




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**

Second Reading

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice) (3.14 pm): I move—
That the bill be now read a second time.

The Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018 was introduced on 13 November 2018 and referred to the Education, Employment and Small Business Committee for examination. I thank the committee for their thoughtful consideration of the bill. I would also like to thank the stakeholders and organisations who took the time to make submissions on and attend the public hearing in relation to the bill. I am pleased to inform the House that on 14 February 2019 the committee tabled report No. 12 and made one recommendation: that the bill be passed. I welcome the recommendation of the committee. In doing so, I note the statement of reservation from the opposition members of the committee and I will address some of the points raised in this statement throughout my contribution today.

I also foreshadow that I will be proposing amendments to be moved in consideration in detail. They will: address minor technical matters which were identified post introduction of the bill; respond to submissions made by stakeholders; and ensure the most effective transition with regards to the issuing of blue cards, post commencement of the government's no-card no-start laws. In addition, I will be moving further amendments which will: elevate additional offences to the list of serious offences and disqualifying offences under the act; and introduce new arrangements for blue card applicants and cardholders charged or convicted of a serious offence.

The bill before the House reflects the Palaszczuk government's ongoing commitment to ensuring the safety and protection of Queensland's children. Working with children checks are an important element of this protection. However, it is important to reiterate that a working with children check is but one component in a much broader framework for keeping children safe in our community.

As part of its comprehensive review of the blue card system, the Queensland Family and Child Commission found that the blue card system is already one of the strongest working with children check systems in Australia. The Palaszczuk government has been strengthening the overarching working with children system since the QFCC handed down its 81 recommendations. The QFCC identified the need for an overarching review of the act to implement its recommendations to keep pace with changing community expectations and emerging risks, simplify the laws and make it easier for stakeholders to understand their obligations.

This government is committed to meaningful and considered legislative reform to further strengthen the blue card system—noting that the bill before the House is the first of a series of sweeping legislative reforms to the system. Firstly, the bill delivers on the Palaszczuk government's election commitment to implement a no-card no-start arrangement. This means applicants will not be able to

commence paid employment while their blue card application is pending. This will reduce the risk to children and further strengthen the robust blue card system that the QFCC noted Queensland already has. Consistent with the QFCC's findings, the committee observed that support for the no-card no-start requirement was predicated on the streamlining of the blue card application process and improved processing timeframes.

This is why the Palaszczuk government has injected \$17 million over the next three years into modernising the blue card system. This includes: the development of an efficient online application process; a streamlined and strengthened identity check system; and the development of an online organisational portal which will allow organisations to manage their blue card obligations administratively online. We are building this critical information technology infrastructure with users of the blue card system in mind.

Let us not forget, there are 740,000 current blue card holders in Queensland. That is almost one in six Queensland adults who hold a blue card. In addition, there are also over 32,000 organisations that are part of the blue card system. For this reason, it is vital to ensure that users are ready for the changes when they go live in early 2020. This is not something that can be rushed; it must be done properly and in consultation with stakeholders.

No-card no-start will bring paid employees into line with volunteers and business operators and will prohibit an employer from employing a person in child related employment unless the person holds a working with children clearance and the employer has notified the chief executive about the employment or proposed employment of the person. As part of this notification, employers will be required to take reasonable steps to verify their employee's identity and to notify the chief executive either via the new online organisational portal, which is currently under development, or through a paper based form of this employment arrangement.

By establishing a link to the employee, an employer becomes a 'notifiable person' under the act and the chief executive will provide updates to the employer if the person's blue card status changes. These updates will be communicated to the employer through the organisational portal in real time. To emphasise the significant responsibility that employers have as the gatekeepers of child related employment, increased penalties will be imposed against an employer who engages an employee without a working with children clearance if an aggravating circumstance applies. The same is applicable to employees as well. It will become an offence, under new section 176A, to start or continue in regulated employment without a blue card, with a five-year maximum penalty available in certain circumstances.

