Speech By

Michael Berkman

MEMBER FOR MAIWAR

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CHILD PROTECTION REFORM AND OTHER LEGISLATION AMENDMENT BILL

Mr BERKMAN (Maiwar—Grn) (12.33 pm): I rise to make my contribution on the Child Protection Reform and Other Legislation Amendment Bill. The first broad observation I want to make is that much of this bill takes us in generally the right direction, enjoys the support of a number of submitters and proposes some very welcome reform. In particular, improving children's capacity to engage with the child protection system and participate in planning that affects their lives is a great step forward. We also welcome the strengthening of requirements to take active efforts to apply the Aboriginal and Torres Strait Islander child protection principles.

Submitters have provided some useful and important feedback on these issues that I will touch on later, time permitting, but first I want to speak to some concerns we have about the proposed amendments to the working with children checks or the blue card system, as we know it, and unintended consequences of the proposed reforms that were raised by a number of submitters. The proposed changes to the blue card system will most significantly allow the chief executive to request domestic violence information from the Police Commissioner where the chief executive believes a domestic violence order, a DVO, may have been made against the person. Once the chief executive is aware of domestic violence information, they are required to consider that information in their decision-making around blue cards.

The Women's Legal Service expressed concerns that the changes will create a number of unintended and perverse outcomes, some of which have already been referred to in the debate so far. It is concerned that the changes will make domestic violence victim survivors more reluctant to involve authorities where the perpetrator's ability to support them and their family would be compromised by a DVO. The changes may reduce the likelihood of DVO applications being resolved by consent without admission which is to the detriment of women who experience domestic violence and then have to argue the case in court. It also expressed grave consequences where police misidentify a domestic violence perpetrator. On the issue of misidentification, its submission states—

> WLSQ is aware that there is a concerningly high proportion of women being misidentified as respondents. This misidentification results in domestic violence orders being placed upon women who are not the primary aggressor but might have lashed out in self-defence or the primary aggressor has successfully manipulated the narrative when the police and other authorities respond to an incident.

Beyond that, the submission from Sisters Inside also points to research indicating that women are routinely being misidentified as perpetrators of domestic and family violence and named as respondents to protection orders and that this is more prevalent in Aboriginal and Torres Strait Islander and culturally and linguistically diverse communities. The ramifications for a misidentified victim survivor are already severe and would be gravely compounded by these proposed changes to the blue card system.

The changes we are looking at must be considered against the backdrop of disproportionate criminalisation of Aboriginal and Torres Strait Islander people. We cannot ignore the fact that the amendments to the blue card system and the unintended consequences raised by submitters will

disproportionately affect Aboriginal and Torres Strait Islander people. They will disproportionately deprive First Nations communities of employment opportunities that require a blue card. I discussed these issues just last week with elders at the COOEE Indigenous Family and Community Education Centre when we stopped in for a visit. These barriers to employment are very real and well recognised and this is clear in the evidence before the committee. Beyond that, the QFCC's recent review of the working with children system set out its concerns that the blue card system is a major barrier to employment and kinship care arrangements.

The committee report on this bill and the government's own response to that report recognise the same, but the government's response offers no new or meaningful solutions on this issue. I will say that the member for Traeger deserves recognition for his ongoing efforts to address the issues around blue cards in First Nations communities, particularly those in his electorate, and the barriers that this process creates, but this is work that the government should be doing. It cannot fall to the crossbench or to committee inquiries into private member's bills to find solutions to such complex problems. The government needs to do the work to resolve these issues, to address disproportionate impacts on First Nations people and to remove those barriers, but instead we are being asked to support amendments in this bill that will create new barriers, that will raise the bar, that will only put employment opportunities further out of reach for some people who already face significant disadvantage.

Whatever other positive changes this bill contains, we cannot support these specific amendments given those unintended consequences. Some submissions suggested constructive amendments to soften the impact while allowing for consideration of domestic violence information.

ATSILS, the Aboriginal and Torres Strait Islander Legal Service, noted that the bill requires the chief executive to have regard to circumstances of any DV information in blue card checks. They suggested that this should be amended to give the chief executive a discretion as to how this domestic violence information is dealt with simply by changing 'must' to 'may'. ATSILS and LawRight recommend in their respective submissions that the bill be amended to ensure domestic violence information is only taken into account where it supplements consideration of criminal charges, or at least require that where domestic violence information is considered in a blue card application this is done by someone with specific training and expertise in domestic violence.

There were a number of other submitters, including the QFCC and the Women's Legal Service, who noted the importance of relevant domestic and family violence training and expertise for those people responsible for processing blue card applications. Additional resourcing for this purpose would allow more nuanced consideration of the circumstances of any domestic violence information and proper consideration of the gendered nature of domestic violence when making a determination.

Before I turn to other issues, I want to put on the record concerns communicated to the committee by LawRight about misrepresentation of their evidence in the committee report. This is not the first time I have had to raise concerns about the misrepresentation or oversimplification of witness testimony in committee reports. LawRight is referred to in section 2.1.1 of the committee's report which states that LawRight supports the inclusion of domestic violence information in blue card assessments. The committee received correspondence that sought to clarify their position and evidence asking that LawRight be removed from that paragraph. The report was not amended to reflect this request so I table a copy of that letter and I raise this issue here to ensure LawRight's concerns are properly reflected on the record.

Tabled paper: Letter, dated 16 November 2021, from LawRight to the Community Support and Services Committee 616.

Turning to the changes around active efforts to apply the Aboriginal and Torres Strait Islander Child Placement Principle, these changes should be applied to good effect and are welcome, but they also could go further. ATSILS recommended in its submission that the amendments requiring active efforts should include a definition detailing steps which should be taken to meet that requirement. Submitters also expressed concern that decision-making under the Child Protection Act does not require evidence that active efforts have been made. PeakCare's submission suggested, and QCOSS suggested similarly, that a decision should not be able to be made by a court unless it is satisfied that the chief executive or delegated decision-maker has made and can evidence active efforts to comply with the child placement principle. The department's response to this was that it would be inappropriate to remove the court's discretion, especially in urgent circumstances where a child was at risk of harm. I would suggest that this concern could be accommodated by creating an exception for urgent decisions or where there is risk of harm to the child.

Around the provisions to do with case plan review, it was noted in the report that QLS and ATSILS raised concerns about the chief executive's power to refuse to review a case plan and emphasised the importance of case plan reviews to address any concerns a child may have. The department's response simply notes that the purpose of the amendments is to align the rights of children with or without a

long-term guardian and that the decision to review the case plan can be challenged before QCAT. The response does not address the more fundamental question of whether the chief executive should be able to refuse a child's request for a case plan review, nor does it engage with the information in the submission from Create Foundation that almost half of all children with a case plan do not know about it and less than 60 per cent of those who knew about their case plan were involved in its development. We would like to see a child's right to a case plan review enshrined in legislation.

The last point I will turn to is the need for improved access to independent legal advice. This is a concern not only in this sphere but also in various other areas of legislation. Submitters, particularly Sisters Inside, noted that some changes proposed by the bill, including the expansion of the reviewable case plan decision framework, will be of limited benefit unless children and their advocates have better access to independent legal advice. This requires far better funding for organisations like Sisters Inside, ATSILS, Legal Aid Queensland and the countless other community legal centres that provide this support. I take the opportunity to implore the government to increase funding to these independent legal advocates.