Speech By

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MEMBER FOR MAIWAR

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CHILD SAFE ORGANISATIONS BILL; WORKING WITH CHILDREN (RISK MANAGEMENT AND SCREENING) AND OTHER LEGISLATION AMENDMENT BILL

Mr BERKMAN (Maiwar—Grn) (2.14 pm): I rise to make my contribution on the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill and the Child Safe Organisations Bill. These are both very important pieces of legislation. I note that, once again, they are being debated in cognate. I am genuinely glad, even relieved, to see both of these bills coming back for debate before the end of this session of parliament, but it cannot become the norm for the government to put up essentially completely unrelated bills for debate together.

In the limited time available to me, I have to skip over detailed consideration of the Child Safe Organisations Bill, but I will say briefly that we support this bill. While we support it, I note the concerns raised by Queensland Foster and Kinship Care about any unintended effect of the bill on family-based care, which is distinct from a professional service environment. I also note that many stakeholders have called for additional resourcing and support for the community service organisations to implement the changes. With that, I will turn to the long-overdue changes to the working with children risk management and screening regime, otherwise known as the blue card system.

Blue Card Services plays a vitally important role in the community, but it has long been recognised that the legislative framework and its implementation have been a bit of a mess. We have seen lengthy delays and outcomes that disproportionately punish disadvantaged and vulnerable people. The Greens absolutely support this bill, but it is important in considering these changes to reflect on what has made them necessary and the people who have borne the brunt of the existing system.

Under the current test, negative notices are meant to be issued in exceptional cases where it would not be in the best interests of children for a working with children clearance to be issued. That test has next to no criteria and has been applied inconsistently. Without any criteria to establish what is in the best interests of children, decision-makers have effectively applied their own moral lens, which has not necessarily been founded on the advice of experts or relevant research and at times has strayed towards upholding stereotypes and tropes to the detriment of people who have overcome huge barriers to improve their life circumstances. Aboriginal and Torres Strait Islander people face higher rates of criminalisation and systemic disadvantage arising from colonisation, dispossession, poverty and intergenerational trauma. Under the existing scheme, consideration of that context has been at the individual discretion of decision-makers and the effect has been to entrench this systemic disadvantage.

Professor Tamara Walsh has helpfully provided an analysis of published decisions in QCAT. Although these are just a snapshot from those applicants who have had the resources and capacity to see the review process through, they still offer a helpful reference point for us. Professor Walsh points out that tribunal members adopted markedly different approaches, especially in cases concerning past drug use and domestic and family violence. In some cases past drug use was seen as an automatic reason to deny a blue card, while in others the person's ability to overcome these issues was seen as a likely positive influence.

There were instances where women who were subjected to domestic and family violence—women who are themselves victim-survivors—were denied blue cards because of an apparent failure to protect their own children from the perpetrator. I think everyone would agree that is absolutely horrific. Additionally, contrary to the foundational principle of a person being considered innocent until proven guilty, many people have received negative notices purely because of charges being laid including charges that do not have any direct relevance to working with children.

Sisters Inside provided an important perspective in their submission to the committee. They reflected on the difficulties that women accessing their service have in obtaining blue cards, noting that in their experience the department has refused applications in the vast majority of cases where a person has served a term of imprisonment or has a conviction for any indictable offence, again, even where those offences have no direct relevance to working with children. They also reflect on their own difficulties as an organisation that prioritises employing individuals with lived prison experience and that they are generally unable to do so within their programs that support criminalised girls and women and their children.

The effect of the current regime is that a young person might grow up in resi care, be subjected to overpolicing and criminalisation within that setting, be funnelled into the adult justice system and, even if they turned their life around, never be able to work in the environment they grew up in. This process has prevented individuals from meaningfully participating in society and limited the quality of services provided by community organisations that benefit enormously from staff with relevant lived experience. In light of all of that, we are absolutely supportive of the changes in this bill and look forward to monitoring their implementation. The changes mean that a negative notice will be issued where a person over 18 has been convicted of a disqualifying offence and sentenced to imprisonment and that all other applications will be subject to the new discretionary framework.

The primary question is no longer whether issuing a blue card is in the best interests of the child but instead whether the applicant presents a real and appreciable risk to the safety of children. In deciding if a person is a risk to the safety of children, the decision-maker is obliged to conduct a risk assessment that involves considering all of the available information, with a mechanism available to seek specialist advice from an advisory committee and appointed expert advisers. This mechanism is particularly important and I hope that we see it frequently exercised under the new system. Decision-makers have had so little guidance in the enormous task of deciding what is in the best interests of children and this has resulted in an overly cautious, moralistic approach. While a cautious approach is obviously important when it comes to the safety of children, decisions have not been founded on actual expert evidence.

Having considered all of the available information, the decision-maker then applies the reasonable person test asking whether a reasonable person would allow their child to have direct contact with the applicant while engaged in child related work. To assist, there are clear risk assessment criteria involving consideration of the nature, gravity and circumstances of the conduct; the relevance of the conduct; when it occurred; conduct since then; any pattern of concerning behaviour; and, where a victim is involved, their age, vulnerability and the person's relationship with them.

For applications made by First Nations people, the decision-maker is obliged to consider the impacts of systemic disadvantage and intergenerational trauma and the historical context and limitations on access to justice. While this is a positive change, I would note that it still adopts a deficit focused framing and is not coupled with mandatory consideration of the protective factors that First Nations people can bring to their work and workplaces, including through cultural safety and strength.

The bill expands the scope of regulated employment and businesses and removes some exemptions, meaning that there will be increased pressures on the blue card system with potential consequences for processing times that are already lengthy. Concerns have been raised that the expanded scope is not necessary and will lead to unintended consequences. In saying that, it is important that we have a robust, preventative system and I am pleased to see the expansion of regulated industries to include justice or detention services where staff may have access to young people who are particularly disadvantaged and vulnerable.

The bill also removes the requirement for kinship carers to hold a blue card. However, these changes will not take effect until a new fit-for-purpose screening process is put in place. It is unclear as yet what kind of timeframe this is expected to happen in and the changes are already well overdue. I hope that this process is progressed as a matter of urgency so that these important reforms can commence and First Nations children have greater access to culturally appropriate care within their communities. The Human Rights Commission in its submission, supported by the recommendation of the committee, also suggests that this does not go far enough and that members of the same household should also be exempt from obtaining blue cards. We agree with that.

In all of the grandstanding about the importance of keeping children and young people safe when accessing services in organisations, it is hard to forget that just over three weeks ago this House voted to remove the principle of detention as a last resort—a change that will directly lead to more children being locked up in unsafe conditions and subjected to pat downs and strip searches, use of force and limited access to their families and communities. When we stand here as lawmakers and profess a shared commitment to protecting children, we should be clear about which children we mean and who is excluded. All children and young people deserve safety and support to lead meaningful lives. In supporting this bill, I implore everyone here to apply this same principle each time we are asked to vote on laws that affect children in this state.