of charges at any one Magistrates Court sitting varies between 90 and 170, but is on average about 120; with the typical number of persons appearing being 60-70, but sometimes the court list contains over one hundred individuals. The charges vary of course, from simple alcohol possession charges to various forms of violence and driving offences. When extrapolating these figures, you will understand that the “average ordinary” adult on Mornington amasses on average one or two charges and convictions a year, which means that most people over 30 years of age will have criminal record of several pages long. As said, virtually all offending is in some way alcohol related.

Alcohol abuse is typically also the vector for other offending from violence to property related and traffic offences. Whilst the Island is officially alcohol free with a total ban having been in place since 2008, alcohol is produced in very large quantities by the population in the form of "home brew". This method of acquisition typically leads to very large quantities of this illegal substance being available in large batches (30-60 litres is common), which are then quickly consumed by groups that walk the streets in search for the next ready brew. This excessive use of alcohol creates the conditions for other offending and problems.

Typically, some 30-40 Mornington Island residents are in custody at any given time. The chance of a resident from Mornington being incarcerated is 30 times as high as that probability is for the age adjusted average Queensland population, and still three times as high as the average Queensland indigenous rate. Having spent time in prison does not in any way carry the stigma on Mornington that it does elsewhere.

A further note must be made about the Cultural Heritage of the Mornington population. This group is not from singular tribal descent, but is an amalgamation of a number of tribes which was created during the Mission era on Mornington, which started as late as 1914. The original population are the Lardil tribes, divided in four groups or Moieties. The Yankaal tribe inhabited the islands between Mornington and the mainland, but now reside on Mornington where they went in the early Mission times. During the mission days after 1918 many outcasts from the mainland and girls from what was later termed "the stolen generation" were brought to Mornington. These were people from Gangalida, Waanyi, Minginda, Gkuthaarn and Ganalanja language groups. In 1948 the entire population of the South Wellesley Islands, the Kaiadilt people, were brought to Mornington. Over the ensuing years these populations slowly intermixed, but tribal tensions do sometimes come to the surface. In many ways the situation on Mornington is similar to that of Palm Island, which was also used as a place where troublesome individuals were taken.

In 1978 the Local Government system ousted the missionaries and the Shire Council increasingly relied on beer sales for its revenue gathering. This was the main driver for the enormous excess alcohol consumption on Mornington, which was rumoured at some point to have reached 50,000 cans of beer in a week, to a total population of about a thousand people. Eventually this abuse led to the (in the eyes of many misconceived) introduction of a total alcohol ban, which has only given rise to the cottage industry of home-brewing, which has made alcohol even more available than it was, but now in a format that is entirely uncontrollable and which has driven its consumption "underground". Besides the alcohol issues there are additional health problems, such as the unhygienic conditions of production and drinking and the excess sugar levels, which combine with a natural propensity for this disease to create a huge problem with diabetes. The illegality of alcohol and its consumption is evident from the court statistics also, with some 30%-40% of charges directly relate to alcohol possession, whilst of the remainder more than half is in some other way alcohol related.

In cultural terms, the local tribes have a very different perception of violence and of its social use. In the traditional cultures fights are used as a method to demonstrate and enforce social cohesion and the tolerance for violence is significantly different than what would be expected in mainstream society. All of the above is well documented in anthropological research, for instance in books by McKnight, Cawte, Tindale, Trigger, Huffer, Roughsey and others. Whilst this cultural trait cannot be taken as a disculpatory factor, it provides perspective and context for the tendency that conflict escalates quite quickly into

violence, even into the use of weapons, which are often implements close at hands, such as sticks, metal pipes, knives and fishing spears. Having convictions for violent behaviour is therefore quite common on Mornington Island, but this says more about cultural remnants and perhaps overall social dysfunction, than it speaks to the personality traits of the individuals under consideration. To some extent domestic violence offending is also connected with general dysfunction, especially alcohol abuse. This conclusion is supported by the fact that on Mornington domestic violence is not as gendered as elsewhere, with about even distribution of aggrieved and respondents between the genders. The same observation applies to lesser offending, such as public order offending, assault/obstruct police and alcohol related offending.

