




Speech By
Hon. Yvette D'Ath

MEMBER FOR REDCLIFFE

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**WORKING WITH CHILDREN (RISK MANAGEMENT AND SCREENING) AND
OTHER LEGISLATION AMENDMENT BILL**

Introduction

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice) (11.43 am): I present a bill for an act to amend the Disability Services Act 2006, the Public Service Act 2008, the Working with Children (Risk Management and Screening) Act 2000 and the legislation mentioned in schedule 2 for particular purposes. I table the bill and the explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

Tabled paper: Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018 [1849](#).

Tabled paper: Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018, explanatory notes [1850](#).

I am pleased to introduce the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018. The Palaszczuk government makes the safety of Queensland children its highest priority. It was under a former Labor government that Queensland became one of the first jurisdictions to introduce a working with children check scheme in Australia. The blue card is now synonymous with our commitment to keeping our children safe. As at 30 September 2018, there were over 725,000 current blue card holders and applicants, representing almost one in every six Queenslanders.

It is, however, important to remember that child protection does not start and finish with a blue card; it is one of many tools available to us to assist in protecting our children. The purpose of the blue card system is to contribute to the creation of safe and supportive environments for children and young people when receiving services and participating in activities which are essential to their development and wellbeing, such as child care, education, sport and cultural activities. The Working with Children (Risk Management and Screening) Act 2000 refers to these core activities as 'regulated employment' and 'regulated business'.

The blue card system mitigates past, present and future risks to children through screening people working with children in regulated employment and businesses, monitoring all blue card holders and applicants, and legislatively requiring child related organisations to implement policies and procedures to manage risks to children. To strengthen and improve the blue card system, this government, under the leadership of the Premier, took action and commissioned the Queensland Family and Child Commission, the QFCC, to undertake a whole-of-system review of the working with children act with the assistance of an expert panel. The QFCC in its final report, *Keeping Queensland's children more than safe: review of the blue card system*, found that Queensland's blue card system is one of the strongest in Australia and since 2001 has enhanced protection for children in regulated environments.

The Palaszczuk government has broadly supported the intent of all recommendations made by the QFCC and made a commitment to further strengthen the blue card system. This includes \$17 million over the next three years to implement the government's no-card no-start scheme and improve the blue

card application process. Importantly, and in accordance with recommendation 78 of the QFCC's blue card system review report, an implementation reference group has been established to monitor the blue card reforms. The group consists of government and non-government stakeholders including Bravehearts, PeakCare Queensland, Queensland Council of Social Service, QSport, Surf Life Saving Queensland, Independent Schools Queensland, Queensland Catholic Education Commission, Aboriginal and Torres Strait Islander Legal Service, Kummara Association and Junkuri Laka. In accordance with its monitoring role, the implementation reference group has been consulted on key aspects of the bill.

The bill I introduce today is the first stage in a series of legislative reforms that I will bring before this House. If passed, this bill will implement the bulk of the QFCC recommendations from its final report. It also lays the foundations for other reforms to be progressively implemented over a period of time that balances the needs of relevant stakeholder groups with the Palaszczuk government's commitment to keeping our children safe. Most importantly, it prioritises key safeguards that will further strengthen, enhance and modernise the operation of the blue card system.

The bill has two key objectives. Firstly, the bill delivers on the government's election commitment to amend the working with children act and introduce automated blue card application processes to prevent people commencing paid work while a blue card application is pending. The implementation of no-card no-start is a core safeguard that strengthens the blue card system by ensuring that all persons working in regulated child related environments have been issued with a working with children clearance prior to commencing work. It is consistent with the principles of the working with children act that the welfare and best interests of a child are of paramount consideration.

The bill gives effect to the government's commitment to no-card no-start laws by prohibiting an employer from employing a person in regulated employment unless the person holds a working with children clearance and the employer has notified Blue Card Services that the employer is proposing to employ the person. To satisfy the notification requirement, an employer will be required to take reasonable steps to verify the employee's identity—for example, by viewing the employee's working with children card, which will include the person's photograph, or another form of photo identification—and notify the chief executive either via the Blue Card Services new online organisational portal being developed or through a paper based form of this employment arrangement. This new requirement builds upon the existing offences that prohibit an employer from employing a person if they know or ought reasonably to know the person holds a negative notice, or the employer has received a notice that the person's working with children authority has been cancelled, or their application has been withdrawn due to being charged with a disqualifying offence.

Offences will also apply to employees who start or continue in regulated employment without a working with children clearance. Circumstances of aggravation will apply so that more severe penalties can be imposed if the person is either a disqualified person, a negative notice holder, has cancelled their previous working with children authority on their own initiative, or has received a notice of withdrawal for their application because they have been charged with a disqualifying offence. This is in addition to existing offences that prohibit a person from performing regulated employment because their working with children authority has been suspended and prohibit employers from allowing a suspended person to perform regulated employment.

