



HEALTH, COMMUNITIES, DISABILITY SERVICES AND DOMESTIC AND FAMILY VIOLENCE PREVENTION COMMITTEE

Members present:

Mr AD Harper MP (Chair)
Mr MC Berkman MP
Mr MA Hunt MP
Mr MF McArdle MP
Mr BL O'Rourke MP
Ms JE Pease MP

Staff present:

Mr R Hansen (Committee Secretary)
Mr J Gilchrist (Assistant Committee Secretary)

PUBLIC BRIEFING—EXAMINATION OF THE DISABILITY SERVICES AND OTHER LEGISLATION (WORKER SCREENING) AMENDMENT BILL 2018

TRANSCRIPT OF PROCEEDINGS

MONDAY, 16 APRIL 2018

Brisbane

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The committee met at 12.30 pm.

CHAIR: Good afternoon, ladies and gentlemen. Before we start, I request that mobile phones be switched off or placed on silent. I declare this public briefing of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee open. I acknowledge the traditional owners of the land on which we are meeting today. I am Aaron Harper, the chair of the committee and member for Thuringowa. Other members of the committee with me today are Mark McArdle, the member for Caloundra and the deputy chair; Michael Berkman, the member for Maiwar; Marty Hunt, the member for Nicklin; Barry O'Rourke, the member for Rockhampton; and Joan Pease, the member for Lytton. Also with us is the committee secretary, Mr Rob Hansen, and James Gilchrist.

Thank you very much for your attendance this afternoon. Today's hearing is part of the committee's examination of the Disability Services and Other Legislation (Worker Screening) Amendment Bill 2018. The bill was introduced on 20 March by the Hon. Coralee O'Rourke MP, Minister for Communities and Minister for Disability Services and Seniors. The committee is required to report on the bill by 8 May 2018.

There are a few procedural matters before we start. The committee is a statutory committee of the Queensland parliament and, as such, represents the parliament. It is an all-party committee which takes a nonpartisan approach to inquiries. This hearing is a formal proceeding of the parliament and is subject to the Legislative Assembly's standing rules and orders. The committee will not require evidence to be given under oath, but I remind you that intentionally misleading the committee is a serious offence. Witnesses have been provided with a copy of the instructions for witnesses so we will take those as read. Hansard will record the proceedings and you will be provided with a copy of the transcript. The hearing will also be broadcast live on the parliament's website. For any media present, I ask that you adhere to my directions as chair at all times. The media rules are endorsed by the committee and available from committee staff if required. I remind all in attendance today that these proceedings are similar to parliament and that the public cannot participate. I remind members of the public they may be admitted to or excluded from the hearing at the committee's discretion.

BIANCHI, Ms Elizabeth, Executive Director, Legal Policy and Legislation, Department of Communities, Disability Services and Seniors

FERGUSON, Ms Helen, Assistant Director-General, Strategic Policy and Legislation, Department of Communities, Disability Services and Seniors

CHAIR: Today we are hearing a public briefing from the department. The officers present were here this morning when Age and Disability Advocacy Australia were in attendance and articulated some of their concerns. Do you have any opening statements you want to make in response to some of the issues raised by Mr Geoff Rowe?

Ms Bianchi: I have some more information for the committee that might be of assistance. I am the Executive Director, Legal Policy and Legislation in the Department of Communities, Disability Services and Seniors. I am joined by Helen Ferguson, the Assistant Director-General, Strategic Policy and Legislation in the department. We also have some colleagues joining us from other areas of the department and from the Queensland Police Service, so thank you for making time to attend with us today.

I would like to acknowledge the traditional owners of the land on which we meet today and pay my respects to elders past and emerging. It is noted that all the submissions received by the committee were generally supportive of the bill but there were a number of discrete issues raised in relation to the bill itself, the broader proposed worker-screening system for NDIS at full scheme and the operation of NDIS generally rather than the specific provisions of this bill. The department has provided further information to the committee in response to those issues raised in the submissions, and I hope that was of assistance.

There were a couple of issues raised this morning and we thought it might be useful to provide the committee with some further information on those. One of the critical issues that Geoff spoke to this morning was the intersection between the aged care yellow card and blue card systems. They

are very important policy issues, particularly in the context of the significantly changing service model for disability services and, as Geoff spoke to this morning, the crossover of the workforce that is emerging.