Implementation of no-card no-start requires not only legislation and technology changes but also the development of a range of accompanying resources, a stakeholder engagement and education campaign and change management strategy. This government is committed to getting this right. No-card no-start will be in place by early 2020.

This brings me to the second core objective of the bill giving effect to a range of other recommendations made by the QFCC across the two reports into the blue card system. At this point I wish to thank Cheryl Vardon, Principal Commissioner and Chief Executive of the QFCC, and her staff for the significant body of work they have undertaken. I also thank organisational members of the implementation reference group for sharing their perspectives and views.

Under the existing framework, a person must have an agreement to work or volunteer with a regulated organisation before they can apply for a blue card. The application must be completed by both the employee and employer. To complement the no-card no-start reforms, the bill abolishes this requirement. This will mean that a person can make an application on their own initiative and become job ready before entering child related employment. Applicants who seek to undertake volunteer work will be required to first establish an agreement with a regulated organisation to provide volunteer services in order to have their application processed free of charge. This approach strikes a balance between the need to continue to encourage volunteering in the community and the sustainability of the blue card system.

Before speaking to the additional safeguards the bill introduces, I will outline the current robust decision-making framework which Blue Card Services applies when assessing a person's application for a blue card. Firstly, it is important to once again note that the QFCC found Queensland has one of the strongest screening systems in Australia. It is important to note this because the opposition have done their very best to talk down the system—the very system that operated virtually untouched under the Newman LNP government. Where a person has known police information, Blue Card Services undertakes a thorough assessment which is underpinned by a robust decision-making framework focused on the safety of children. The most significant offences are categorised under the act into two groups: 'disqualifying' and 'serious'.

Currently, a person who has a conviction for a disqualifying offence and has been sentenced to a term of imprisonment is automatically prohibited from making an application for a blue card. It is an offence for this category of person to make an application. It is important for the public to note that the Palaszczuk government decided to retain this up-front offence to send a strong deterrent message to applicants: if you are automatically disqualified from participating in child related activities under the act, do not bother applying for a blue card; we do not want you working with our children. The offence, which the opposition proposes to remove, carries a maximum penalty of five years imprisonment. If a person is charged with a disqualifying offence, either while holding or applying for a blue card, the card is either automatically suspended or the application is withdrawn—in both cases until the charge is finalised.

For serious offences, strict decision-making tests apply. Currently, if a cardholder is charged with a serious offence, the person's blue card status is reassessed with the presumption that the chief executive will reissue the person a blue card unless there are exceptional circumstances. While this reassessment occurs, the cardholder can continue to engage in child related work, but the person's employer is notified that the cardholder has been charged with a serious offence so that the employer can take risk mitigation steps.

The chief executive must issue a negative notice to an applicant or an existing cardholder if the person has been convicted of a serious offence, unless the chief executive is satisfied there is an exceptional case in which it would not harm the best interests of children to issue or continue the blue card. The 'exceptional case' threshold is a high bar to satisfy. Blue Card Services take a conservative approach when assessing whether exceptional cases exist and can take into account a range of factors including the length of time since the offending, patterns of behaviours, the relevance of concern to child related activities and evidence of attempts to address behaviour or triggers for offending.

As part of its *Working with children checks report*, the Royal Commission into Institutional Responses to Child Sexual Abuse recommended the expansion of the range of disqualifying offences to include a discrete set of offences including kidnapping and abduction of a child, and animal related sexual offences. The QFCC adopted this recommendation but, importantly, noted the need to consider any unintended consequences from the blue card system automatically disqualifying people with convictions for kidnapping offences that arise in a family law context. It is against this background and framework that the bill, as introduced, strengthens existing safeguards. In line with the Royal Commission and QFCC, the bill expands the range of disqualifying offences to include:

- bestiality;
- kidnapping of a child;
- kidnapping for ransom of a child;
- child stealing; and
- abduction of a child under 16.