The no-card no-start requirement under the bill does not apply to police officers and registered teachers who undertake child related work outside their professional duties. This is on the basis that they have already been subject to criminal history screening and ongoing monitoring by either the Queensland Police Service or the Queensland College of Teachers. The no-card no-start laws are so much more than just legislative change—they represent a significant shift for the system. In order to meet their intent, they must be supported by a suite of complementary initiatives, including improvements to the application process as well as a community education and awareness campaign.

This brings me to the second core objective of the bill, giving effect to a range of recommendations made by the QFCC in its final report on the review of the blue card system and its *Recommendation 28 supplementary review: a report on information sharing to enhance the safety of children in regulated home-based services*. I will turn to some of the main changes now. One of the key findings of the QFCC's review of the blue card system was the need for an overarching review of the working with children act to simplify the laws and make it easier for stakeholders to understand their obligations. In recognising this, the bill takes the opportunity to modernise and simplify some of the language in the working with children act.

Under the framework proposed by the bill, a person seeking to undertake regulated employment or carry on a regulated business will make a working with children check application and, if successful, be issued with a working with children clearance or a working with children exemption if the person is a registered teacher or police officer. A working with children card will be issued to the person as evidence

that they hold a clearance or exemption. In addition, to reduce duplication across the working with children act and other legislation, the bill introduces the collective term of a 'working with children authority' to capture both a working with children clearance or a working with children exemption. The bill also implements a range of recommendations that the QFCC identified would complement the no-card no-start requirement.

As part of its review, the QFCC identified that the current blue card application form is hard to follow and complete correctly; the manual and paper based nature of the process results in delays in processing times; and current identity check processes create an administrative burden for organisations. The QFCC recommended the introduction of an efficient online application process supported by a strengthened identity check that would result not only in faster processing times and a better client experience for applicants but also stronger safeguards for children through better quality identity checks of applicants. A user-friendly manual application form will also be available for people who have limited access to technology or prefer not to apply online. The QFCC also recommended removing the requirement for a person to have an agreement to work before applying for a working with children check, considering it to be an unnecessary barrier to employment.

In response to these findings, the bill includes a streamlined and simplified process for a person to make a working with children check application. The amendments provide sufficient flexibility so that applications can be made manually or through an efficient online process. There will be no need for a person to have an agreement to work with an organisation prior to making the application. This will allow a person to become job ready before engaging in child related employment.

While the bill uncouples the application process for paid employees, persons who seek a working with children check to undertake volunteer work will be required to demonstrate that they have an agreement with a regulated organisation to provide volunteer services in order to have their application fee waived. This approach balances the need to continue to encourage volunteering in the community while also keeping the blue card system sustainable. From an employer perspective, the bill will enable communications between the chief executive and organisations to be made through an online organisational portal, which I referred to earlier. All of the current interactions between organisations and the chief executive are authorised under the working with children act. For example, organisations are responsible for notifying the chief executive of each new person's employment with them. In addition, organisations must notify the chief executive about a range of other issues, including when an employee or volunteer leaves the organisation. The bill will provide sufficient flexibility so that these notifications can continue to be made manually or through the online organisational portal.

New section 398A recognises that the chief executive may approve an information system for generating, sending, receiving and otherwise processing electronic communications between the chief executive and organisations. This will facilitate the establishment of the online organisational portal. New section 344A formalises that the chief executive may give a range of authorised entities information electronically through the portal. This includes information about a working with children check application, a working with children authority or negative notice held by a person as well as other notifications given to the entity under the working with children act. This is information that is already provided, but the portal will enable this information to be shared in a much more efficient way.

The bill also introduces other key safeguards, as recommended by the QFCC. This includes changes to the disqualifying offences regime. Currently, under the working with children act, disqualifying offences can generally be categorised into three groups: serious child related sex offences, offences related to child exploitation material, and murder of a child. A person who has a conviction for a disqualifying offence is prohibited from making a working with children check application. If a person is charged with a disqualifying offence while either holding or applying for a blue card, the card is either suspended or the application is withdrawn.

In 2015, the Royal Commission into Institutional Responses to Child Sexual Abuse released its recommendations on working with children check systems. The royal commission recommended that the range of offences that should be treated as disqualifying should be expanded to include abduction or kidnapping of a child and animal related sexual offences. The QFCC agreed with, and endorsed, the royal commission's findings as part of its review of the blue card system. The QFCC also highlighted the need to consider any unintended consequences from the system automatically disqualifying people with convictions for kidnapping offences that arise in a family law context. As a result, the bill gives effect to the royal commission and the QFCC recommendations and expands the range of disqualifying offences under the working with children act to include: bestiality; kidnapping of a child; kidnapping for ransom of a child; child stealing; and abduction of a child under 16.

The bill has regard to avoiding the unintended consequences foreshadowed by the QFCC by making clear that the abduction and kidnapping offences will only be treated as disqualifying if the context in which the offence was committed was not familial. The bill also makes the murder and rape

of an adult disqualifying offences. These offences are currently treated as serious offences under the working with children act. It is important to note that the existing strict decision-making framework in respect of serious offences means the chief executive must issue a negative notice to the person unless it is an exceptional case in which it would not harm the best interests of children.