They are policy matters for state, territory and the Commonwealth governments to consider. While the issues are not directly relevant to this bill, which seeks to clarify arrangements during NDIS transition in Queensland in relation to two discrete issues, there are some obvious intersections. In terms of the intersection between the blue card and the yellow card systems in Queensland that will continue to operate during transition, we thought it might be helpful to clarify that there is an exemption framework in place which acknowledges the crossover between the operation of the two systems. There are some information-sharing provisions which enable information to be shared between those departments that are operating those respective frameworks. Those information-sharing provisions largely relate to the administration of the operation of the exemption framework.

As the department outlined in its response to the submissions, further consideration of the intersection between the two systems and the information-sharing frameworks is a matter for the Queensland government to continue to consider as part of implementing the recommendations of the QFCC report in relation to the review of the blue card system and as part of the whole-of-government legislation review to ensure that we are ready for full scheme transition of the NDIS in Queensland.

There were some concerns raised this morning about the exemption framework and the fact that at the moment the intersection requires another application to be made. We thought it might be helpful to provide some information about why that separate application process is in place. The rationale for an application for an exemption needing to be made, as opposed to an automatic system, is about a notification process where the individual is relying on that exemption. It is to ensure that, when a relevant change in criminal history or a change to the card status of that individual occurs, the respective departments know which organisations to advise so they know Helen might be using her blue or yellow card at a particular organisation for a particular purpose. It is about ensuring that, if those changes happen, those notifications can be pushed out to the relevant organisations.

There were some issues raised this morning in relation to the complexity of the NDIS registration process and we thought it might be helpful to provide some information about how Queensland is providing support during the transition phase. In Queensland during transition obviously Queensland quality and safeguards continue to apply. We have a specific contract with National Disability Services Queensland, and under those contractual arrangements supports are available to assist providers seeking registration during the transition period. If a need is identified, providers can be referred on a case-by-case basis to the NDS to access additional support. That includes providers in rural and remote communities. NDS works with providers as required to assist them to understand the system and requirements for delivering services under the NDIS including the quality and safeguards framework such as worker screening.

There was one last issue which we thought it might be helpful to provide more information on and that was in relation to the movement of individuals between organisations. There was some discussion about how we ensure if there is inappropriate conduct in one organisation that someone does not keep transferring over to other organisations. As part of the NDIS quality and safeguards framework, there is going to be a national clearance database which will include information about worker-screening outcomes. In addition, the NDIS Quality and Safeguards Commission will be responsible for a national critical incidents scheme so there will be defined reportable incidents that will need to be reported to the NDIS Quality and Safeguards Commission including things such as the death of a person with a disability, serious injury of a person with disability, abuse or neglect of a person with disability, unlawful sexual or physical contact or assault of a person with a disability, sexual misconduct committed or in the presence of a person with disability including grooming behaviours and the use of restrictive practices in relation to a person with disability other than where that use is specifically authorised in accordance with a state or territory framework.

Under the proposed intergovernmental agreement for worker screening, disciplinary and misconduct information held by the NDIS Quality and Safeguards Commission will be provided to worker-screening units and considered as part of that check. We thought it might be helpful to provide some more of that contextual information about how some of that is proposed to operate. That was all that I had to add to this morning's discussion. We would be happy to take any questions that the committee may have.

CHAIR: Thank you very much for your briefing today. One of the things I took from Mr Rowe's submission and his answers this morning was the difficulty in rural and remote areas of service provision in this particular space. Let me take as an example a person who had an offence such as

driving unlicensed, which is common in rural and remote areas. Would they be able to apply for an exemption for the yellow card for such an offence? I want to know what that exemption framework looks like. Can you unpack that a little more?

Ms Bianchi: Any individual other than a disqualified person can apply for an exemption. Disqualifying offences are broadly in the range of murder, serious sexual offences or child pornography offences. There are some limitations around those offences being committed against a child or a vulnerable person, but generally unless you have an offence and a conviction for an offence that sits in that framework you can apply for the exemption. It is then subject to an assessment framework around whether that should be granted.

CHAIR: Would you have a list of those offences?

Ms Bianchi: Yes. They are currently prescribed under both the working with children check legislation and the Disability Services Act in the relevant schedules.

CHAIR: Would we be able to see those? Can you take that on notice?

Ms Bianchi: Yes.

Mr HUNT: In relation to those offences, are there some key differences between the blue card and the yellow card or are they essentially the same?

Ms Bianchi: In terms of the disqualifying offences?

Mr HUNT: Yes.

