Parliamentary Committees



Child Protection Reform and Other Legislation Amendment Bill 2021

Report No. 12, 57th Parliament
Community Support and Services Committee
November 2021

Community Support and Services Committee

Chair	Ms Corrine McMillan MP, Member for Mansfield
Deputy Chair	Mr Stephen Bennett MP, Member for Burnett
Members	Mr Michael Berkman MP, Member for Maiwar
	Mr Jon Krause MP, Member for Scenic Rim
	Ms Cynthia Lui, Member for Cook
	Mr Robert Skelton, Member for Nicklin

Committee Secretariat

Telephone	+61 7 3553 6623
Fax	+61 7 3553 6699
Email	CSSC@parliament.qld.gov.au
Technical Scrutiny Secretariat	+61 7 3553 6601
Committee webpage	www.parliament.qld.gov.au/CSSC

Acknowledgements

The committee acknowledges the assistance provided by the Department of Children, Youth Justice and Multicultural Affairs, the Department of Justice and Attorney-General, the Department of Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, the Torres Shire Council and the communities of Mount Isa, Townsville, Cairns and Thursday Island.

All web address references are current at the time of publishing.

Contents

Abbreviations

ATSILS	Aboriginal and Torres Strait Islander Legal Service
BCS	Blue Card Services
Bill	Child Protection Reform and Other Legislation Amendment Bill 2021
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women 1979
Charter of Rights	Charter of Rights for children in care
committee	Community Support and Services Committee
CP Act	*Child Protection Act 1999*
department	Department of Children, Youth Justice and Multicultural Affairs
DJAG	Department of Justice and Attorney-General
DSDSATSIP	Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
DSA	*Disability Services Act 2006*
ECHR	European Convention on Human Rights
former department	Department of Child Safety, Youth and Women
HRA	*Human Rights Act 2019*
ICCPR	International Covenant on Civil and Political Rights
Intergovernmental Agreement	Intergovernmental Agreement for a National Exchange of Criminal History Information for People Working with Children
LSA	*Legislative Standards Act 1992*
OPG	Office of the Public Guardian
PeakCare Queensland Inc	PeakCare
QATSICPP	Queensland Aboriginal and Torres Strait Islander Child Protection Peak
QCAT	Queensland Civil and Administrative Tribunal
QCEC	Queensland Catholic Education Commission
QCOSS	Queensland Council of Social Services

QCPCOI	Queensland Child Protection Commission of Inquiry
QFCC	Queensland Family and Child Commission
QFCC blue card report	QFCC, Keeping Queensland's children more than safe: Review of the blue card system, 2017
QFCC's foster care report	QFCC, Keeping Queensland's children more than safe: Review of the foster care system report, 2017
QFKC	Queensland Foster and Kinship Care
QLS	Queensland Law Society
Royal Commission	Royal Commission into Institutional Responses to Child Sexual Abuse
SFCF reforms	Supporting Families Changing Futures reform program
UNCRPD	Convention on the Rights of Persons with Disabilities 2006
UNDRIP	UN Declaration on the Rights of Indigenous People
WLSQ	Women's Legal Service Qld
WWC Act	*Working with Children (Risk Management and Screening) Act 2000*
WWCC	Working with Children Check
WWCC NRS	Working with Children Check National Reference System
WWCC Report	Working with Children Check Report

Chair's foreword

This report presents a summary of the Community Support and Services Committee's examination of the Child Protection Reform and Other Legislation Amendment Bill 2021.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament. The committee also examined the Bill for compatibility with human rights in accordance with the *Human Rights Act 2019*.

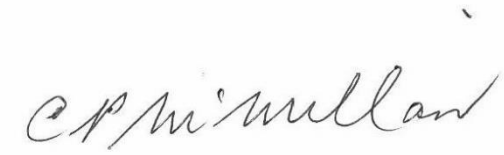
It is my firmly held belief that all children should be afforded the opportunity to have a voice in decisions that are made about them and their lives, therefore, it is incumbent on us as a Government to facilitate children's views and wishes in the safest possible way.

Involving young people in the decisions about their lives not only empowers them, it allows decision-makers to make better and more informed care arrangements.

Whilst the committee notes the concerns from some stakeholders with respect to reforms to the blue card assessments, the safety of children in care remains of paramount importance to this Government.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill and attended public hearings to meet and speak with the committee. I also thank Members of Parliament who assisted the committee and attended public hearings, our Parliamentary Service staff, the Department of Children, Youth Justice and Multicultural Affairs, the Department of Justice and Attorney-General, the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships, the Torres Shire Council, and the communities of Mount Isa, Townsville, Cairns and Thursday Island who assisted the committee during the course of the inquiry.

I commend this report to the House.



Corrine McMillan MP

Chair

Recommendations

1 Introduction

1.1 Role of the committee

The Community Support and Services Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 26 November 2020 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[1]

The committee's areas of portfolio responsibility are:

- Communities, Housing, Digital Economy and the Arts
- Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships
- Children, Youth Justice and Multicultural Affairs.

The functions of a portfolio committee include the examination of bills and subordinate legislation in its portfolio area to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles
- matters arising under the *Human Rights Act 2019* (HRA)
- for subordinate legislation – its lawfulness.[2]

The Child Protection Reform and Other Legislation Amendment Bill 2021 (Bill) was introduced into the Legislative Assembly and referred to the committee on 15 September 2021. The committee is to report to the Legislative Assembly by 12 November 2021.

1.2 Inquiry process

On 17 September 2021, the committee invited stakeholders and subscribers to make written submissions on the Bill. The committee received 18 submissions.

The committee received a written briefing on the Bill on 23 September 2021 and a public briefing about the Bill from the Department of Children, Youth Justice and Multicultural Affairs (department) and Department of Justice and Attorney-General (DJAG) on 27 September 2021. A transcript is published on the committee's web page; see Appendix B for a list of officials.

The committee received written advice from the department in response to matters raised in submissions.

The committee held a public hearing in Brisbane on 15 October 2021, and hearings in North and Far North Queensland between 18 and 21 October 2021 (see Appendices C-G for a list of witnesses).

The submissions, correspondence from the department and transcripts of the briefing and hearings are available on the committee's webpage.[3]

During the course of the inquiry the committee heard compelling evidence from people directly experiencing the child protection system in Queensland. The committee is particularly appreciative of Mr Jake Shields, Young Consultant, Create Foundation, who spoke to his experiences of care at the public hearing in Brisbane on 15 October 2021:

> Participation is fundamentally important for young people in care. They need to know that they are being listened to and they need to know that they have a say. As a kid in care I sometimes felt like a puppet and

1 *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

2 *Parliament of Queensland Act 2001*, s 93; and HRA, ss 39, 40, 41 and 57.

3 https://www.parliament.qld.gov.au/Work-of-Committees/Committees/Committee-Details?cid=165&id=4116

> not in control about decisions in my life. No child or young person should feel like that. When I was in care I stopped going to my case plan meetings because I was not included in decisions that were being made and I felt like they were always telling me what I was doing wrong.[4]

1.3 Background to the Bill

Queensland is currently mid-way through the 10-year Supporting Families Changing Futures reform program (SFCF reforms). As part of the SFCF reforms, the *Child Protection Act 1999* (the CP Act) has been progressively amended[5] and reviewed.[6] The explanatory notes to the Bill advise that priority amendments were made through the *Child Protection Reform Amendment Act 2017*, with further amendment to be progressed in subsequent stages.[7]

The *Rethinking rights and regulation: towards a stronger framework for protecting children and supporting families* (the discussion paper) was released by the state government for public comment in 2019. The discussion paper proposed options for reform relating to three key focus areas:

- reinforcing children's rights in the legislative framework
- strengthening children's voices in decisions that affect them, and
- reshaping the regulation of care.[8]

The options in the discussion paper are intended to address outstanding recommendations from the Queensland Child Protection Commission of Inquiry (QCPCOI), the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), the Queensland Family and Child Commission (QFCC) *Keeping Queensland's children more than safe: Review of the foster care system report* (QFCC's foster care report), and previous departmental consultation. The options in the discussion paper also considered obligations prescribed by the HRA and legislative frameworks in other jurisdictions.[9]

When introducing the Bill, Hon Leanne Linard MP, Minister for Children and Youth Justice and Minister for Multicultural Affairs stated the proposed amendments to the CP Act are part of the government's 10-year Supporting Families Changing Futures reform program, and were informed by the 2019 *Rethinking rights and regulation: towards a stronger framework for protecting children and supporting families discussion paper*.[10]

The proposed reforms were themselves generated by the recommendations from the QFCC's foster care report, the 2013 QCPCOI and the Royal Commission into Institutional Responses to Child Sexual Abuse.[11]

The Bill proposes to support or address outstanding recommendations from the Royal Commission (recommendations 8.17, 8.18, 8.19, 8.20, 8.21, 8.22 and 8.23, and Criminal Justice Report, recommendation 8) and QFCC's foster care report (recommendation 11), as well as proposals from stakeholders gathered during consultation.[12]

---

4 Public hearing, Brisbane, 15 October 2021, p 2.

5 *Child Protection Reform Amendment Act 2014, Director of Child Protection Litigation Act 2016, Child Protection Reform Amendment Act 2016, Child Protection (Mandatory Reporting—Mason's Law) Amendment Act 2016, Child Protection (Offender Reporting) and Other Legislation Amendment Act 2017, Child Protection Reform Amendment Act 2017*.

6 In 2014, 2016 and 2017.

7 Explanatory notes, p 1.

8 Explanatory notes, p 1.

9 Explanatory notes, p 1.

10 Queensland Parliament, Record of Proceedings, 15 September 2021, pp 2672-2673.

11 Queensland Parliament, Record of Proceedings, 15 September 2021, p 2673.

12 Explanatory notes, p 5.

1.4 Policy objectives of the Bill

The objectives of the Bill are to 'better support children and young people in care, and streamline, clarify or improve processes', to be achieved by amendment to the CP Act in three reform areas:

- reinforcing children's rights in the legislative framework
- strengthening children's voices in decisions that affect them
- streamlining, clarifying and improving the regulation of care.[13]

The Bill also proposes amendments to the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act) by:

- obtaining and considering domestic violence information
- facilitating Queensland's participation in the Working with Children Check National Reference System (WWCC NRS)
- simplifying and streamlining the categories of regulated employment and regulated business that deal with licensed care services to better reflect the contemporary service delivery model used by licensees in discharging their functions.[14]

The Bill also proposes to resolve technical issues by amendment to the *Adoption Act 2009* in relation to delegations under the Australian Government's *Immigration (Guardianship of Children) Act 1946* (Cth).[15]

1.5 Government Consultation on the Bill

As described above, consultation was undertaken by the former Department of Child Safety, Youth and Women (former department) in 2019 to the discussion paper, Rethinking rights and regulation: towards a stronger framework for protecting children and supporting families.[16] The former department received 54 written submissions to the discussion paper. In addition, the former department conducted public surveys through the Get Involved and the Youth eHub platforms. The explanatory notes report that 181 people responded to the Get Involved survey, and a further 210 young people responded to the Youth eHub survey.[17]

The former department also undertook 10 targeted face-to-face consultation sessions attended by over 150 people including children and young people, parents and families, carers, peak bodies, service providers, legal professionals and departmental staff.[18]

The explanatory notes state in regard to additional consultation by the department during 2020 and 2021:

> Separate consultation meetings also took place with the Truth, Healing and Reconciliation Taskforce and the First Nations Council, as well as PeakCare's Quality Collaboration Network (including representatives from Life Without Barriers, UnitingCare, Multicap, Anglicare Southern Queensland, Mamre Association Inc, Churches of Christ in Queensland, Care Connect, PCYC Queensland and Centacare Brisbane) and QATSICPP.
>
> The OPG, Legal Aid Queensland and the Director of Child Protection Litigation were consulted through targeted workshops.

13 Explanatory notes, p 1.

14 Department, correspondence, 23 September 2021, attachment, pp 3, 5.

15 Department, correspondence, 23 September 2021, attachment, p 6.

16 Explanatory notes, p 27.

17 Explanatory notes, p 27.

18 Explanatory notes, p 27.

> The QFCC, OPG, Magistrates Court, President of the Childrens Court and Queensland Civil and Administrative Tribunal (QCAT) were consulted on draft policy proposals for legislative amendment. In July and August 2021, the department also undertook further targeted consultation with stakeholders on the detailed proposals for legislative reform and a draft Bill. This included QATSICPP, the CREATE Foundation, PeakCare, QFKC [Queensland Foster and Kinship Care], the Queensland Council of Social Services (QCOSS), QFCC, the Queensland Teacher's Union and the Family Inclusion Network. In August 2021, these stakeholders were also advised of the proposed changes to licensed care services and reviewable decisions.
>
> In August 2021, consultation on the amendments relating to the blue card system, including the amendments to facilitate Queensland's participation in the WWCC NRS and the domestic violence information sharing arrangements, was undertaken through an information sharing session with a range of key organisations. This included the QFKC, Aboriginal and Torres Strait Islander Legal Service (ATSILS), PeakCare, QCOSS, Family Day Care Association Queensland, Independent Schools Queensland, Catholic Schools Queensland, Anglican Diocese of Brisbane and Scouts Queensland.[19]

As advised by the department, the consultation process received strong stakeholder support for further legislative reform. Key stakeholders expressed their view that proposals relating to children's rights and voices should be progressed as a priority.[20]

1.6 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

Recommendation 1

The committee recommends the Child Protection Reform and Other Legislation Amendment Bill 2021 be passed.

[19] Explanatory notes, pp 27-28.

[20] Department, correspondence, 23 September 2021, attachment, p 2.