Unlike the proposed opposition amendments, the government bill has regard to avoiding the unintended consequences foreshadowed by the QFCC by making clear that the abduction, child-stealing 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. Currently, they are treated as 'serious offences' under the working with children act. While the royal commission and the QFCC did not recommend the inclusion of these two offences, the government made these changes in response to community concerns and to provide even greater protection for Queensland's children.

In line with our commitment to keep our communities safe, the Palaszczuk government will move amendments during consideration in detail, which will elevate the following offences from serious to disqualifying under the act:

- torture of a child;
- attempt to commit rape of an adult;
- assault with intent to commit rape of an adult;
- cruelty to children under 16;
- trafficking in children; and
- domestic trafficking in children.

We will also designate the following offences as disqualifying offences:

- choking, suffocation or strangulation in a domestic setting; and
- servitude offences if the victim is a child and provide that they are a serious offence if the victim is an adult.

The government will also elevate manslaughter to a serious offence. This recognises that manslaughter can involve a very broad range of factual circumstances ranging from where the offender did not intend to cause any physical harm, let alone cause death, to circumstances where the offender intended to kill or cause grievous bodily harm but is found guilty of manslaughter because of the operation of a partial defence, such as diminished responsibility. We heard this range of offences that fall within manslaughter when we debated the child homicide bill recently in this chamber.

Courts have long acknowledged that manslaughter attracts the widest range of possible sentences of all serious offences on this basis. As a result, it is appropriate that this offence be categorised as 'serious' under the working with children act; to designate the offence of manslaughter as a disqualifying offence would most definitely lead to unintended consequences and cases of injustice. It is the government's intention that the changes to the disqualification framework will commence on 1 July 2019. I will, therefore, be moving further amendments to the transitional arrangements provided for under the bill to ensure that any current blue card holder at commencement who has an historical conviction for one of these new disqualifying offences will be reassessed to determine their suitability and for the protection of children. These cardholders will be required to be reassessed by Blue Card Services on the basis that a negative notice must be issued, unless it is an exceptional case. The cardholder will not be required to cease child related work, but their employer will be notified that the cardholder is being reassessed due to recent law changes.

I would now like to foreshadow additional amendments which I will move during consideration in detail which will introduce a new framework for applicants and cardholders who have been convicted or charged with a serious offence. The amendments will ensure that people charged or convicted of a serious offence are unable to work with children until they have been issued with a blue card. The amendments provide that:

- a blue card holder who has been charged with a serious offence will have their blue card suspended; and
- an applicant will have their application withdrawn if the person is charged with a serious offence. Blue Card Services would not be required to make a decision in relation to a suspended cardholder until the charge is finalised or deal with an application while the charge is still pending.

The amendments also introduce, as an interim arrangement until no-card no-start commences, that an applicant with a conviction for a serious offence must not commence paid child related work until their application has been assessed and a blue card issued.

Moving back to the statement of reservation, I note that the opposition members of the committee objected to the retention of the eligibility declaration process. This process has existed for many years. It allows a disqualified person who has been convicted of a disqualifying offence but sentenced to no term of imprisonment to be declared eligible to apply for a blue card. Let me be clear about how this process actually operates. For the purposes of the blue card system, a term of imprisonment is broadly defined to include actual and all types of suspended periods of imprisonment and intensive correction orders. An eligibility declaration can only be issued if the chief executive is satisfied that the case is an exceptional one in which the best interests of children would not be harmed by allowing the person to apply for a blue card.

A person cannot work with children while Blue Card Services assesses an eligibility declaration application. The decision of whether to grant or refuse an eligibility declaration is not subject to review. Where an eligibility declaration is issued, a blue card application can then be made, and if the application is made the blue card must be issued on the basis that the consideration in the eligibility declaration process involved the equivalent of the comprehensive assessment undertaken when a person makes a blue card application.