Ms Bianchi: They are essentially the same. From memory, I think there are some distinctions in terms of the qualifications in that under the working with children check legislation they are targeted at offences committed against a child and in the Disability Services Act it might be a tiny bit broader. I would need to check that because I cannot remember that off the top of my head, but the offences themselves are the same.

Mr HUNT: One of the other submissions related to opinions given of behaviours by police officers in reports and how that might prejudice somebody in terms of the language used. Is there a standard that is going to be set in relation to that, or is it each one on its merits in terms of assessment?

Ms Bianchi: Do you mean in relation to the assessment framework applied when assessing an application or in relation to police reporting?

Mr HUNT: If I am applying for a yellow card, for example, and I have no convictions but a police report exists of a criminal offence and there are some documents related to a police officer's opinion of my behaviour, is there a framework around what is acceptable and what is not? It is very clear if you have a conviction for a grade of offence, but when it gets into that area of behaviour or opinion is there a framework around that?

Ms Bianchi: Under the proposed intergovernmental agreement which will support the NDIS worker-screening regime there is provision for the development of a risk assessment framework to be commonly agreed across jurisdictions in order to bring consistency to the decision-making. That is where guidance is provided in terms of the assessment processes undertaken.

Mr HUNT: Is there an appeal process if you are unsuccessful in getting a card because of something like that?

Ms Bianchi: The way it currently works in Queensland is that there is generally an appeal process except if you are a disqualified person in certain circumstances. If you have a conviction for those types of offences we talked about before and you have been sentenced to a period of imprisonment, there is a limitation on appeal rights. If you have a charge or a conviction that does not fall within those parameters, that is subject to an external appeal right, currently to QCAT. Under the proposed new NDIS worker-screening model, it is a similar type of arrangement where there are some limitations on appeal rights proposed but generally if it falls into that high-level serious offending behaviour.

Ms PEASE: Thanks very much for coming in today. Can you provide some clarity on how much assessment goes on with respect to spent convictions?

Ms Bianchi: Yes. Spent convictions are currently included within the framework in Queensland under the Disability Services Act. Under this bill it is proposed to expand the range of criminal history information that jurisdictions can exchange with each other as part of those assessment processes, and that would include the provision of spent convictions. The risk assessment framework which I

spoke to before would be the tool that is utilised in conjunction with the expertise of specialist government operated screening units which would undertake an assessment of that information in the context of the broader criminal history of the person.

Ms PEASE: Currently there is interagency sharing of data with regard to people. For example, if someone made a complaint to the teachers registration board about one of their teachers and some alleged behaviour, in the future is there any likelihood that they would share that information with disability services?

Ms Bianchi: Under the proposed intergovernmental agreement for the NDIS worker-screening regime, there is a range of information that is proposed for consideration as part of the check including disciplinary and misconduct findings from professional organisations.

Mr BERKMAN: Thanks for being here at very short notice. I do not know if it is something that you can respond to quickly, but there was a question that ADAA took on notice regarding concerns within their membership about the overrepresentation of Indigenous people in the justice system and how that might be reflected in difficulties in getting yellow cards as has been discussed with blue cards. Was that an issue that the department considered in the lead-up to this point in the process? Is it being considered in other pockets of the department outside of this legislation?

Ms Ferguson: Thank you for your question. It is an important question. One of the things that we are very keen to do once we have an IGA for worker screening in place with the Commonwealth government is to talk to the newly formed commission for quality and safeguards and to the various commissioners involved in that commission about the role that the commission will have, including to provide awareness raising for various cohorts who would be interested in providing supports to people with a disability under the NDIS arrangements. Some of that would be around worker screening to dispel some concerns that people might have about their own history—if they think that because they have a history that would exclude them entirely—to explain to them the criminal history arrangements to alleviate any myths, I suppose, that people might have in their minds about the fact that just because they have something on their history they would be excluded automatically.

That is a process that has been adopted elsewhere with other criminal history screening schemes and it is one that we think is a really important one under the NDIS. We will be taking that up with the commission once those folk in the commission have their feet under their desks. A couple of the commissioners have been appointed already but not all of them.

Mr O'ROURKE: Thank you for your briefing this afternoon. If there were an investigation underway and it had not been finalised, would there be any way of tracking that support worker where it is a serious offence, sexual assault or whatever, against a client while that was still being investigated?

Ms Bianchi: Thank you the question. I think the answer to that is yes. Under the Disability Services Act, at the moment pending charges are communicated to the department, including changes in criminal history for a person who might have already been issued with a yellow card. Similarly, pending charges are also proposed to be included within the NDIS worker-screening framework.