> I dream of every young person having a smile on their face knowing that they have control over their own life. … nothing about us without us. Thank you.
>
> Mr Jake Shields, Young Consultant, Create Foundation[21]

2 Examination of the Bill

This section discusses issues raised during the committee's examination of the Bill.

2.1 Proposed amendments to the *Child Protection Act 1999*

Clauses 6 to 68 of the Bill propose to reinforce children's rights:[22]

- by amendment to support Aboriginal and Torres Strait Islander children and families
- to reinforce a human rights focus in the legislation and inserting additional rights in the Charter of Rights for children in care
- to ensure that children are regularly informed of these rights in a way which is appropriate for them to understand, and
- to introduce participation principles into the CP Act.[23]

The explanatory notes advise that feedback received during the 2015-2017 review of the CP Act was consistent with the findings of other inquiries and reviews. During this consultation process, stakeholders recognised the importance of the legislative framework for protecting children's rights and felt that many children in care do not know or understand their rights or how to exercise them. The CREATE Foundation's 2018 national survey of children in care published in the report *Out of Home Care in Australia: Children and Young People's Views After Five Years of National Standards*, found that only about 30 percent of children in care in Queensland knew about the Charter of Rights for Children in care (Charter of Rights).[24]

The Bill proposes to amend the CP Act in respect to expanding the broader purpose, by amending the long title of the Act and to introduce participation principles into the CP Act,[25] and by increasing the list of rights in the Charter of Rights.[26] The reforms were supported by stakeholders.[27] The committee received generally positive feedback to the proposed reforms to the purpose of the CP Act. For example, Ms Carly Jacobitz, Director, Life Without Barriers stated:

> Children and young people should be given the opportunity to have all of the information that is relevant to their world be that education, be that culture, be that family connection. Then it is incumbent on us to facilitate those views and wishes in the safest way possible.[28]

2.1.1 Clarification of general principles in determining the best interests of the child

Section 5A of the CP Act provides that the main principle for administering the Act is that the safety, wellbeing and best interests of a child, both through childhood and for the rest of the child's life, are

---

21 Public hearing transcript, Brisbane, 15 October 2021, p 1.

22 Ms Claire Hurst, Acting Executive Director, Strategic Policy and Legislation Strategy, Department of Children, Youth Justice and Multicultural Affairs, public briefing transcript, Brisbane, 15 October 2021, p 3.

23 Explanatory notes, pp 3-4.

24 Explanatory notes, p 8.

25 Explanatory notes, p 8.

26 Explanatory notes, p 10.

27 See for example submissions 6, 10, 13, 14, 15, 16, 17.

28 Public hearing transcript, Cairns, 20 October 2021, p 3.

paramount. Section 5B of the CP Act sets out general principles for ensuring the safety, wellbeing and best interests of a child. Clause 8 of the Bill proposes to amend section 5B to clarify that the general principles set out in the section are relevant to making decisions relating to ensuring the safety, wellbeing and best interests of a child.[29] Clause 8 also provides that a child can express views about what is, and is not, in their best interests.[30]

2.1.1.1 Stakeholders views and department response

Stakeholders were generally supportive of the proposed amendment to principles of the CP Act that allow children in care to have a greater say in decisions that affect them so that their care can be better tailored to suit their needs. Mrs Sandra Oui expressed this sentiment at the Townsville public hearing:

> It is about making sure our children have a voice. It is about making sure that when their voice is wanting to be heard someone is going to be there to give them that 100 per cent support that they are comfortable with. Like I said, we all come from different diverse cultural backgrounds and one shoe might fit one person but not necessarily fit another person.[31]

According to Dr Joseph McDowall, Executive Director, Create Foundation, child protection authorities 'should engage with children and young people to develop meaningful and respectful relationships' and encourage the child to actively participate in case meetings.[32] He added;

> What [the Bill proposes] in terms of allowing the young person to have some control over that meeting, to feel like they are being respected, that it is meaningful, is applying that principle. I think that would be a wonderful outcome.[33]

The Queensland Council of Social Service (QCOSS) and PeakCare Queensland Inc (PeakCare) submitted that the amendment should be strengthened to include a definition of 'best interests' to be a less subjective concept. These stakeholders also suggested that decision-makers should be required to provide an explanation of how they applied the concept of 'best interests' of the child to their decision and actions.[34]

Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) suggested the language of the provision be strengthened so that the best interests of the child 'must be considered as relevant'.[35] QATSICPP submitted that section 5B of the CP Act should be further amended to include Aboriginal and Torres Strait Islander communities' participation in determining the best interests of an Aboriginal and Torres Strait Islander child.[36] This need was echoed by Mr Faisal Khan at the Mount Isa public hearing:

> We need cultural staff because, at the end of the day, there are certain things—and please do not get me wrong: we cannot convey to the kid what a culturally appropriate staff member can convey, because they can talk about the issues much more openly than us.[37]

29 Explanatory notes, p 10.

30 Explanatory notes, p 31.

31 Public hearing transcript, Townsville, 19 October 2021, p 8.

32 Public hearing transcript, Brisbane, 15 October 2021, p 4.

33 Public hearing transcript, Brisbane, 15 October 2021, p 4.

34 Submissions 8 and 12.

35 Submission 10, p 6.

36 Submission 10, p 14.

37 Public hearing transcript, Mount Isa, 18 October 2021, p 9.

To stakeholders' suggestions concerning the definition of 'best interests', the department stated:

> What is in the bests interests of a child will vary significantly from child to child, and in different circumstances for the same child. There is a risk that prescriptively defining 'best interests' will limit flexibility in considering the needs of each child, at each point of contact with the child protection system. Sections 5A and 5B instead provide a principles-based approach, allowing for responses to be tailored to the individuality of each child.[38]

Similarly, the department advised that; 'A principles-based approach under section 5B can be tailored to the needs and circumstances of each child and is therefore preferred instead of a prescriptive approach with the use of the word 'must''.[39]

In terms of inclusion of Aboriginal and Torres Strait Islander communities in determining the best interests of an Aboriginal and Torres Strait Islander child, the department noted the cultural rights of children would be protected under clause 66 of the Bill, which intends to amend the Charter of Rights (refer to section 2.1.2 below).[40]

2.1.1.2 Committee comment

The committee encourages the participation of children in care in decision-making that affect them. This may include exploring mediums such as choosing which adults attend the meeting, an opportunity to contribute to the agenda of the meeting and an opportunity to chair the meeting where appropriate.

2.1.2 Expanded rights of children

The rights of children enshrined in the Charter of Rights would expanded by the Bill at clause 66 to include rights relating to culture, religion and language, fairness, respect, development of identity, personal belongings, play and recreational activities.

Clauses 29 and 30 propose amendments to ensure children are provided with information about their rights under the Charter of Rights in a way which is appropriate for them to understand. This is intended to ensure children are made aware of their rights and where they can seek help.[41]

2.1.2.1 Stakeholders views and department response

Stakeholders were supportive of expanding children's rights and improving children's knowledge of their rights within the child protection system.[42] Aunty Ivy Trevallion submitted that greater awareness of their rights would encourage children to speak up when they are in harmful environments:

> I think it is a good idea that children should have a choice of who they live with, but we have to make sure that the children are safe. Safety comes first and foremost. A lot of the times we sweep everything up underneath the carpet. The kids we look after might get abused unbeknownst to anybody, and then they are expected to live their life or continue on with their education. But because of family reasons, and because of the coercive behaviour of the people they live with and feeling that they do not have the choice to say something, they find themselves in that situation where they have to live there until they finish school. That should not be the case. They should have a choice of where they are going to live.[43]

---

38 Department, correspondence, 11 October 2021, attachment, p 8.

39 Department, correspondence, 11 October 2021, attachment, p 9.

40 Department, correspondence, 11 October 2021, attachment, p 9.

41 Department, correspondence, 23 September 2021, p 2; Ms Claire Hurst, Acting Executive Director, Strategic Policy and Legislation Strategy, public briefing transcript, Brisbane, 15 October 2021, p 3.

42 See for example submissions 3, 6, 8, 12.

43 Public hearing transcript, Thursday Island, 21 October 2021, p 5.

QCOSS and PeakCare suggested the Charter of Rights be applied to all children in care or who come into contact with the child protection system.[44]

Mr Jake Shields submitted that the proposed legislation must be widely and consistently applied to be most effective:

> The key is ensuring that this positive legislation is actually put into practice on the ground. We need to see every child safety officer listening to and engaging with young people and involving young people in decisions about their lives. Every regional service centre, residential care house and organisation needs to take young people's participation seriously.[45]

In response, the department stated:

> It is not proposed to expand the Charter to all children who come into contact with the child protection system. Children in care have specific vulnerabilities and needs and require additional rights to be recognised compared to children who may be subject to other types of ongoing intervention with no changes to their custody or guardianship status.[46]

Recommendation 2

The Committee encourages the Department of Children, Youth Justice and Multicultural Affairs to establish a process to ensure there is customary and age-appropriate participation of children in care in decision-making processes that affects them.

2.1.3 Partnership element in decision-making

Clause 9 proposes to amend section 5C of the CP Act to rename the 'child placement principles' the 'Aboriginal and Torres Strait Islander child placement principle'. The clause would also amend the 'partnership' element of the Aboriginal and Torres Strait Islander child placement principle to clarify that it is relevant to both significant decisions about Aboriginal and Torres Strait Islander children and decisions relating to the development and delivery of services provided by the department.

2.1.3.1 Stakeholder views and department response

Adding a partnership element to the Aboriginal and Torres Strait Islander child placement principle was supported by stakeholders.

QATSICPP 'broadly' supported the proposal in Clause 9 to improve legislated description of application of the partnership element of the Aboriginal and Torres Strait Islander child placement principle, stating that; 'The amendment makes clearer the types of activities Aboriginal and Torres Strait Islander people, community representatives and organisations are to participate in'.[47] QATSICPP submitted that the amendment should be strengthened to ensure application of the partnership element is to the level of 'active efforts' and not reliant on solely upon family led decision-making as a mechanism for achieving compliance. The submission suggested there should be further clarity on what constitutes a 'significant decision' as stated in the provisions.[48]

The department advised:

> What is a significant decision may vary from child to child and as such, a prescriptive definition within the CP Act may be limiting and not reflect the needs of all children. The participation principles in clause 11

44 Submissions 8 and 12.

45 Public hearing transcript, Brisbane, 15 October 2021, p 2.

46 Department, correspondence, 11 October 2021, attachment, p 10.

47 Submission 10, p 7.

48 Submission 10, pp 7-8.

apply to all decisions that affect or may affect a child and will provide an opportunity for children to identify what decisions they consider significant.

Consideration will be given to whether further guidance or non-exhaustive examples should also be provided in practice guidance.[49]

2.1.3.2 Committee comment

The committee encourages the department to develop and publish a guide for practitioners within the child protection system, as well as culturally relevant information for carers and children.

2.1.4 Aboriginal and Torres Strait Islander Child Placement Principle to be applied to a standard of 'active efforts'

The CP Act at section 6AA prescribes that a relevant authority must have regard to the child placement principle[50] in relation to an Aboriginal or Torres Strait Islander child when making a significant decision about that child. A relevant authority includes the chief executive, the litigation director and an authorised officer.

Clause 12 of the Bill proposes to amend section 6AA(2)(a)of the CP Act to replace the concept of 'having regard to' the child placement principle with the concept of applying active efforts in relation to the child placement principle. 'Active efforts' is to be defined as meaning 'purposeful, thorough and timely efforts'.[51]

The department advised:

> Clause 12 amends the Act to require 'active efforts' be made to apply the five elements of the Aboriginal and Torres Strait Islander child placement principle. This brings the Act into line with current departmental practice, which can encompass a variety of strategies to ensure Aboriginal and Torres Strait Islander children's connection to family, culture, community and country is maintained.[52]

Ms Claire Hurst, Acting Executive Director, Strategic Policy and Legislation Strategy, Department of Children, Youth Justice and Multicultural Affairs, further described the intended purpose of the provision:

> The notion of 'active efforts', again, puts in place the practice that we currently have in the agency where, in every decision made about a child in reviews of the way in which a child is in care through their journey, the notion of 'active efforts' is brought into that consideration. It is building on the notion of having regard and making it really quite strong and purposeful.[53]

2.1.4.1 Stakeholder views and department response

There was general support from stakeholders to strengthening the application of the Aboriginal and Torres Strait Islander child placement principle.[54] Mr Lindsay Wegener, Executive Director, PeakCare, identified the need for the provision in the Bill:

> Aboriginal and Torres Strait Islander children have the same rights as any Queensland child has, but there are some rights that are specific to their culture and those obligations. If they are in care, there are some additional rights and entitlements that they should have because of their experience entering care. There

---

49 Department, correspondence, 11 October 2021, attachment, p 6.

50 Department, Child Placement Principle, https://www.cyjma.qld.gov.au/foster-kinship-care/training/aboriginal-torres-strait-islanders/child-placement-principle

51 Bill, cl 43.

52 Department, correspondence, 5 October 2021, attachment, p 2.

53 Public briefing transcript, Brisbane, 23 September 2021, p 8.

54 See for example submissions 2, 3, 6, 7, 8, 10, 11, 12, 14, 15, 17.

> are some added entitlements that they have to ensure their cultural safety is maintained or renewed during their contact with the child protection system.[55]

The Queensland Law Society (QLS) supported the proposed amendments but submitted that 'active efforts' should be expanded to include the steps that the relevant decision-maker should take when making a decision that engages section 6AA.[56] ATSILS also submitted the Bill should detail steps to be taken to embed 'active efforts' into policy and procedure.[57] Similarly, QATSICPP suggested the Bill further detail what constitutes 'active efforts'.[58] Ms Jasmine Jevaherjian, Acting Law Reform and Advocacy Officer, knowmore, concurred:

> … with regard to the Aboriginal and Torres Strait Islander Child Placement Principle, although we are supportive of the move from 'having regard to' to the proactive concept of 'active efforts', we also have concerns about what this could look like in practice. Similar to previous submissions and evidence given to the committee, we believe that guidance would be important here.[59]

PeakCare and QCOSS submitted that decision-makers, including the Childrens Court, be prevented from making a decision in relation to an Aboriginal and Torres Strait Islander child unless the decision-maker is satisfied that active efforts have been made, and evidenced, to apply the Aboriginal and Torres Strait Islander child placement principle.[60]

The department noted stakeholders' comments in relation to how 'active efforts' may be applied in practice and stated: 'Any changes to operational policies and/or additional guidance to further embed the provision will be considered during implementation'.[61]

In response to concerns of the application of the proposed provision to decision-makers, the department advised:

> The CP Act currently requires the court to consider the application of the Aboriginal and Torres Strait Islander Child Placement Principle. Section 6AB of the Act requires the court, when exercising any power under the Act in relation to an Aboriginal or Torres Strait Islander child, to have regard to the Aboriginal and Torres Strait Islander Child Placement Principle.[62]

2.1.5 Reviewable decisions

Schedule 2 of the CP Act provides for the decisions that can be reviewed by the Queensland Civil and Administrative Tribunal (QCAT), and provides for who may apply to have the decision reviewed. Under schedule 2, it is a reviewable decision to refuse a request to review a case plan for a child who has a long-term or permanent guardian, other than the chief executive. For a child who is under the guardianship of the chief executive, there is no ability to request review of a case plan or seek external review of a refusal to do so by QCAT.