We therefore argue that having lengthy criminal records on Mornington says more about social dysfunction and failed interventions than it says about moral shortcomings of individuals. Nevertheless, when a person applies for a Blue Card, this general context is not taken into consideration, but the individual is weighed against the contemporary moral standards of the dominant settler culture, or perhaps to the even higher standards of the Blue Card agency, which by its very nature is based on risk avoidance.

How the Blue Card system intersects with this situation

We typically encounter the system in its discretionary capacity. It is obvious that those with disqualifying offences cannot work with children in principle. There are few issues with people having committed serious offences as defined in the legislation. Our concern is with those for whom the legislation directs that they must be given Blue Cards, unless they are deemed to represent an **exceptional case**. This introduces a discretionary process with very little objective direction, and one that seeks to apply (undefined) standards or principles that are simply unrealistic in our local setting. This process is framed in terms of risk avoidance and sets moral standards that are perhaps relevant in the environment of those working in George Street, but that cannot be similarly applied to Mornington Island.

As its result, people are denied Blue Cards, who we know to be very suitable to work with children, and who are often the carers for many children in their family. We regularly observe the perplexing situation where a person who cares 24/7 for many of the children in his/her family environment, is not allowed to work with those same children in the institutionalized environment of the school or other social service providers. This excludes these individuals from suitable work, often the only work available to them.

It must in that context be appreciated that most of the work in communities is in some way government derived and involves social service delivery. Whilst much of that work is delegated to NGO's, they are all required to comply with certain standards, including the requirement for Blue Cards for those working with children, or work associated with such services. As a result of what perhaps may be called "regulation creep" this also includes work that can hardly be prescribed as such, for instance work as groundsman at a service provider where children may attend from time to time, or picking up children for school or kindy. In a recent example, we had to argue on behalf of the Local Government entity that its property maintenance workers should not be required to hold Blue Cards.

Almost all work available, especially for women, requires the possession of a Blue Card, and the Blue Card process thus provides a very real and significant hurdle to many who are seeking employment. Quite apart from the practical aspect of this hurdle, the result is also that people are in fact told that they are in some way morally lacking, or unsuitable. As these are of course always indigenous people, it can be argued that the system has a highly discriminatory effect as well.

All of these problems are addressed with the proposed Bill. It redirects those who would be subject to the discretionary process to a system of vetting by their community seniors, who have a very good knowledge of the person behind the application, rather than being forced to assess this on the basis of a criminal history and some police statements of fact only.

A level of protection is also built in, in that the Blue Card thus obtained can only be used to obtain work in the community, and that this Blue Card remains subject to some supervision by the Community Justice Group.

Our current collaboration with Blue Card services.

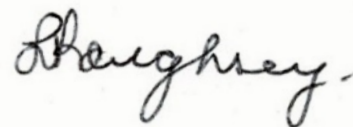
We must say something about the way we have collaborated with Blue Card Services in the past years to address our issues. Through our Community Legal Centre we assist applicants with making submissions and as a Justice Group we do provide references. Our collaboration is a positive one, and one that has certainly improved the chances of success for our community members. But the process remains tedious and lengthy and would be very much improved with the amendments contained in the Bill. Over the past few years we have been involved with over 80 Blue Card applications in a formal way.

It is beyond the scope of these submissions to provide actual examples, or to discuss individual cases, but you will appreciate that we have a wealth of real world case scenarios that underpin our views in this submission. We would be happy to provide further oral submissions to the committee in due course.

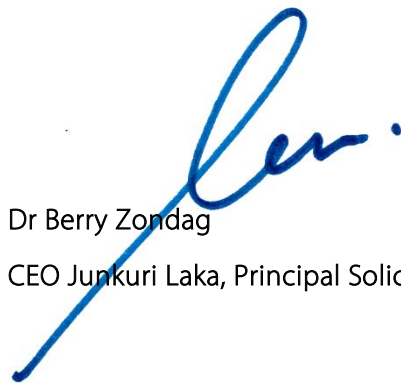
Yours sincerely



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