It depends on the nature of the charge and whether it falls within the framework of the disqualifying offences that we spoke about earlier. If it does, that is something that would often result in the suspension of the current clearance notice issued to the individual while that investigation is completed, or it may lead to the withdrawal of an application for such period of time as that charge is on foot.

There are also currently notification requirements in place if a person is charged with an offence that does not fall within that disqualifying offence regime but is still considered to be relevant to working with children or working with people with a disability. There are specified notification provisions for the organisations to be made aware that they need to have some risk management strategies in place while that reassessment is being undertaken.

There are also self-disclosure obligations under the Disability Services Act that require an individual to report to their organisation or service provider that they have had a change in their criminal history. There are a couple of safeguards around that to ensure that, while that investigation is underway and while that charge is pending before the courts, action is taken to mitigate any risks.

Mr McARDLE: Ladies, thank you very much for being here this afternoon. It is always good to see you. Going on from the question asked by my colleague from Rockhampton about pending charges, they are referred to the NDIS and, therefore, the NDIS is aware of what is taking place and they will take the appropriate action in regard to any card issued to that person. How do the police

know that a person is the provider of NDIS services at the time of the charge? I assume that it is the police you would normally refer to to request them to refer to the NDIS any notifications. What happens to alert the police? How do the police know about a person being charged holding a card?

Ms Bianchi: I will explain how it works under the current framework in Queensland and then move on to the NDIS arrangements. At the moment in Queensland there are links between the department and the Queensland Police Service in terms of the Queensland Police Service being aware of where a person is the holder of a yellow card. It is an electronic interface so that, when the police enter that information about the person who has been charged, the system knows that they are a yellow card holder.

Mr McARDLE: The red flag comes up.

Ms Bianchi: I do not know the technicalities of how it works, I must say. There is an electronic interface in place between the two systems that enables that notification to happen from the Queensland police. In terms of moving forward into the new NDIS landscape, I spoke a little bit before about this national clearance database that is envisaged to operate. I think the details of how that is to operate are still being developed, but it is certainly within contemplation that there will be continuous monitoring and the ability for organisations to be advised where there is a critical change in criminal history or other information coming into the system. I cannot provide detailed information about exactly how that will work other than to say that all states and territories have definitely agreed that that is within the parameters of what the system is to deliver.

Mr McARDLE: The national database does not come within this bill in relation to the second limb of the investigation or search. Do you have any ideas as to when that might commence? Is there a home jurisdiction to trial that in some manner? I can certainly imagine down the track—in two years or so—there will be a number of people who will fall into that category and the national database becomes quite important for a jurisdictional check.

Ms Bianchi: I would probably need to take the question on notice in relation to the exact time frame for the commencement of that. I think that we have a little bit of information about it, but I cannot remember the details off the top of my head other than to say that Queensland is not operating this new NDIS worker-screening check until July 2019. The work is currently underway in looking at what that system might look like and what the business requirements are in terms of meeting the policy objectives.

Mr McARDLE: If you could take that on notice that would be good. I know that Queensland is 1 July 2019. Let us accept that we get to 1 July 2019. As I understand the legislation, the current cardholders must have a new card in their hands by that date. The current card can wait until 1 July. You can hold that until 1 July 2019, but by that date under the bill you must hold a new card; is that right?

Ms Bianchi: This bill does not deal with that issue. I think we provided a little bit of information in answer to one of our questions on notice.

Mr McARDLE: You have, yes.

Ms Bianchi: That was around the transitional arrangements. Those transitional arrangements are a matter of negotiation between relevant state and territory governments and the Commonwealth in terms of exactly how that phasing in might happen or whether there would be any kind of transitional period. The answer from a Queensland perspective is that that issue forms part of the whole-of-government legislation review, which will come back before the committee and back before the House prior to full scheme commencement and is, I guess, a policy matter for the government to determine as part of that review.

Mr McARDLE: Yes, I take your point. My concern would be: once the new regime comes into play, if I am in Queensland do I need to search every jurisdiction to get the yellow card? Post the transition date passing, am I required to cover off every employee within my organisation with a yellow card? More importantly, is the card issued in Queensland recognised nationally or, if I am a multinational organisation, in every state am I required to go through the same process? That is my concern. It is a bit like the blue cards. I suspect they are not nationally recognised. I understand they are individually recognised.