Clause 24 of the Bill amends section 51V to provide that a child who does not have a long-term guardian may also request that the chief executive reviews their case plan.[63] It also expands the

55 Public hearing transcript, Brisbane, 15 October 2021, p 8.

56 Submission 17, p 3.

57 Submission 3, pp 8-9.

58 Submission 10, p 6.

59 Public hearing transcript, Townsville, 19 October 2021, p 3.

60 Submissions 8 and 12.

61 Department, correspondence, 11 October 2021, attachment, p 4.

62 Department, correspondence, 11 October 2021, attachment, p 4.

63 Bill, cls 24, 67.

decisions that can be reviewed by QCAT to include a decision to refuse a request to review a case plan under section 51V(6).[64] The explanatory notes state:

> The chief executive may decide not to review the case plan if the chief executive is satisfied that the child's circumstances have not changed significantly since the plan was finalised or most recently reviewed, or if it would not be appropriate for another reason. If the chief executive decides not to review the case plan, the decision is reviewable by QCAT.[65]

2.1.5.1 Stakeholders views and department response

Stakeholders were generally supportive of the amending provisions[66] with some submitters providing additional suggestions, as outlined below.

PeakCare submitted that any child in the child protection system, and not just those who have long-term or permanent guardians, should be able to request a review of their case plan.[67]

The QLS and ATSILS were not supportive of clause 24 enabling the chief executive to decide not to review a case plan.[68] ATSILS stated:

> We are of the view that a child's case plan is a significant part of a child's care arrangements that not only allows for their views and wishes to be heard, but it gives provides a plan for contact, placement and care that can add great stability to a child's time in out-of-home care. We are of the view that if requested by a child, it will have been requested for a reason and it would be important that a review of the case plan be done in order to address any concerns the child may have.[69]

In response, the department stated:

> The amendment seeks to align the review rights of children without a long-term guardian with those who do. It aligns with existing provisions under Schedule 2, which provide that it is a reviewable decision to refuse a request to review a case plan for a child who has a long-term or permanent guardian, other than the chief executive.[70]

2.1.6 Definition of kin

Clause 68 of the Bill amends schedule 3 (Dictionary) of the CP Act to clarify the definition of 'kin'. The department clarified that the current definition of kin includes 'a person of significance to the child'.[71] The department advised; 'In response to feedback from our stakeholders, the Bill amends this definition to require, for an Aboriginal or Torres Strait Islander child, that the person must also have a cultural connection to the child'.[72]

The intention of the amended definition of kin is further clarified in the explanatory notes:

> The amended definition is intended to ensure that the determination of who is kin for an Aboriginal or Torres Strait Islander child includes meaningful mapping, identification, support and enabling of people who have a legitimate cultural connection to the child.[73]

---

64 Bill, cl 67.

65 Explanatory notes, p 33.

66 See for example submissions 2, 3, 10, 12.

67 Submission 12, p 5.

68 Submissions 3, 17.

69 Submission 3, p 2.

70 Department, correspondence, 11 October 2021, attachment, p 11.

71 Department, correspondence, 5 October 2021, attachment, p 2.

72 Department, correspondence, 11 October 2021, attachment, p 19.

73 Explanatory notes, p 21.

2.1.6.1 Stakeholder views and department response

Support was expressed for the proposed amendment to the definition of kin.[74] ATSILS submitted:

> We welcome and note the clarification of the definition of "kin" in Schedule 3 of the Child Protection Act 1999 to recognise Aboriginal family structures and Torres Strait Islander family structures, and in so doing, ensuring that for Aboriginal or Torres Strait Islander children, it takes into account kinship relationships for the child according to Aboriginal tradition or Island custom as well as the cultural connection between the person identified as kin and the child.[75]

Aunty Ivy Travallion spoke of the importance of kinship support for Aboriginal and Torres Strait Islander children at the public hearing on Thursday Island:

> [The children] have gone through a lot being removed from their home into an environment, whether they are with families or whether they are with services that are established to provide services. We have a duty of care to these kids irrespective of what they do.[76]

QATSICPP expressed concern that 'the current definition of kin in clause 68 of the Bill continues to include 'another person who is recognised by the child, or the child's family group, as a person of significance to the child', is highlighted in the bill prior to identification of kinship care as a priority and could cause confusion'.[77]

QATSICPP recommended the following amendment to schedule 3, instead of the proposed amendment currently in the Bill:

> "kin, in relation to an Aboriginal and Torres Strait Islander child, means the following persons:
>
> a) a person recognised as kin by those with cultural authority for the child according to Aboriginal tradition or Torres Strait Islander custom.
>
> b) a member of the child's family group who is a person of significance to the child and their family".[78]

QATSCIPP submitted:

> If kinship carers are not immediately identifiable for children when they require out of home care, then families must be consulted to identify people in their network that they would feel confident and comfortable in caring for their children, especially people known to the family and child who could offer safe and supported care whilst kin are located rather than foster care.[79]

In response, the department referred to the explanatory notes, and further stated:

> … the amended definition ensures that for an Aboriginal or Torres Strait Islander child, a person who is recognised by the child, or the child's family group as a person of significance to the child must also be a person with a cultural connection to the child. This intent is further clarified in the accompanying explanatory notes, which provide that the determination of who is kin for an Aboriginal or Torres Strait Islander child should include meaningful mapping, identification, support and enabling of people who have a legitimate cultural connection to the child.[80]

---

74 See for example submissions 3, 5, 6, 10 and 12; Office of the Commissioner, Meriba Omasker Kaziw Kazipa, correspondence, 14 October 2021, p 1.

75 Submission 3, p 2.

76 Public hearing, Thursday Island, 21 October 2021, p 4.

77 Submission 10, p 10.

78 Submission 10, p 10.

79 Submission 10, p 11.

80 Department, correspondence, 11 October 2021, attachment, p 3.

2.1.7 Executive access to criminal history information

The Queensland Family and Child Commission (QFCC)'s foster care report recommended that the department work with DJAG to become a participating screening unit to the Intergovernmental Agreement for a National Exchange of Criminal History Information for People Working with Children (Intergovernmental Agreement) (recommendation 11).

The explanatory notes state that in assessing the suitability of a person to be a provisionally approved carer, the department currently obtains expanded criminal history information such as charges and spent convictions held in Queensland, but can only receive limited criminal history information from interstate in the form of conviction information, not in a routine manner and only through the police commissioner.[81]

The Bill would allow Queensland to meet the participation requirements of the Intergovernmental Agreement for participating screening units. The Bill would enable the department to obtain expanded criminal history and police information from interstate police commissioners and use it to assess the suitability of prospective provisionally approved carers and their adult household members.[82]

Clause 61 replaces section 186 to implement recommendation 8 of the Royal Commission Report. Currently section 186 prohibits the disclosure of the identity of a notifier, or information from which the notifier's identity could be deduced, other than as allowed by that section. New section 186B would enable a notifier's identity, or information from which the notifier's identity could be deduced, may be disclosed to a senior police officer, of at least the rank of sergeant. The senior police officer must make a written request for the information and the information must be required for the prevention, detection, investigation, prosecution or punishment of a criminal offence against a child. The person making the disclosure must also be reasonably satisfied it is necessary to ensure the safety, wellbeing or best interests of a child. The disclosure may only be made by an authorised person, which includes the chief executive or a person approved by the chief executive to disclose a notifier's identity.[83]

2.1.7.1 Stakeholders views and department response

Sisters Inside was not supportive of enabling the chief executive to have access to expanded criminal history for the purpose of assessing the suitability of a person (and adult members of the person's house) in order to be a provisionally approved carer. Their submission expressed concern it will prevent criminalised Aboriginal and Torres Strait Islander people from becoming carers.[84]

PeakCare was supportive of the intent of the provision but submitted that it does not address the broader systemic issue relating to the current criminal history screening approach – for example, children who turn 18 years of age are made subjects of checks as household members, with the result being that they are no longer permitted to reside within the household, despite no changes having occurred to the actual risk factors.[85]

To the potential for information sharing about a notifier by authorised persons, as proposed in clause 61 of the Bill, the QLS submitted; 'we highlight the importance of protecting the identity of notifiers to encourage people to disclose concerns about a child without fear of their identity being disclosed'.[86]

---

81 Explanatory notes, p 14.

82 Explanatory notes, p 15.

83 Explanatory notes, p 38.

84 Submission 2, p 6.

85 Submission 12, p 6.

86 Submission 17, p 5.

In response to concerns about the sharing of interstate criminal history information the department advised:

> The Bill makes it clear that in considering whether a person is suitable to be a provisionally approved carer, the chief executive may have regard to the person's expanded interstate criminal history information only to consider whether the person poses a risk to the child's safety; and that the expanded interstate criminal history information is not to be considered when assessing whether a person is able and willing to protect a child from harm (new section 142F).
>
> Information received through this process will form only one component of robust decision-making framework already in place for assessing provisionally approved carers. Existence of criminal history will not necessarily preclude a person from becoming a provisionally approved carer, but it is essential for the department to have this information in order to assess whether the person poses a risk to the child's safety.[87]

Concerning the discloser of notifiers' identities, the department advised: 'Further guidance will be provided in departmental policy'.[88]

2.1.7.2 Committee comment

The committee encourages the department to undertake a culturally appropriate public information and awareness campaign as part of the implementation of these reforms.

2.1.8 Extending the date for a renewed carer certificate

Currently, section 134(8) of the CP Act provides that the expiry day for a renewed carer certificate must be:

- for a foster carer certificate—2 years from the day of issue
- for a kinship carer certificate—not more than 2 years from the day of issue.

Clause 42 of the Bill proposes to amend the CP Act to provide that the expiry date for a renewed carer certificate must be 3 years from the day of issue for a foster carer certificate, and not more than 3 years from the day of issue for a kinship carer certificate.[89]

In some Australian jurisdictions carer approvals remain valid indefinitely once granted. The exceptions to this are the Australian Capital Territory, which has a three-year term for carer approvals, and the Northern Territory, which has a two-year term.[90] The explanatory notes state that the intention of this proposed amendment is to 'reduce the impact on carers and improve consistency with other jurisdictions'.[91]

The department reassured the committee the extension of carer certificates will not adversely affect children's safety:

> We do have some significant safeguards in place to ensure that children placed with a carer continue to be safe and supported. For example, the child safety officer will have regular contact with the child, we have obligations of the carer through statements of standards and, as I mentioned previously, the Office of the Public Guardian Community Visitor Program—all of those safeguards will remain.[92]

---

87 Department, correspondence, 11 October 2021, attachment, p 13.

88 Department, correspondence, 11 October 2021, attachment, p 8.

89 Explanatory notes, p 15.

90 Explanatory notes, p 30.

91 Explanatory notes, p 30.

92 Ms Claire Hurst, Acting Executive Director, Strategic Policy and Legislation Strategy, Department of Children, Youth Justice and Multicultural Affairs, public briefing transcript, Brisbane, 27 September 2021, p 12.

2.2 Proposed amendments to *Working with Children (Risk Management and Screening) Act 2000*

Clauses 75 to 131 of the Bill amend the WWC Act, the legislation that supports Queensland's blue card system for screening people who work with children.