In their statement of reservation, opposition members point to recommendation 29 of the QFCC's report which calls for the removal of the eligibility declaration process. However, such a statement only tells half the story and neglects to look at the recommendation in its entirety. Can I be clear for everyone in this House. Yes, the QFCC did recommend the removal of the eligibility declaration process. However, in the same recommendation, the QFCC also specifically acknowledged and recommended the continuation of the chief executive's discretion for applications involving a conviction for a disqualifying offence where the applicant was not sentenced to a term of imprisonment. In other words, the QFCC recommended the removal of the eligibility declaration process only if there was an avenue for a person convicted of a disqualifying offence with no term of imprisonment still to apply for a blue card.

When members of the opposition state that the QFCC recommended the removal of the eligibility declaration, it should in no way be interpreted as saying that the QFCC recommended it; in fact, it did the complete opposite. It recommended the retention of 'exceptional circumstances', as do many other

stakeholders in relation to this act and how it applies. The QFCC's recommendation goes to a process. It recommends that the process cease but that the eligibility still be allowed. It is just a different process for considering those individuals applying who are otherwise disqualified. However, as I said, this up-front offence under the bill, the offence which prohibits a disqualified person from making a blue card application, was retained. The declaration and the offence go hand in hand. If we are to remove one, we need to remove both.

The bill also strengthens safeguards by removing the ability for a person to undertake child related work without a working with children clearance if they meet one of the exemptions provided for under the working with children act. These include, for example, if the person is a volunteer parent, in certain circumstances, or is a volunteer under the age of 18. Currently, such a person can undertake child related work which is not considered regulated employment under the working with children act when the person has been issued with a negative notice or is subject to other high-risk orders or reporting obligations. Importantly, the bill responds to a recommendation of the QFCC by introducing a new category of persons—a 'restricted person'.

The definition of 'restricted person' captures negative notice holders; persons with a suspended working with children authority; disqualified persons; and persons who have been charged with a disqualifying offence. A restricted person is prohibited from relying on the exemptions to which I referred earlier in order to work with children.

I note that stakeholders support these amendments, which are consistent both with the QFCC and royal commission recommendations, but raised concerns about the difficulties in giving effect to the requirement in practice. In particular, stakeholders were concerned about how an employer will be able to identify a restricted person. I note that resources will be developed in consultation with stakeholders to support organisations to better identify and risk-manage a restricted person.

Finally, I turn to the outstanding element of the statement of reservation by the opposition members of the committee. Opposition members pointed to the fact that Blue Card Services does not consider applicants' international criminal history. Currently, upon application for a blue card, Blue Card Services undertakes a national criminal history check in respect of the applicant. The LNP Commonwealth government has highlighted the complexity in relation to obtaining international records for applicants for working with children checks and that it would explore avenues through which international records could become more accessible, but the Commonwealth is yet to provide a solution to how we do this and share this information with states.

Gaining access to records of other countries will depend on factors such as the political relationship of the country and Australia, respective privacy frameworks, record-keeping practices and information technology capabilities. It is important to note that, although the QFCC recommended the implementation of international criminal history checks and this government supports the recommendation, there are significant issues to overcome before operationalising this recommendation.

To legislate now not only would be premature but also would result in delays of the no-card no-start system because significant resources would need to be diverted to implement the recommendation. Further, without federal cooperation, to implement now would simply result in a self-disclosure system, and any person who is intent on harming children will not self-disclose serious offences against children.

The Queensland Law Society notes that implementing international criminal history checks may prove to be operationally unviable. In the view of the Queensland Law Society, the potential for cost, delay, translation, jurisdictional variations in offences and inaccuracy of international criminal history checks would render this process impractical, including the obvious problems with looking behind a conviction. In light of the issues raised, the government will continue to examine the issue of international criminal history checks but will not make amendments for such checks in this bill.

In conclusion, the amendments made by this bill and the government's proposed amendments for consideration in detail are evidenced based and will further strengthen and improve the operation of the system to enhance the protection of children in line with the government's commitment to keep communities safe. I commend the bill to the House.