The other question that I have is: if I am in New South Wales and I come on board on 1 July 2018—so the transition expires—and they seek Queensland jurisdictional clearance for me and my employees, do they pay the fee to New South Wales or do they pay the fee to Queensland? For New South Wales, how do we recoup the money that we expend by way of application process?

Ms Bianchi: The way it is intended to work from an NDIS perspective is that the starting point is that the intergovernmental agreement is to support a nationally consistent system administered by state and territory governments to enable recognition across jurisdictions. In effect, if I am operating in Queensland I make the application in Queensland. I am assessed in accordance with the nationally consistent framework and guideline. I am issued a screening outcome and that screening outcome is then recognised across other jurisdictions. The national clearance database is then the tool by which people will be able to access information about whether a person has been cleared or issued with effectively what we would call in Queensland a negative notice.

Mr McARDLE: I take it from your words that if I am ticked off in Queensland I am ticked off nationally.

Ms Bianchi: Yes.

Mr McARDLE: That is fine. What happens with employees who move interstate? Every time a new employee is taken on board, does there need to be a review process? I could be the worst offender in Queensland, rip down to New South Wales and work for an organisation. If I am not charged in Queensland, you will never know in New South Wales. In New South Wales, do you have to check in to Queensland in regard to that new employee?

Ms Bianchi: No. That would be the role of the NDIS Quality and Safeguards Commission in terms of those critical reporting incidents that I spoke about way back at the beginning—it was a little while ago—when we talked about that process of having that range of reportable incidents that then have to go into the quality and safeguards commission and then the quality and safeguards commission disseminates information to state and territory worker-screening units for consideration as part of the check where necessary. Again, that is where the national clearance database comes into effect in that it will provide for the continuous monitoring of individuals. Where there is a relevant change, notifications are then able to be issued to the relevant organisations in whatever state or territory they are in.

Mr McARDLE: The database would cover only spent convictions, convictions or pending charges from the date transition concludes under the NDIS, or does it also cover existing convictions and existing spent charges?

Ms Bianchi: The management of the criminal history information is undertaken by ACIC, the Australian Criminal Intelligence Commission. They are the central repository of all criminal history information including spent convictions, charges et cetera. That process is already in place. The clearance database is about recording the outcomes of worker-screening checks that are undertaken. The information that is held by ACIC now is all information—past and present—and that would continue. That is where jurisdictions make their application to obtain the criminal history information. It comes back to them. They undertake their assessment and then the outcomes of that are envisaged to be recorded on the national clearing database.

Mr McARDLE: It is not a new body as such. It is a body that accesses the existing database held by a federal body; is that right?

Ms Bianchi: That is right.

Mr McARDLE: Okay. What is the cost involved to Queensland in running this exercise post, say, 1 July 2018 when New South Wales and South Australia commence the NDIS proper?

Ms Bianchi: In terms of providing that expanded range of information available under this bill?

Mr McARDLE: Yes.

Ms Bianchi: At this stage it is envisaged that it would not be significant from the perspective that such an arrangement is already in place in relation to working with children checks. There are established processes and procedures in place to allow the additional information to be provided. Similarly, those jurisdictions that already operate worker-screening units are already making applications for criminal history, so Queensland is already dealing with those. This is about the range of information that could be provided pursuant to those.

Mr McARDLE: Is an application fee paid to access Queensland data for New South Wales purposes?

Ms Bianchi: There is an application fee made to access the ACIC data and then in Queensland in some circumstances there is a fee that is associated with obtaining a yellow card, so there are those two components.

Mr McARDLE: If I am in New South Wales and post transition—on 1 July 2018, if I recall correctly—in New South Wales, do I then have to make an application to Queensland to get clarification?

Ms Bianchi: Do you mean as part of the transitional arrangements or on an ongoing basis?

Mr McARDLE: Post transition. As I understand it, you have to get a new yellow card post transition.

Ms Bianchi: At the point at which individuals enter the new NDIS worker-screening process there would then be the national criminal check undertaken with ACIC, which will provide information across all states and territories in terms of the criminal history information held. The NDIS commission will obviously then have a range of information in relation to longer term reportable incidents, as we talked about before. No, I do not think there is any additional checking that happens. I make my application, the request goes in to ACIC as per usual, they gather the information from all state and territory police jurisdictions and then that is fed back to the organisation that has made the application.

CHAIR: Thank you very much. Given that you have taken a couple of questions on notice, the secretariat will be in contact to confirm the questions taken and when the response is due. I thank you both for the briefing today. The committee appreciates your assistance. I declare this briefing closed.

The committee adjourned at 1.00 pm.