2.2.1 Domestic violence information

The explanatory notes advise the QFCC's report, *Keeping Queensland's children more than safe: Review of the blue card system* (QFCC blue card report), recommended amendments to the WWC Act to allow Blue Card Services (BCS) to obtain domestic violence information about blue card applicants.[93]

Clause 87 of the Bill amends the WWC Act to enable the Chief Executive (Working with Children) to request domestic violence information from the police commissioner. A request can only be made where the Chief Executive (Working with Children) reasonably believes a domestic violence order may have been made against the person. If there is domestic violence information about a person, the police commissioner may provide the Chief Executive (Working with Children) with a brief description of the circumstances of a domestic violence order mentioned in the domestic violence information.[94]

Clause 80 of the Bill (new section 228(2)(a)) sets out that if the chief executive is aware of domestic violence information about the person, the chief executive must have regard to the circumstances of a domestic violence order or police protection notice mentioned in the information, including the conditions imposed on the person by the order or notice. In considering the domestic violence information, the chief executive must also have regard to the length of time that has passed since the event or conduct the subject of the information occurred; the relevance of the information to employment, or carrying on a business, that involves or may involve children; and anything else relating to the information that the chief executive reasonably believes is relevant to the assessment of the person.[95]

An information sharing arrangement already exists for the purposes of disability worker screening under the *Disability Services Act 2006* (DSA). A complementary minor amendment is proposed in the Bill (at clauses 72 to 74) to the DSA to reflect the nature of information captured by this information sharing arrangement.

2.2.1.1 Stakeholder views and departments' response

There were mixed views from stakeholders to the Bill's provisions relating to domestic violence information sharing.

LawRight and the Queensland Catholic Education Commission (QCEC) expressed support for the inclusion of domestic violence information for the purpose of blue card assessments.[96]

The Women's Legal Services Queensland (WLSQ) was supportive for the provisions 'in practice', but submitted the amendments will have an impact upon women in need of protection as well as their financial stability and independence. This includes situations where the existence of an order may impact a respondent's blue card status and ability to financially support the victim. WLSQ submitted the proposed amendments would add to the barriers for women to report the domestic violence and seek protection through domestic violence orders.[97] Similarly, Sisters Inside submitted that the ability to request domestic violence information in the context of obtaining a blue card, will result in further social exclusion of vulnerable women, and that misidentification of perpetrators in domestic violence

93 Explanatory notes, p 2; recommendation 39 of QFCC, blue card report.

94 Explanatory notes, pp 42-43.

95 Explanatory notes, p 41.

96 Submissions 1 and 11.

97 Submission 9, p 3.

is a particular issue in Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse communities.[98]

LawRight noted well documented abuses of the domestic violence system and submits that the chief executive should exercise caution when using this information to decide an application.[99]

Ms Julie Sarkozi, Solicitor, Women's Legal Service Qld also expressed concern over how the provisions will disproportionally affect women, stating:

> We … have very good information and rigorous research that shows us that there is a high level of misidentification of the primary aggressor. What happens in practice is that the first responders turn up to an incident and they are under-resourced and they make a call. Often the narrative of that call has been set up by the perpetrator.[100]

The QFCC acknowledged the complexity of using domestic violence information as part of a working with children check as proposed in its QFCC blue card report: 'The dynamics of domestic and family violence are challenging, particularly where there is a risk the perpetrator of violence has been misidentified'.[101]

In acknowledging the Bill implements recommendation 39 of the QFCC blue card report, the QFCC recommended:

> It is important that recommendation 40 of the [QFCC blue card report], which will require that domestic and family violence information is assessed by staff with sufficient expertise in multidisciplinary approach, is implemented alongside these amendments. This will help to make sure domestic and family violence information is used appropriately without further disadvantaging applicants who have already experienced harm.[102]

To the QFCC's recommendation, ATSILS further submitted:

> In our view the pre-existence of criminal charges is central to the QFCC recommendation and we would strongly urge that domestic violence material only be taken into account as an adjunct to criminal charges, to give context to them. The problem with doing otherwise is that unlike criminal charges which are brought only after review by police to consider whether the allegations are sustainable and that a charge is made out to an appropriate standard of proof.[103]

The complexity of assessing domestic violence information was also noted by Dr Lee-Anne Perry, Executive Director, QCEC, who concluded that; '… we are also of the view that it will strengthen current approaches by allowing for a holistic risk assessment and for erring on the side of caution in respect of children's safety'.[104] ATSILS and WLSQ highlighted the need for specialist officers, or specialist training, to understand the unique nature and dynamics of domestic violence and associated court processes to undertake the blue card assessment.[105]

98 Submission 2, p 2.

99 Submission 2, p 2.

100 Public hearing transcript, Brisbane, 15 October 2021, p 26.

101 Submission 5, p 2.

102 Submission 5, p 2.

103 Submission 3, p 6.

104 Public hearing transcript, Brisbane, 15 October 2021, p 20.

105 Submissions 3 and 9.

In response, the department advised that the proposed amendments were consistent with the principles of the WWC Act.[106] The department further stated:

> New section 315A, as inserted by clause 87, allows the chief executive to request domestic violence information from the police commissioner if the chief executive reasonably believes a domestic violence order may have been made, or a police protection notice may have been issued, against a person. This is an important threshold which applies to the new framework. It ensures that the chief executive does not automatically receive domestic violence information about a blue card applicant or cardholder but must first form a reasonable belief about the existence of an order or notice before requesting the information.[107]

To concerns about this decision-making process, the department advised:

> The positive presumption decision-making test applies to the consideration of domestic violence information. This means the chief executive must issue a blue card unless the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of children for the chief executive to issue a blue card to the person.[108]

The Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP) provided a separate response to the submission of Sisters Inside in relation to the sharing of domestic violence information further disadvantaging certain people under the disability worker screening system:

> The amendments to the DSA confirm DSDSATSIP's existing ability to obtain and consider domestic and family violence information as part of its worker screening function. … Where issues of concern are identified, DSDSATSIP will invite the person to provide further information relevant to its consideration of whether the person poses an unacceptable risk.[109]

2.2.1.2 Committee comment

The committee notes the concerns expressed by stakeholders that the provisions in the Bill relating to domestic violence information may exasperate the barriers facing First Nations peoples and women in particular, but acknowledges that the safety of children in care is paramount.

Recommendation 3

The Committee encourages the Department of Justice and Attorney-General to investigate the nuances and the barriers regarding First Nations persons obtaining Blue Cards so as to improve access to employment.

2.2.2 Participation in the national scheme

All states and territories operate their own working with children check (WWCC) schemes. The explanatory notes to the Bill advise that currently, Queensland has no visibility of decisions made in other jurisdictions and there is no ability under the WWC Act for BCS to share information about blue card outcomes with worker screening units in other jurisdictions.[110]

The Royal Commission in its Working with Children Check Report (WWCC Report) highlighted the lack of visibility of WWCC outcomes across jurisdictions and the limitations for state and territory screening agencies to be able to take into account previous interstate WWCC decisions that may influence the

---

106 WWC Act, s 6, '(a) the welfare and best interests of a child are paramount, and (b) every child is entitled to be cared for in a way that protects the child from harm and promotes the child's wellbeing'. Responses to issues raised in submissions about amendments to the WWC Act were provided by DJAG.

107 Department, correspondence, 11 October 2021, attachment, p 38.

108 Department, correspondence, 11 October 2021, attachment, p 39.

109 Department, correspondence, 11 October 2021, attachment, p 43.

110 Explanatory notes, p 2.

eligibility of an applicant. In particular, the Royal Commission noted that there was little visibility between jurisdictions in relation to individuals who cross borders and who have already been found ineligible to work with children based on their known police or disciplinary information. The Commonwealth Government established the WWCC NRS, a centralised database housed and operated by the Australian Criminal Intelligence Commission in 2016.[111]

From an information sharing perspective, the Bill proposes to amend the WWC Act to enable the chief executive (working with children) to:

- enter and upload key decisions on the WWCC NRS – these decisions will be limited to adverse outcomes including negative notices, suspensions, cancellations, and withdrawals
- give information to an interstate screening unit if the chief executive reasonably believes the information is relevant to the functions of the interstate screening unit, and
- request information from an interstate screening unit about a person if the chief executive believes the unit has information that is relevant to the performance of the chief executive's screening functions.[112]

The proposed amendments to facilitate Queensland's participation in the WWCC NRS to provide the executive with the ability to mutually recognise an adverse decision about a person in another jurisdiction so that the person is prohibited from working with children in Queensland.[113]

2.2.2.1 Stakeholders views and department response

The QCEC and Life Without Barriers were supportive of the Bill's amendments and Queensland's participation in the national information scheme, which had the potential to 'make children safer'.[114]

Mr David Keenan, Chief Executive Officer, Mount Isa City Council was supportive of the proposed amendments in the context of regional and remote communities, stating:

> Blue cards are particularly important in a population that is ageing rapidly. The number of volunteers that we have across the board is diminishing at the moment. Anything that streamlines the process, whether it be by getting a blue card or anything else, needs to be taken into account because we need as many volunteers as we possibly can for the different sporting organisations.[115]

Sisters Inside expressed concern that it is procedurally unfair for a Queensland cardholder's blue card to be cancelled because of the operation of another jurisdiction's decision-making process, without any independent assessment of the circumstances by the chief executive, nor any opportunity for review or appeal afforded to that person. Sisters Inside submitted the process would impact disadvantaged and Aboriginal and Torres Strait Islander women.[116]

In regard to the sharing of interstate suspension or cancellation information, Mount Isa City Council Mayor Danielle Slade was supportive:

> The other thing that stood out to me is definitely liaising across agencies and interstate. As a council we are finding that one of the impacts for us is Queensland and the Northern Territory not working together, and even with the Commonwealth. There is definitely an opportunity to improve there.[117]

111 Explanatory notes, p 3.

112 Explanatory notes, p 6.

113 Department, correspondence, 11 October 2021, attachment, p 40.

114 Submissions 1 and 7.

115 Public hearing transcript, Mount Isa, 18 October 2021, p 2.

116 Submission 2, p 4.

117 Public hearing transcript, Mount Isa, 18 October 2021, p 2.

In contrast, ATSILS recommended that the language of the Bill be amended so that the chief executive 'may' (rather than 'must') have regard to interstate material. ATSILS stated: 'The reasons for the need for some flexibility in decision-making arises from the variation between jurisdictions in adverse decision-making. An automatic and unreviewable decision is capable of producing anomalies and absurd results'.[118]

Similarly, LawRight submitted that as a matter of procedural fairness applicants should be afforded a right of review if their positive notice is cancelled in another state, unless a disqualifying offence is involved.[119] Mr Ben Tuckett, Managing Lawyer, LawRight, stated:

> The inclusion of [this provision] as part of this blue card process then means that it may be that those people have to go through a more complicated appeal process to try to change that order, to then go back to Blue Card, which is supposed to be an easier system that they can access.[120]

In response to stakeholders views' regarding procedural fairness, the department advised:

> Mutual recognition of adverse decisions is necessary to ensure stronger protections for children and young people. It reduces the risk of forum shopping, as a bar on engaging in child-related work applies in Queensland, regardless of where it was issued.[121]

The department further advised that the tribunal in the jurisdiction where the original decision which prohibited the person from working with children was made is the appropriate forum for the person to request a review of that decision, and therefore procedural fairness is afforded to the person in the jurisdiction that made the interstate adverse decision.[122]

The department stated:

> Importantly, the withdrawal of an application or the cancellation of a blue card means no formal negative notice is recorded in Queensland. This means that when the person's adverse interstate decision is cleared, overturned or expires, the person may re-apply for a blue card in Queensland.[123]

2.2.2.2 Committee comment

The committee notes the concerns expressed by stakeholders, in regard to the potential effect of the reforms on women and First Nations peoples, and the evidence provided by stakeholders to indicate domestic violence orders against women are often retaliatory in nature. However, the committee also notes DJAG's response to submitters that the Bill incorporates a number of safeguards to ensure the appropriate access to and consideration of domestic violence information in the blue card assessment process, and the committee supports the intention of the Bill to ensure the safety of children.

2.3 Licensed care services

The department advised that the existing categories of regulated employment and regulated business under the WWC Act which deal with the care of children by licensed care services has not been amended since 2006. In practice, some functions of a licence are now outsourced to contractors and subcontractors.[124]

Clause 39 of the Bill amends the WWC Act by restructuring the categories of regulated employment and regulated business that deal with licensed care services, to ensure that blue card screening

118 Submission 3, p 7.

119 Submission 11, p 3.

120 Public hearing transcript, Brisbane, 15 October 2021, p 28.

121 Department, correspondence, 11 October 2021, attachment, p 41.

122 Department, correspondence, 11 October 2021, attachment, p 41.

123 Department, correspondence, 11 October 2021, attachment, p 41.

124 Mrs Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services, DJAG, public briefing, Brisbane, 27 September 2021, p 11.

requirements will be imposed on any person who is performing a risk-assessed role for a licensed care service.[125] The amendments are required to 'ensure blue card screening requirements remain contemporary and responsive'.[126] The department further advised that licensees would be required to ensure that persons who carry out 'risk assessed roles in a licensed care service' are suitable and hold a blue card.[127]

The department further advised:

> ... the definition of a 'risk-assessed role' under clause 39 of the Bill is intended to capture roles which either involve contact with a child, or with the child's information, which would allow the person to facilitate contact with the child. For example, a youth worker employed or contracted by a licensee to provide support to children would be captured, because this role will involve contact with children. However, a payroll officer for a licensed care service would not be captured, as their normal duties would not involve contact with children or their information.[128]

2.3.1 Stakeholder views and department response

The Office of the Public Guardian submitted 'the definition of "risk assessed role" should provide clarification regarding the standard of acceptable risk and define the term "acceptable risk", to enable objective interpretation'.[129]

In response the department advised that:

> It is considered unnecessary to define "acceptable risk" because it is not the relevant consideration under new section 123A inserted by clause 39 of the Bill. The new section describes the meaning of a "risk-assessed role" for a licensed care service, which involves normal duties that require a person to contact a child or allows a person to permit or facilitate contact with a child.
>
> It is intended for licensed care services to conduct a risk assessment of whether a role requires a suitable person based on the criteria listed under section 123A (i.e. level of contact with a child or their personal information). Guidance is proposed to be developed by the department and the Department of Justice and Attorney-General during implementation to assist licensees and inform this risk assessment process.[130]

2.4 Proposed amendments to the Child Protection Regulation 2011

The amendments in the Bill to the Child Protection Regulation 2011 establish a framework for the carers' register.[131]

Clause 70 of the Bill proposes to replace the existing Part 3A of the Regulation. The new Part 3A includes relevant definitions and the information that is required to be kept on the register of applicants, authority holders and former authority holders.