The bill's inclusion of these offences as disqualifying is beyond what the QFCC and the royal commission called for. Notwithstanding the current strict framework regarding serious offences, the Palaszczuk government has listened to community concerns and is making these changes to include murder and rape of an adult as disqualifying offences, providing even greater protection for Queensland's children. In addition, the bill removes the ability for a person performing child related work to rely on an exemption under the working with children act if they are considered ineligible to work with children. Currently, a person can undertake child related work without a blue card if they meet one of the exemptions provided for under the working with children act. These include if the person's child related work: is as a volunteer parent, in certain circumstances; or is as a volunteer under the age of 18; or does not meet the minimum frequency for regulated employment.

This means that persons with negative notices and other high-risk people can rely on these exemptions to carry out child related work. The QFCC noted that stakeholders expressed strong views that allowing such persons to rely on an exemption is unacceptable. To this end, the bill introduces a new category of person, a 'restricted person', which will capture the following people: negative notice holders; persons with a suspended working with children authority; disqualified persons; and persons who have been charged with a disqualifying offence.

The bill provides that a restricted person will not be able to rely on certain exemptions in the working with children act to perform child related work. The bill creates an offence for the restricted person who starts or continues in this employment; and for employers who employ or continue to employ the person if they know or ought reasonably to know the person is a restricted person. The amendments in the bill will not affect the continuing general operation of these exemptions. For example, the volunteer parent exemption will continue to enable parents who do not meet the definition of a 'restricted person' to continue to be exempted from working with children check requirements.

Above and beyond the QFCC's recommendations, the bill includes a further safeguard to complement the no-card no-start initiative by providing for a stay of blue card review decisions so that, if the Queensland Civil and Administrative Tribunal overturns a decision made by the chief executive to issue a person with a negative notice, QCAT's orders are stayed automatically until the appeal period has expired or an appeal is finalised.

I earlier made reference to the QFCC's *Recommendation 28 supplementary review*. This report evolved out of a QFCC recommendation in its report *When a child is missing: remembering Tiahleigh—a report into Queensland's children missing from out-of-home care*. Recommendation 28 of that report required the QFCC to undertake a supplementary review of legislation, policies and practices relating to information sharing between all parties as responsible agencies for undertaking internal risk assessments and decision-making about the safety of all children in regulated home based care services.

Regulated home based care services include foster and kinship care, family day care and stand-alone care services. Under the working with children act, foster and kinship carers, family day care educators and persons providing stand-alone care are all required to hold a blue card. The QFCC's supplementary review identified a need for the greater visibility of households providing home based care services to children by regulatory bodies such as the Queensland Police Service, the Department of Education, the Office of the Public Guardian and the Department of Child Safety, Youth and Women. This is particularly relevant where households are providing more than one home based care service to children such as a foster carer who may also operate a family day care service from their home.

The key recommendation, which was accepted by the Palaszczuk government, called for the creation of a centralised register of regulated home based care services. The bill establishes the register to improve the visibility of these services, inform decision-making and risk assessments, and facilitate information sharing between relevant government agencies to promote the safety of all children accessing these services. The register is not designed to replace existing information exchanges between agencies. It is an additional tool to provide more comprehensive information regarding certain types of home based care services to inform other forms of compliance and monitoring activities being undertaken by regulatory agencies.

The bill provides for the type of information the register must contain about each person who delivers a home based care service and other adult household members who reside in the home. Access to the register will be limited to authorised users from the Queensland Police Service, the Department of Education, the Department of Child Safety, Youth and Women and the Office of the Public Guardian. The bill provides when an authorised user of the register can use, give access to, or

disclose confidential information obtained from the register. In particular, an authorised user will be able to use, give access or disclose information to identify, access or monitor a risk or potential risk to the safety or welfare of a child being provided care through a home based care service, as well as check the currency and status of a regulated person's or adult household member's working with children authority or application.

Other amendments are proposed which address recommendations from the supplementary review. These will require all adult household members of home based stand-alone care services to hold a blue card and make the Department of Education the notifiable person for individual family day care educators and adult household members so that it receives notifications about any changes to their blue card status. Above and beyond the supplementary review recommendations, the bill also makes the Department of Education the notifiable person for all staff members, nominated supervisors and volunteers under either the Education and Care Services National Law or Education and Care Services Act 2013.

The Palaszczuk government is committed to listening to the community and experts to increase protections for the safety and wellbeing of Queensland's children. The preparation of this legislation has been considered and thorough, involving consultation with key industry stakeholders, including through the implementation reference group, all of whom work to keep our children safe each and every day. Our children deserve nothing less. I commend the bill to the House.

First Reading

Hon. YM D'ATH (Redcliffe—ALP) (Attorney-General and Minister for Justice) (12.03 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

Referral to the Legal Affairs and Community Safety Committee

Madam DEPUTY SPEAKER (Ms Pugh): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.