The department advised that the information requirements as prescribed by the Bill 'generally align with recommendation 8.17 of the Royal Commission', to be available to agencies or bodies with responsibility for assessing, authorising or supervising carers.[132]

---

125 Explanatory notes, p 7.

126 Explanatory notes, p 3.

127 Explanatory notes, p 22.

128 Department, correspondence, 5 October 2021, attachment, p 5.

129 Submission 18, p 6.

130 Department, correspondence, 2 November 2021, attachment, p 3.

131 Bill, cls 69-71.

132 Department, correspondence, 13 October 2021, attachment, p 6.

2.4.1 Stakeholders views and department response

Life Without Barriers supported the creation of the carer's register to 'contribute to making safer environments for children in foster, kinship and residential care settings'.[133]

The organisation knowmore submitted that the government should advance the progress of implementing the recommendations of the Royal Commission to reach a nationally consistent carers' register.[134]

The QLS cautioned that information held in the carers' register must be 'managed in a way that safeguards privacy.[135]

Towards a nationally consistent carers' register, the department advised:

> It is the department's intention to engage in future discussions at a national level regarding a consistent carers' register that aligns with the Royal Commission's recommendations'.[136]

Concerning privacy and the security of carers' information, the department advised:

> The restrictions on the disclosure of information by persons involved in the administration of the CP Act apply as provided under Chapter 6, Part 6, Division 2 of the CP Act. The department is a 'relevant entity' under the *Information Privacy Act 2009*, meaning the Information Privacy Principles provided under Schedule 3 of the IP Act apply to the collection, use and management (including obligations related to security) of information obtained by the chief executive and held on the carers' register.[137]

2.5 Proposed amendments to the *Adoption Act 2009*

The adoption of children through an intercountry adoption program is governed by the Commonwealth and relevant state or territory adoption legislation as well as the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.[138]

Section 199 of the *Adoption Act 2009* (Adoption Act) enables the chief executive to apply to the Childrens Court for a final intercountry adoption order for a child when the child has been in the custody of the prospective adoptive parents for at least one year, in circumstances mentioned in section 198(1). Section 198(1)(c) provides that these circumstances include where the chief executive, as the child's guardian, placed the child in the prospective adoptive parents' care. The chief executive of the department is usually the guardian, and responsible for the placement of children in Queensland as part of Australia's intercountry adoption program because of a delegation by the Minister responsible for administering the *Immigration (Guardianship of Children) Act 1946* (Cth) (IGOC Act).[139]

The explanatory notes state that the Adoption Act does not currently allow for the chief executive to supervise the wellbeing and interests of the child under section 198, or to apply for a final adoption order under section 199, unless the chief executive, as the child's guardian, has placed the child in the custody of their prospective adoptive parents.[140]

---

133 Submission 7, p 3.

134 Submission 16, p 4.

135 Submission 17, p 5.

136 Department, correspondence, 13 October 2021, attachment, p 6.

137 Department, correspondence, 13 October 2021, attachment, p 6.

138 Explanatory notes, p 30.

139 Explanatory notes, p 5

140 Explanatory notes, p 5.

The Bill proposes at clauses 3 to 5, to enable the chief executive to provide post-placement supervision of the child's wellbeing and interests while the child is in the custody of the prospective adoptive parents as well as enabling the chief executive to apply to the Childrens Court for a final adoption order.[141]

2.5.1 Stakeholder views and department response

There were no comments from stakeholders to the proposed amendments to the Adoption Act in the Bill, although LawRight noted the proposed reforms were 'a missed opportunity to amend an anomaly relating to the absence of a definition within the Adoption Regulation 2009 as to 'disqualifying condition''. This absence 'leaves applicants (and their legal advisors) with uncertainty about whether their diagnosed health conditions will automatically prevent them from being considered eligible to adopt'. LawRight recommended 'disqualifying condition' be defined in the regulation.[142]

The department noted the recommendation on LawRight was outside the scope of the Bill but stated the matter 'will be added to an issues register for possible consideration in future amendments to Queensland's adoption legislation'.[143]

141 Explanatory notes, p 24.

142 Submission 11, p 4.

143 Department, correspondence, 11 October 2021, attachment, p 41.

3 Compliance with the *Legislative Standards Act 1992*

3.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' are the 'principles relating to legislation that underlie a parliamentary democracy based on the rule of law'. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals
- the institution of Parliament.

The committee has examined the application of the fundamental legislative principles to the Bill. The committee brings the following to the attention of the Legislative Assembly.

3.1.1 Rights and liberties of individuals

The right to privacy is relevant to a consideration of whether legislation has sufficient regard to the rights and liberties of the individual.[144]

The Bill introduces a number of provisions that could impact on an individual's right to privacy. A summary of the relevant clauses, together with justifications provided in the explanatory notes, is outlined below.

3.1.1.1 Child's participation in decision-making

The Bill proposes to amend the CP Act to introduce new principles for children's participation in decisions that affect them. This includes the principle that a child is to be given information that is reasonably necessary to allow the child to participate in decisions made under the CP Act that affect, or may affect, them.[145] Depending on the decision that the child is participating in, such information could relate to another person, such as a parent, sibling, family member or carer (which may impact that person's right to privacy).[146]

The explanatory notes state that this amendment is necessary 'to ensure that children have access to all information required to support their informed participation in decision-making'.[147] Further, that the provision contains an inherent safeguard (being that the information to be given to the child is only the information that is 'reasonably necessary to allow the child to participate').[148] The explanatory notes also highlight that where information is confidential under the CP Act or another law, the information would be redacted from what is provided to the child.[149]

3.1.1.2 Committee comment

The committee considers that given an objective of the Bill is to strengthen children's voices in the decisions that affect them, and the safeguard inherent in the provision, the committee is satisfied that this provision has sufficient regard to the rights and liberties of individuals.

144 LSA, s 4(2)(a); see also Office of the Queensland Parliamentary Counsel, *Fundamental legislative principles: the OQPC notebook*, p 95.

145 Bill, cl 11 (CP Act, new s 5E).

146 Explanatory notes, p 23.

147 Explanatory notes, p 23.

148 Explanatory notes, p 24; see also Bill, cl 11 (CP Act, new s 5E(2)(c)).

149 Explanatory notes, p 24.

3.1.1.3 Giving information to children and carers

Under the CP Act, before placing a child in care the chief executive must give the proposed carer information about the child that the proposed carer reasonably needs to help make an informed decision about whether to agree to the placement.[150]

The Bill clarifies this information could include:

- information about why the chief executive has custody or guardianship of the child
- information about any special needs of the child
- the proposed length of time of the placement
- information the carer will reasonably need to ensure the safety of the child, the carer and other members of the carer's household.[151]

Whilst this may impact the child's right to privacy of that personal information, it is information that is ultimately going to assist the proposed carer in making an informed decision about the placement for that child or to support the carer to provide care for the child.[152] Further, the explanatory notes highlight that any departure from this fundamental legislative principle is 'mitigated as it relates to information that the carer reasonably needs and does not extend beyond this.'[153]

3.1.1.4 Committee comment

The committee considers that has sufficient regard to the rights and liberties of individuals.

3.1.1.5 Obtaining criminal history information of provisionally approved carers

Under the CP Act, the chief executive may ask the police commissioner for police information about a person who applies for a certificate of approval (to be a provisionally approved carer) or another adult member of their household.[154] Currently, this is generally limited to information held about charges and convictions in Queensland.[155]

The Bill introduces a new provision into the CP Act which provides the chief executive with the power to obtain and use expanded interstate criminal history information. This could include information about interstate convictions and interstate charges relating to both the applicant for a certificate of approval and adult members of their household,[156] which impacts their right to privacy.

The explanatory notes justify this on the basis that 'the information is necessary to assist decision-makers to make informed decisions that protect vulnerable children who may be placed in the care of a provisionally approved carer'.[157] The explanatory notes also highlight that this amendment is required to meet the participation requirements of the Intergovernmental Agreement.[158]

150 CP Act, s 83A.

151 Bill, cl 32 (CP Act, amended s 83A).

152 Explanatory notes, p 24.

153 Explanatory notes, p 24.

154 CP Act, s 142C.

155 Explanatory notes, p 14.

156 Bill, cl 55 (CP Act, new ss 142E, 142F).

157 Explanatory notes, p 24.

158 Explanatory notes, pp 14-15.

Whilst this provision may breach fundamental legislative principles, the Bill goes some way in mitigating the impact on a person's right to privacy by providing that:

- the chief executive may only use expanded interstate criminal history to the extent necessary to assess whether the relevant person poses a risk to the child's safety, and
- the chief executive must not use the expanded criminal history when considering whether the relevant person is able and willing to protect a child from harm.[159]

The statement of compatibility adds:

> Existing provisions will apply to protect the confidentiality of information collected under new section 142E, for example, Part 6 of the CP Act restricts the disclosure of a person's information collected in accordance with the Act except to authorised persons. Further procedural safeguards will be in place for secure access and storage of the information, to ensure only certain staff undertaking the assessment can access it.[160]

3.1.1.6 Committee comment

The committee is satisfied that a breach of fundamental legislative principles in these circumstances is justified, given the aim of the provision is to prevent children from being placed with persons who are deemed unsuitable to care for, or live with, children due to their interstate criminal history.[161]

3.1.1.7 Carers' register

The Royal Commission recommended that state and territory governments introduce legislation to establish carers' registers in their respective jurisdictions.[162]

The purpose of a carers' register is to act as a preventative mechanism against unsuitable people being approved as carers by making relevant information about suitability available for assessment purposes.[163]

According to the explanatory notes, national discussions around the consistency of carers' registers to be established by each state and territory have been suspended due to the impacts of COVID-19.[164] Nevertheless, the Bill establishes a legislative framework for a carers' register.[165]

The Bill also provides for amendments to the Child Protection Regulation 2011 to prescribe the information to be included in the register. The explanatory notes advise that prescribing the information in a regulation 'will provide flexibility as agreement is reached about national consistency'.[166] The details proposed to be prescribed in the Child Protection Regulation 2011 include personal information about applicants, authority holders and former authority holders such as:

- name, date of birth, address
- whether the person holds an authority or whether an authority has been refused (and why)
- working with children information about an applicant.[167]

---

159 Bill, cl 55 (CP Act, new s 142F(2)).

160 Statement of compatibility, p 13.

161 Statement of compatibility, p 12.

162 Explanatory notes, p 16.

163 Explanatory notes, p 16.

164 Explanatory notes, p 16.

165 Bill, cl 58 (CP Act, new s 148F); explanatory notes, p 16.

166 Explanatory notes, pp 16-17, 26-27; see also Bill, cl 70 (Child Protection Regulation, new Part 3A).

167 See cl 70 (in particular Child Protection Regulation new ss 10A, 10B, 10C, 10D) for the prescribed particulars for each category.

The provision of this personal information on a central register potentially breaches the fundamental legislative principle that legislation has sufficient regard to an individual's right to privacy.

Whilst the impacts on privacy are not addressed directly in the explanatory notes, the notes explain the purpose of having a carers' register is to assist in decisions regarding suitability so as to make foster, kinship and residential care environments safer for children.[168] These amendments are also necessary to implement the Royal Commission's recommendation that states and territories put in place carers' registers in their jurisdictions.[169]

The confidentiality provisions of the CP Act will apply to information obtained in relation to the register[170] which means that it is an offence for a person involved in the administration of the CP Act to use or disclose confidential information otherwise than in accordance with the Act.[171]

3.1.1.8 Committee comment

Given the overall purpose of the provision and the protections in the CP Act for the unauthorised use of confidential information, the committee is satisfied that any breach of fundamental legislative principle is justified in the circumstances.

3.1.1.9 Domestic violence information sharing

The Bill amends the WWC Act to enable the chief executive (working with children) to request domestic violence information from the police commissioner in regard to a person who holds a working with children authority or a person who has made a working with children check application.[172]

Specifically, the Chief Executive (Working with Children) can request such information if the chief executive 'reasonably believes' a domestic violence order may have been made or a police protection notice may have been issued against the person.[173] Further, if there is domestic violence information about the person, the police commissioner can provide the chief executive with a brief description of the circumstances of a domestic violence order or the police protection notice.[174]

The Bill also makes changes to the WWC Act to enable the Chief Executive (Working with Children) to have regard to domestic violence information as part of a working with children check assessment.[175] In regard to the overall purpose of this provision, the statement of compatibility provides:

> The purpose of the amendments to the WWC Act is to protect the wellbeing and best interests of children by ensuring that the chief executive (working with children) has all relevant information before them to make a holistic assessment of a person's eligibility to engage in child-related work.[176]

Whilst the explanatory notes acknowledge that the collection of domestic violence information potentially breaches the fundamental legislative principle that protects a person's right to privacy of their personal information, the notes state:

> These provisions are considered justified as they will enable the effective operation of the WWC Act by ensuring that the chief executive (working with children) has the most current, relevant and

168 Explanatory notes, p 16.

169 Explanatory notes, p 16.

170 See note to Bill, cl 58 (CP Act, new s 148F(2)).

171 CP Act, chapter 6, part 6, division 2.

172 Bill, cl 87 (WWC Act), new s 315A); see also WWC Act, s 310 for the full list of persons in regard to whom the chief executive may make a request for domestic violence information about.

173 Bill, cl 87 (WWC Act, new s 315A(1)).

174 Bill, cl 87 (WWC Act, new s 315A(4), (5)).

175 Explanatory notes, p 6; Bill, cl 80 (WWC Act, amended s 228).

176 Statement of compatibility, p 30.

comprehensive information about a person when assessing a person's eligibility to engage in child-related work.

Further, the new information sharing arrangement is supported by appropriate safeguards to protect the confidentiality of information. The information shared will be subject to section 384 of the WWC Act which provides specific protections in relation to the confidentiality of protected information.[177]

3.1.1.10 Committee comment

The committee considers that that a breach of fundamental legislative principle in these circumstances is justified, given the overall objective of the provision is to assist the chief executive to make a holistic assessment of a person's eligibility to engage in child-related work, and the safeguards provided by the confidentiality provisions in the WWC Act.

3.1.1.11 Information sharing – Working with Children Check National Reference System

The Bill amends the WWC Act to enable the chief executive (working with children) to enter key decisions on the Working with Children Check National Reference System (WWCC NRS), give information to an interstate screening unit or the Australian Crime Commission (ACC) and request information from an interstate screening unit[178] in regard to a person who holds a working with children authority or a person who has made a working with children check application.[179]

The threshold test for the chief executive is whether the chief executive (working with children) 'reasonably believes' the information is relevant to the functions of the ACC or the interstate screening unit. Essentially this means:

- identifying information about a person who holds, or has held, an adverse WWC decision will be entered and stored on the WWCC NRS; and
- assessable information about a person who has received an adverse WWC decision in Queensland will be shared with a corresponding interstate screening unit if that unit requests the information to inform its own assessment and the chief executive (working with children) reasonably believes the information is relevant to the functions of the interstate screening unit under the corresponding WWC law.[180]

This means that a person who is currently prohibited from working with children in another jurisdiction will be prohibited from working with children in Queensland, based on the sharing of personal information about their adverse history.[181]

The explanatory notes acknowledge that these provisions breach the fundamental legislative principle of a person's right to privacy of their personal information, but state:

This potential departure is justified as the provisions enable the chief executive (working with children) to have the most comprehensive information to undertake an assessment of whether it is in the best interests of children for a person to carry out child-related work. By being able to make an informed decision, the risk of harm to children is mitigated. Similarly, the power to provide information to an interstate screening unit will ensure the relevant decision-maker in that jurisdiction has the information they require to undertake their corresponding functions.[182]

---

177 Explanatory notes, p 25. Section 384 of the WWC Act prohibits the unauthorised use or disclosure of confidential information, with a maximum penalty of 100 penalty units ($13,785) or 2 years imprisonment.

178 Bill, cls 119 and 124 (WWC Act, new ss 320A, 320B; new ch 8, part 6, div 10).

179 See WWC Act, s 310 for the full list of persons in regard to whom the chief executive may make a request for information about.

180 Statement of compatibility, p 27.

181 Explanatory notes, p 6.

182 Explanatory notes, p 26.

Further, the notes highlight that the confidentiality provisions in the WWC Act[183] will apply to this confidential information:

> The confidentiality of the information accessed by the chief executive (working with children) through the WWCC NRS will be protected by the existing confidentiality provisions in the WWC Act. Also, interstate screening units that receive information from the chief executive (working with children) will be bound by the confidentiality protections of their respective legislation.[184]

3.1.1.12 Committee comment

The committee considers that a potential breach of fundamental legislative principle in these circumstances is justified given the overall purpose of the provision is to facilitate the WWCC NRS, and the safeguards provided by the confidentiality provisions in the WWC Act.

3.1.1.13 Retrospectivity

The Bill amends section 198 of the Adoption Act to expand the circumstances in which the chief executive is obligated to supervise the wellbeing and interests of a child in the context of intercountry adoptions.[185] According to the explanatory notes, this amendment is a result of technical issues arising with the Adoption Act as a result of a delegation instrument made under the IGOC Act.[186]

The amended provision is to have retrospective effect, in that it applies if a child was brought into Queensland from another country and placed in the custody of prospective parents during the period starting on 20 November 2020 and ending immediately before the commencement. In these circumstances, the amended section 198 (as proposed by this Bill) would apply and is taken to have always applied to the custody of the child.[187]

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, the legislation does not adversely affect the rights and liberties, or impose obligations retrospectively.[188] Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.[189]

According to the explanatory notes, whilst this provision may operate retrospectively, it is considered justified:

> ... given the positive impact the amendments will have on the operation of Australia's intercountry adoption program in Queensland for non-citizen children and prospective adoptive parents. For example, the amendment enables the chief executive to provide post-placement supervision of the child's wellbeing and interests while the child is in the custody of the prospective adoptive parents as well as enabling the chief executive to apply for a final adoption order.[190]

Further, the circumstances in which this provision will apply is limited to situations where the non-citizen child has been placed by the Commonwealth Minister responsible for administering the IGOC Act, and/or where guardianship of the non-citizen child has not been delegated to the chief executive.[191]

---

183 WWC Act, ss 384, 385.

184 Explanatory notes, p 26.

185 Bill, cl 4 (Adoption Act, amended s 198).

186 Explanatory notes, p 2.

187 Bill, cl 5 (Adoption Act, new s 359).

188 LSA, s 4(3)(g).

189 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 55.

190 Explanatory notes, p 24.

191 Explanatory notes, pp 5-6.

3.1.1.14 Committee comment

Given the limited circumstances in which this retrospective provision will apply, and that it is intended to solve technical issues around delegations, the committee is satisfied that the provision has sufficient regard to the rights and liberties of individuals.

3.1.1.15 Penalties

As a result of the proposed amendments that allow for interstate information sharing, the Bill adds new circumstances of aggravation to some existing offences across the WWC Act. Specifically:

- it is an aggravating circumstance for the offence for an employer to employ or continue to employ a person in regulated employment without a working with children clearance if an adverse interstate WWC decision made about the employee is in effect and the employer knows, or ought reasonably to know, the decision is in effect (maximum penalty 200 penalty units ($27,570) or 2 years imprisonment)[192]
- it is an aggravating circumstance for the offence for a person to start or continue in regulated employment unless the person holds a working with children clearance if the person is the subject of an adverse interstate WWC decision that is in effect (maximum penalty 500 penalty units ($68,925) or 5 years imprisonment)[193]
- it is an aggravating circumstance for the employer to employ, or continue to employ, a police officer or registered teacher in regulated employment without a working with children exemption if an adverse interstate WWC decision made about the employee is in effect and the employer knows, or ought reasonably to know, the decision is in effect (maximum penalty 200 penalty units ($27,570) or 2 years imprisonment)[194]
- it is an aggravating circumstance for a police officer or registered teacher to start or continue in regulated employment without a working with children authority if the person is the subject of an adverse interstate WWC decision that is in effect (maximum penalty 500 penalty units ($68,925) or 5 years imprisonment).[195]

Whether legislation has sufficient regard to rights and liberties of individuals depends on whether, for example, penalties and other consequences imposed by legislation are proportionate and relevant to the actions to which the consequences relate. A penalty should be proportionate to the offence:

> In the context of supporting fundamental legislative principles, the desirable attitude should be to maximise the reasonableness, appropriateness and proportionality of the legislative provisions devised to give effect to policy.
>
> … Legislation should provide a higher penalty for an offence of greater seriousness than for a lesser offence. Penalties within legislation should be consistent with each other.[196]

Whilst the Bill does not introduce new offence provisions, the introduction of new sets of aggravating circumstances could impact individual rights and liberties insofar as they impose a higher penalties.

In this regard, the explanatory notes state 'all of these penalties are considered to be reasonable as they provide stronger safeguards for children and represent a strong deterrent for persons who breach key requirements under the WWC Act'.[197]

---

192 Bill, cl 96 (WWC Act, s 175); explanatory notes, pp 45-46.

193 Bill, cl 97 (WWC Act, s 176A); explanatory notes, p 46.

194 Bill, cl 98 (WWC Act, s 176C); explanatory notes, p 46.

195 Bill, cl 99 (WWC Act, s 176E); explanatory notes, p 46.

196 Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 120.

197 Explanatory notes, p 25.

It is noted that the new aggravating circumstance provisions will attract the same penalties that exist for other aggravated offence provisions in the WWC Act.[198]

3.1.1.16 Committee comment

The committee considers that the penalties proposed for the aggravating circumstance provisions are reasonable and proportionate, such that the provisions have sufficient regard to the rights and liberties of individuals.

3.1.1.17 Administrative power and natural justice

Whether legislation has sufficient regard to the rights and liberties of individuals depends on whether, for example, the legislation is consistent with principles of natural justice and makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.[199]

The provisions of the Bill that allow the chief executive to use certain information (such as domestic violence information and interstate criminal history) in making decisions about whether an individual can work with, or care for, children may impact on individual rights in the sense that an individual may be refused an authority, licence or certificate of approval due to certain information about their past.[200]

This raises issues about administrative power, and also natural justice to the extent that concerned individuals are given an avenue to request review of decisions that affect them.

The explanatory notes do not address these issues of fundamental legislative principle directly.

However, in regard to the chief executive (working with children) considering domestic violence information as part of a working with children check assessment, the Bill sets out specifically the matters the chief executive must have regard to.[201] Further, if the chief executive in considering such information is proposing to issue a negative notice to the person, the chief executive must give the person written notice of this intention and invite the person to make a submission.[202] If the person is ultimately given a negative notice, written notice of this decision must be given to them together with notice of their appeal and review rights.[203]

Similarly, in regard to the chief executive using expanded interstate criminal history information under the CP Act, the Bill contains a specific clause which sets out how interstate criminal history is to be used ('only to the extent necessary to assess whether the relevant person poses a risk to a child's

198 For example, under s 176A of the WWC Act, it is an offence for a person to start or continue in regulated employment unless the person holds a working with children clearance (maximum penalty is 100 penalty units). If an aggravating circumstance applies to the offence (eg if the person holds a negative notice) the maximum penalty is 500 penalty units or 5 years imprisonment. The amended s 176A (introduced by cl 97 of the Bill) introduces another aggravating circumstance which also attracts the maximum penalty of 500 penalty units or 5 years imprisonment.

199 LSA, s 4(3)(a).

200 For example, the amendments to the CP Act provide the chief executive with the power to use expanded interstate criminal history information for the purpose of considering whether a person poses a risk to a child's safety (Bill, cl 55 (CP Act, new ss 142E, 142F)). Also the amendments to the WWC Act enable the chief executive (working with children) to have regard to domestic violence information as part of a working with children check assessment (explanatory notes, p 6; Bill, cl 80 (WWC Act, amended s 228)).

201 Bill, cl 80 (WWC Act, amended s 228).

202 Bill, cl 81 (WWC Act, amended s 229).

203 WWC Act, s 233.

safety').[204] Further, under the CP Act, if a person is refused an application the chief executive must give notice of this decision, including reasons and options for review.[205]

The explanatory notes highlight the overall purpose of using this information in administrative decision-making is to strengthen the suitability assessment for people who are working with, or caring for, children.[206]

3.1.1.18 Committee comment

Given the overall purpose of the provisions, and the existence of specific circumstances under which domestic violence information and interstate criminal history information can be used, the committee is satisfied that the administrative powers given to the chief executives are sufficiently defined and subject to appropriate review.

3.1.2 Institution of Parliament

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament.

3.1.2.1 Delegation of legislative power – carers' register

Whether a Bill has sufficient regard to the institution of Parliament depends on whether, for example, the Bill allows the delegation of legislative power only in appropriate cases and to appropriate persons,[207] and sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly.[208]

As noted above, the Bill establishes the legislative framework for a carers' register. The register must contain particulars about applicants for authorities, holders of authorities and former holders of authorities to be prescribed by regulation.[209]

Generally, the prescription of such information by regulation (rather than through a principal Act) raises questions surrounding the appropriateness of a delegation of legislative power. However, here (as noted above), the Bill itself amends the Child Protection Regulation to prescribe the particulars to be included in the register.[210] This means that the amendments are subject to the scrutiny of the Legislative Assembly through the legislative (and committee) process.

Whilst there may be other details prescribed by future regulations, such regulations would be subordinate legislation and therefore be subject to scrutiny through the notification, tabling and disallowance process.

3.1.2.2 Committee comment

The committee considers that the clauses of the Bill that relate to the carers' register have sufficient regard to the institution of Parliament.

3.2 Explanatory notes

Part 4 of the LSA requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

204 Bill, cl 55 (CP Act, new s 142F).

205 CP Act, s 136.

206 Explanatory notes, pp 2, 14-15.

207 LSA, s 4(4)(a).

208 LSA, s 4(4)(b).

209 Bill, cl 58 (CP Act, new s 148F).

210 Bill, cl 70 (CP Act, new Part 3A).

Explanatory notes were tabled with the introduction of the Bill. The notes are fairly detailed and contain the information required by Part 4 and a sufficient level of background information and commentary to facilitate understanding of the Bill's aims and origins.

4 Compliance with the *Human Rights Act 2019*

The portfolio committee responsible for examining a Bill must consider and report to the Legislative Assembly about whether the Bill is not compatible with human rights, and consider and report to the Legislative Assembly about the statement of compatibility tabled for the Bill.200

A Bill is compatible with human rights if the Bill:

(a) does not limit a human right, or

(b) limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019* (HRA).[201]

The HRA protects fundamental human rights drawn from international human rights law.[202] Section 13 of the HRA provides that a human right may be subject under law only to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

The committee has examined the Bill for human rights compatibility. The committee brings the following to the attention of the Legislative Assembly.

4.1 Human rights compatibility

There is limited mention in the explanatory notes to the Bill or the statement of compatibility of (a) the right to life (section 16 of the HRA – mentioned only briefly in relation to the mandatory reporting obligations of reasonable suspicion of harm of risk), the right to be protected from torture and cruel, inhuman or degrading treatment (section 17 HRA), or the right to freedom from forced work (section 18 HRA). There are, however, various references in the statement of compatibility to the right to liberty and security of person (section 26 HRA), including the right to protection of the physical safety of children.

The limited treatment of these issues is notable because the international equivalents of sections 16, 17 and 18 HRA (and of section 25, the right to privacy, which is broadly interpreted to be a more general right to bodily integrity) have been interpreted so as to give rise to a general duty on the state to offer protection. Whilst this is reflected in the right to security of the person in that a breach of the duty to protect life etc will almost invariably also be a breach of the right to security of person, it is important to be comprehensive so as to incorporate the standards that have arisen under these other rights. In addition, this duty to protect has also been extended to the right to property.

In essence, it has been determined in relation to these various rights that

(i) they have negative aspects in the sense of limiting what state officers can do and

(ii) they have positive aspects in the sense of requiring states to take positive steps to protect the right, including from non-state actors.

These positive aspects give rise to a duty to protect, which sounds under the right to life in the case of fatal or near fatal violence, the right not to be subject to the various gradations of ill-treatment in relation to serious violence and the right to privacy in relation to lesser assaults. In addition, there is a duty to protect people from forced labour, which includes trafficking of people for sex work or slavery.

This duty to protect has a common architecture in that it requires:

(i) laws that make illegal the relevant form of misconduct, which might often be criminal laws;

(ii) an adequate regulatory framework to enforce the laws; and

(iii) an 'operational' duty to take reasonable protective measures (i.e., not just relying on the deterrent effect of the law) when the state knows or ought to know about a real and

> immediate risk to an identified individual or individuals. This operational duty may in certain circumstances extend to situations in which there is no identifiable person at risk; and it may also include a duty of special diligence in relation to certain highly risky situations.

There is a wealth of case law and other materials,203 including other international conventions (for example, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children to the UN Convention against Transnational Organised Crime, adopted by resolution A/RES/55/25 of 15 November 2000 and entered into force on 25 December 2003). These provide detailed normative standards which supplement the language of the International Covenant on Civil and Political Rights (ICCPR): whilst that might be most directly relevant to the understanding of the HRA, being the overarching international human rights standard applicable to Australia, the general principle that human rights standards should be read in conformity so as to provide a coherent whole means that a range of standards should be used to audit compliance.

Whilst there is significant reference made to the special position of Aboriginal and Torres Strait Islander peoples there is no reference in the explanatory notes or the statement of compatibility to the right to self-determination (which is referenced in the preamble to the HRA as a core purpose, and is reflected in Article 1 of the ICCPR; nor is there any reference to the UN Declaration on the Rights of Indigenous People (UNDRIP), which provides an additional normative framework for ensuring the proper treatment of indigenous peoples. This lens is necessary to ensure that there is proper consideration of the rights of people with these characteristics.

Although there are amendments to the DSA, there is no more general mention of the rights of persons with disabilities. The Convention on the Rights of Persons with Disabilities 2006 (UNCRPD) rephrases the international rights set out in the ICCPR and the International Covenant on Economic, Social and Cultural Rights so as to give them a disability perspective. Importantly, this is designed to ensure that there is no discrimination on the basis of disability, which occurs when the purpose or effect of legislation or policies is differential treatment, and also occurs when there has not been reasonable accommodation offered for the additional needs of persons with impairments that have to be taken into account in order to secure equality in rights as a matter of outcome. The need for non-discrimination is recognised in section 15 of the HRA 2019, including the need to effective protection.

What this means is that it is always necessary to review legislative amendments and policies through the lens of the UNCRPD in order to ensure that there is suitable equality of outcome. By parity of reasoning, there is a need to consider whether there is discrimination on the basis of gender by considering the impact of the Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW).

Whilst there are some relevant references in the explanatory notes and statement of compatibility to the UNCRPD, which is appropriate, the same should be done in relation to the UNCRPD and CEDAW. This should be done to address possible instances of intersectional discrimination, including where policies and legislation do not make appropriate protective provision to take into account needs arising on the basis of gender and/or disability and/or childhood.

An important aspect of this is the need for appropriate consultation with those affected: this can be seen as part of the right to participate in the conduct of public affairs (s 23 of the HRA), which has to be secured without discrimination – which in turn brings into play the need to ensure that there is no discrimination in effect and the need to sometimes to provide more to counter the effect of a vulnerability. The second reason why such consultation is important is that it allows policy makers to understand how rights are enjoyed in practice or where there are gaps, because those who are most directly affected will have the best insights.

4.1.1 *Child Protection Act 1999*

For the reasons noted above as general comments, other rights are implicated (and some that are mentioned on this page are implicated in supplemental ways to what is mentioned in the statement of compatibility).

4.1.1.1 Recognition and equality before the law – clauses 9, 12, 14, 25 and 31

The statement of compatibility indicates that these are acceptable as positive measures that do not limit any right to recognition and equality. However, section 15 also repeatedly refers to the right to non-discrimination, which (as explained above) entails examining the effect of measures and making sure that vulnerabilities are taken into account, which requires, in addition, consultation with affected groups. Accordingly,

(i) it has been assumed that there has been adequate and effective consultation with Aboriginal and Torres Strait Islander people, and

(ii) that as part of this consultation there has been an examination of whether these amendments go far enough to secure non-discrimination.

4.1.1.2 Freedom from torture – clause 11

The statement of compatibility indicates that this clause is protective of children by allowing them to express their views. This seems accurate, however,

(i) it would be appropriate to make provisions for any intersectional discrimination, including making specific provision for children with disabilities;

(ii) clause 11(5) excludes judicial bodies and there is no obvious reason for that, particularly in relation to the need to protect conduct that might otherwise breach section 17 (which is problematic when it is carried out by a judicial body as well as by any other public body).

4.1.1.3 Freedom of thought – clause 66

The statement of compatibility correctly indicates that this clause is protective of this right by allowing children in care additional rights in relation to religion and language. The analysis in the statement of compatibility is accurate.

4.1.1.4 Freedom of expression – clauses 11, 29, 30, 63 and 66

The statement of compatibility indicates that these clauses support rights relating to seeking, imparting and expressing opinions. The analysis is accurate, but note the need identified above, to include such matters as a disability perspective.

4.1.1.5 Property Rights – clause 66

The statement of compatibility indicates that this clause is protective of this right by making additional provision to protect property rights. This is accurate; note however that the right to property is one that is subject to the duty to protect and accordingly it is appropriate to assess whether the provisions go far enough to protect the right to property.

4.1.1.6 Privacy and Reputation – clauses 62 and 66

The statement of compatibility indicates that these clauses are protective of this right by protecting private information. The analysis in the statement of compatibility is accurate.

4.1.1.7 Protection of Families and Children – clauses 9, 11, 12, 14, 25, 29, 30, 31, 44, 45, 66, 68

The statement of compatibility contends that these clauses are protective of this right in various ways. This is accurate. However, this is an example par excellence of where a disability perspective is particularly warranted, along with consultation with groups representing parents and/or children with disability, to ensure that this right is recognised without discrimination. In addition, since there are also provisions relating to Aboriginal and Torres Strait Islander people, the lens of the UNDRIP should be examined and there should be adequate consultation.

4.1.1.8 Cultural Rights – clause 66

The statement of compatibility indicates that this clause is protective of this right by allowing children in care additional rights in relation to religion, language, and culture. This is accurate; however, note the importance of consultation in this regard.

4.1.1.9 Cultural Rights of Aboriginal and Torres Strait Islands Persons – clauses 9, 12 and 68

The statement of compatibility indicates these clauses are protective of this right in various respects. This seems accurate; however, note the importance of consultation in this regard, and also the importance of exploring the lens of the UNDRIP.

4.1.1.10 Right to a fair hearing – clauses 24, 33 and 67

The statement of compatibility indicates that these clauses protect fair trial rights. This is accurate; however, note the importance of consultation in this regard.

4.1.2 *Working with Children (Risk Management and Screening) Act 2000*

4.1.2.1 Protection of families and children – section 26 HRA

Sharing of domestic violence information. There have been instances of findings that sharing of information between public authorities is appropriate as part of the duty to protect (or, that failures in sharing have breached the duty[204]). Accordingly, whilst the changes might support section 26 HRA, there may be countervailing features (which are discussed below).

4.1.2.2 Right not to be tried or punished more than once – section 34

The statement of compatibility states that the right protected under section 34 is not breached by non-penal consequences of sharing domestic violence information. This analysis is accurate

4.1.3 Justified Limitations – *Child Protection Act 1999*

4.1.3.1 Recognition and equality – section 15 HRA; and Privacy and reputation – section 25 HRA

Collection of expanded criminal history information and its potential to impact on having a carer certificate – which may be discriminatory because of the over-representation of some groups, including Aboriginal and Torres Strait Islander people; and involves the collection and use of information covered by privacy protections, but is argued to be proportionate (even with its discriminatory impact). The statement of compatibility contends that the limitation is justified on balance. This merits careful consideration: the historical (and ongoing) discrimination in the criminal justice system is so significant that the consolidation of this by making further use of this material in ways that will tend to undermine other efforts in the Bill that are designed to secure positive outcomes for Aboriginal and Torres Strait Islander persons is something that merits significant weight to be attached to it in the proportionality assessment. It will be important to assess what evidence has been secured to assist this assessment, which is not discussed in the explanatory notes.

4.1.3.2 Freedom of expression – section 21 HRA, Privacy and reputation – section 25 HRA

Mandatory reporting obligations of carers as to suspicions of harm or risk for protective purposes, citing section 26 HRA (protection of family) and also section 16 HRA (life) and section 29 HRA (security of person). See the discussion above of the duty to protect: this is the only mention of this duty and only in relation to the right to life and security of person. But the duty to protect is more extensive, and this needs to be taken into account: it may offer additional support for this restriction.

4.1.3.3 Privacy and reputation – section 25 HRA

Participation of children and the recording and storing of their views (especially written statements or videos) – this implicates the right to privacy but in a proportionate manner, including because of its role in protecting children and families. This is acceptable, but there must be relevant safeguards and protocols both to preserve privacy and to ensure that the information is not maintained once it becomes disproportionate to any relevant aim to preserve it.

Provision of information to carers about children in their care – implicates the right to privacy but in a proportionate manner, including because of its protective role (section 26 HRA). This is acceptable, but again there must be relevant safeguards, including obligations on carers as to maintaining confidentiality and not maintaining records longer than needed.

Provision of details of notifiers to senior police officers – implicates the right to privacy but in a proportionate manner, including because it protects families and children (section 26 HRA) and security of person (section 29 HRA). This is acceptable, but again it is necessary to consider the extent of the duty to protect; there are safeguards to ensure that the details do not go further, but it is worth considering whether these go far enough because there might be risks to the bodily integrity of the notifier from reprisals (such that their rights to bodily integrity is implicated, giving rise to a duty to protect them).

4.1.3.4 Fair trial – section 31 HRA

Non-notification to parties of appeal proceedings so as not to delay urgent proceedings – implicates the right to fair trial but is said to be justified by the need to protect families and children (section 26 HRA) and security of person (section 29 HRA). This is questionable unless adequate arrangements are made to ensure that any decision made in such a process is provisional and can be modified by allowing a party who has not been notified to have a fresh hearing on a de novo basis (a full rehearing of an appeal). A trial in absentia is simply not a fair trial (it may be a trial, but not a fair one), and the need for urgent action can be accomplished in a proportionate manner by making the decision reached one that can be reconsidered via a process that does amount to a fair trial.

4.1.4 Justified Limitations – *Working with Children (Risk Management and Screening) Act 2000*

4.1.4.1 Privacy and reputation – section 25 HRA

Additional businesses caught by screening requirements – implicates the right to privacy but is proportionate to the need to protect families and children (section 26 HRA) and security of person (section 29 HRA). This assessment is reasonable and appropriate.

Additional persons are given notifications, though with safeguards - implicates the right to privacy but is proportionate to the need to protect families and children (section 26 HRA) and security of person (section 29 HRA). This assessment is considered reasonable and acceptable.

4.1.4.2 Recognition and equality – section 15 HRA; and Privacy and reputation – section 25 HRA

Assessments for involvement in a WWCC based on criminal records and its potential to impact on having a carer certificate – which may be discriminatory because of the over- representation of some groups, including Aboriginal and Torres Strait Islander people; and involves the collection and use of information covered by privacy protections, but is argued to be proportionate (even with its discriminatory impact). The statement of compatibility contends that the limitation is justified on balance. This merits careful consideration: the historical (and ongoing) discrimination in the criminal justice system is so significant that the consolidation of this by making further use of this material in ways that will tend to undermine other efforts in the Bill that are designed to secure positive outcomes for Aboriginal and Torres Strait Islands persons is something that merits significant weight to be attached to it in the proportionality assessment. It will be important to assess what evidence has been secured to assist this assessment, which is not discussed in the Explanatory Statement.

4.1.5 Amendments to *Working with Children (Risk Management and Screening) Act 2000 and Disability Services Act 2006*

4.1.5.1 Privacy and reputation – section 25 HRA

Sharing of domestic violence information with safeguards - implicates the right to privacy but in a proportionate manner, including because it protects families and children (section 26 HRA) and security of person (section 29 HRA). This is acceptable, but again it is necessary to consider the extent of the duty to protect, which goes wider than sections 26 and 29; it should also be determined whether

the domestic violence information in question has been collated in a way that has a disproportionate impact on Aboriginal and Torres Strait Island persons, in which case section 15 is also implicated and the proportionality of its impact will have to considered.

4.1.6 Amendments to *Adoption Act 2009*

4.1.6.1 Privacy and reputation – section 25 HRA, Protection of families and children – section 26 HRA, Cultural rights – section 27 HRA

Ongoing supervision of families during adoption process, transferring of guardianship on adoption and ending of ties with original family unit and so potentially cutting off cultural rights (particularly in a cross-country adoption) – all said to be justified. This seems prima facie acceptable: however, this is an area which may have implications in relation to the rights of persons with disabilities and may disproportionately affect population groups based on ethnicity. As such, it is necessary for there to be analyses from a disability perspective and an ethnicity perspective to determine whether additional safeguards are needed to prevent outcomes that amount to discrimination based on disability or ethnicity.

4.2 Statement of compatibility

Section 38 of the HRA requires a statement of compatibility to be tabled for a Bill.

The statement of compatibility tabled with the introduction of the Bill provides a sufficient level of information to facilitate understanding of the Bill in relation to its compatibility with human rights.

4.2.1.1 Committee comment

Subject to the observations made above, the committee finds the legislation is compatible with the HRA.

Appendix A – Submitters

Sub #	Submitter
001	Queensland Catholic Education Commission
002	Sisters Inside Inc
003	Aboriginal and Torres Strait Islander Legal Service (QLD) Ltd
004	Confidential
005	Queensland Family and Child Commission
006	Anglicare Southern Queensland
007	Life Without Barriers
008	Queensland Council of Social Service
009	Women's Legal Service Qld
010	Queensland Aboriginal and Torres Strait Islander Child Protection Peak
011	LawRight
012	PeakCare Queensland Inc
013	CREATE Foundation
014	Australian Association of Social Workers'
015	Queensland Human Rights Commission
016	knowmore
017	Queensland Law Society
018	Office of the Public Guardian

Appendix B

Officials at public departmental briefing – Brisbane – 27 September 2021

Department of Children, Youth Justice and Multicultural Affairs

- Claire Hurst, A/Executive Director, Strategic Policy and Legislation, Strategy
- Kate Sanderson, A/Manager, Strategic Policy and Legislation, Strategy

Department of Justice and Attorney-General

- Leanne Robertson, Assistant Director-General, Strategic Policy and Legal Services
- Gregory Bourke, Project Director, Strategic Policy

Appendix C

Witnesses at public hearing – Brisbane – 15 October 2021

CREATE Foundation

- Dr Joseph McDowall, Executive Director (Research)
- Andrew Foley, Acting State Coordinator
- Jake Shields, Young Consultant

PeakCare Queensland

- Lindsay Wegener, Executive Director

Queensland Family & Child Commission

- Natalie Lewis, Commissioner

Aboriginal & Torres Strait Islander Legal Service (Qld) Ltd

- Kate Grant, Legal Practitioner (Family Law Section) and Deputy Chair of Queensland Law Society's Children's Law Committee
- Kate Greenwood, Barrister, Prevention, Early Intervention and Community Legal Education Officer

Queensland Law Society

- Elizabeth Shearer, President
- Natalie De Campo, Senior Legal Policy Solicitor

Queensland Catholic Education Commission

- Dr Lee-Anne Perry AM, Executive Director
- Patrick MacDermott, Senior Policy Officer – Governance and Strategy

LawRight

- Nikki Hancock, Senior Lawyer
- Kurt Maroske, Project Officer
- Ben Tuckett, Managing Lawyer

Women's Legal Service

- Julie Sarkozi, Solictor

Appendix D

Witnesses at public hearing – Mount Isa – 18 October 2021

Mount Isa City Council

- Mayor Danielle Slade
- David Keenan, Chief Executive Officer

Private capacity

- Michael Connelly
- Faisal Khan
- Adam Kuzmanovic, Manager, Youth Hub
- Helen McLure, Churches of Christ in Queensland
- Marissa Sherry, Churches of Christ in Queensland

Appendix E

Witnesses at public hearing – Aitkenvale – 19 October 2021

knowmore

- Jasmine Jevaherjian, Acting Law Reform and Advocacy Officer
- Warren Strange, Chief Executive Officer

Australian Association of Social Workers

- Charles Chu, Social Policy and Advocacy Officer
- Angela Scarfe, Senior Policy Adviser

Private capacity

- Sandra Oui
- Francis Tapim

Appendix F

Witnesses at public hearing – Manunda – 20 October 2021

Life Without Barriers

- Carly Jacobitz, Director

Appendix G

Witnesses at public hearing – Thursday Island – 21 October 2021

Pormpur Paanth Aboriginal Corporation

- Ganthi Kuppusamy, Chief Executive Officer

Private capacity

- Aunty Ivy Trevallion

Torres Shire Council

- Dalessa Yorkstone, Chief Executive Officer
- Gabrielle Walsh

Statements of Reservation

CSSC - Report No. 12, Child Protection Reform and Other Legislation Amendment Bill 2021

Statement of Reservation

The LNP members of the Community Support and Service Committee are generally supportive of the Bill.

We make the following statement of reservation to report No.12, 57th Parliament to highlight the issues within the Bill relating to concerns raised around ongoing issues with "Working with Children blue card screening".

Working with children blue card screening and executive access to criminal history information and to domestic violence information

By amendment to the *Working with Children (Risk Management and Screening Act) 2000* (WWC Act) the Bill proposes to enable the chief executive (working with children) to:

- request domestic violence information from the Queensland Police Commissioner for the purposes of a blue card assessment (at clauses 78 to 83), and
- enable the chief executive (working with children) to have regard to adverse decisions in other jurisdictions as part of a blue card assessment, made possible through access to the national database – the Working with Children Check National Reference System (WWCC NRS) - to identify persons who have been deemed ineligible to work with children in another state or territory.

Submissions on this topic

Queensland Family and Child Commission (QFCC):

> *The dynamics of domestic and family violence are challenging, particularly where there is a risk the perpetrator of violence has been misidentified.*[1]

The QFCC called on the government to require that 'domestic and family violence information is assessed by staff with sufficient expertise in multidisciplinary approach, is implemented alongside these amendments. This will help to make sure domestic and family violence information is used appropriately without further disadvantaging applicants who have already experienced harm'.[2]

Sisters Inside:

> *We submit that expansion of the powers of the chief executive to enable them to request domestic violence information from the Queensland Police Commissioner will result in further social exclusion of vulnerable women.*[3]

Sisters Inside:

> *The expansion of the chief executive's powers to enable them to obtain and take into consideration domestic violence in making WWCC decisions will inevitably have a negative impact on vulnerable women who have been identified as DFV perpetrators. As discussed above, women with criminal histories are already*

[1] QFCC, submission 5, p 2
[2] QFCC, submission 5, p 2.
[3] Sisters Inside, submission 2, p 2.

> *prevented or experience immense difficulties in obtaining a positive clearance. The proposed amendment will only worsen this issue and make the lives of women who have experienced trauma and victimisation even more difficult.*[4]

Women's Legal Service Queensland (QLSQ):

> *WLSQ supports information about the existence of domestic violence as being relevant to blue card assessment and eligibility.*[5]

However WLSQ stated 'The existence of a domestic violence protection order, which will affect the respondent's blue card status, and their ability to obtain and maintain employment, may provide added barriers for women to report the domestic violence and seek protection through domestic violence orders'.[6]

WLSQ recommended:

> *WLSQ supports the Chief Executive utilising specific domestic and family violence experts and professionals, taking into account the gendered nature of domestic violence, when making a determination to suspend or cancel a person's blue card.*[7]

Queensland Law Society:

> *Some consideration should be given to the potential adverse impacts associated with screening for domestic violence orders. For example, the proposed amendments may mean that an allegation of domestic violence in a civil proceeding could affect whether a person is permitted to engage in an occupation that requires a blue card even when the order is consented to on a 'without admission' basis. Further, there is a risk that more applications would be opposed and subject to a contested hearing because the respondent was concerned about the information being provided to the chief executive and used to make a decision under the WWC Act.*[8]

QLS recommended:

> *… the chief executive should adopt a discretionary and flexible approach when requesting and relying upon shared criminal history and domestic violence information. Appropriate safeguards to ensure privacy and confidentiality are essential, and the chief executive should ensure that natural justice is afforded to the applicant. This should include appropriate avenues to challenge an unfavourable decision.*[9]

Aboriginal and Torres Strait Islander Legal Service (Qld):

---

[4] Sisters Inside, submission 2, p 3.
[5] WLSQ, submission 9, p 4.
[6] WLSQ, submission 9, p 3.
[7] WLSQ, submission 9, p 4.
[8] QLS, submission 17, p 6.
[9] QLS, submission 17, p 7.

We note the sense of provisions to enable the chief executive (working with children) to have regard to adverse decisions in other jurisdictions as part of a Blue Card assessment; however with respect to the provisions concerning suspension or cancellation of interstate authority, we would urge consideration that the Chief Executive 'may', not 'must' take action. The reasons for the need for some flexibility in decision-making arises from the variation between jurisdictions in adverse decision making. An automatic and unreviewable decision is capable of producing anomalies and absurd results. There should always be an ability to afford fairness to applicants and this would be best achieved by maintaining a discretion for the decision-maker.[10]

Unrelated to the blue card system …. but in the Bill refers to 'Executive access to criminal history information' …

Criminal history information to assess suitability of a person to be carer

Note that the Bill at clause 55 also proposes to amend the *Child Protection Act 1999* to enable the chief executive to request expanded interstate criminal history information for the purpose of assessing the suitability of a person to be a provisionally approved carer (and adult members of the person's house), by enabling the department to become a participating screening unit under the Intergovernmental Agreement.

Currently, in assessing the suitability of a person to be a provisionally approved carer, the department obtains expanded criminal history information such as charges and spent convictions held in Queensland, but can only receive limited criminal history information from interstate in the form of conviction information, not in a routine manner and only through the police commissioner. The Bill enables interstate criminal history to be available to the chief executive in order to assess the suitability of a person to be a carer.

Sisters Inside held concerns about the provision,[11] while PeakCare supported the intent but not the current criminal history screening approach of screening people over 18 years of age and living in the same household.[12]

We the LNP urge the Government to investigate and address the barriers that exists for many Queenslanders navigating the blue card system, as per committee recommendation 3 of Report No. 12.

Mr Stephen Bennett MP
Member for Burnett

Mr Jon Krause
Member for Scenic Rim

[10] Submission 3, p 7.
[11] Submission 2, p 6.
[12] Submission 12, p 6.

Statement of Reservation

Michael Berkman MP, Member for Maiwar

I agree with the majority of the Committee's report on the Bill (**Report**) and acknowledge that there is broad support from stakeholders in relation to much of the reform brought in this Bill. However, there are aspects of the child protection reforms that require further consideration and reform, and unintended consequences of the Blue Card reforms that remain unresolved.

Child Protection Reforms

"Active efforts" to apply the Aboriginal and Torres Strait Islander Child Placement Principle

While I and most submitters welcomed the proposed amendment requiring that "active efforts" be made to apply the Aboriginal and Torres Strait Islander Child Placement Principle, section 2.1.4.1 of the Report notes submitters' concerns that decision-making under the CP Act doesn't require evidence that active efforts have in fact been made.

PeakCare's submission made the following suggestion:

> While PeakCare is supportive of requiring "active efforts" in relation to the Aboriginal and Torres Strait Islander Child Placement Principle, we recommend consideration is given to expanding this to include a requirement preventing the Court from making a decision 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.

Similarly, QCOSS states:

> The welcomed introduction of 'active efforts' in relation to the CPP should be strengthened by preventing a decision-maker, including the Childrens Court, from making a decision in relation to an Aboriginal or Torres Strait Islander child unless the decision-maker is satisfied that active efforts have been made to apply the CPP.

The Report notes the Department's response that courts are required to "consider" or "have regard to" the "active efforts" Aboriginal and Torres Strait Islander Child Placement Principle - a much less stringent requirement than that suggested by submitters.

The Department's response also asserted that "[i]t would not be appropriate to remove the court's discretion… especially in urgent circumstances where a child was at risk of harm." Taking this position into account, it seems there is ample scope to constrain decision-making in the way suggested by QCOSS and PeakCare *unless* the circumstances require an urgent decision or there is a risk of harm to the child.

I encourage the Government to consider amendments that would prevent decision-makers, including Courts, from making a decision in relation to an Aboriginal or Torres Strait Islander child unless the decision-maker is satisfied that active efforts have been made to apply the child placement principle, but leave it open for the Court to dispense with this requirement only where the circumstances require an urgent decision or there is a risk of harm to the child.

Chief Executive's power to refuse case plan review

As noted in the Report, 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 review rights of children with or without a long-term guardian, and that a decision to refuse a case plan review can be challenged before QCAT. But it 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 the CREATE Foundation that almost half of all children with a case plan didn't know about it, and less than 60% of those who knew about their case plan were involved in its development.

Given that the Bill's objectives include reinforcing children's rights under the CP Act and strengthening children's voices in decisions that affect them, and in light of the significance of case plans in ensuring the child's safety, wellbeing, ongoing support and development, this Bill seems like a sensible vehicle to enshrine a child's right to a case plan review, rather than leave this to the Chief Executive's discretion.

I implore the Minister and the department to consider amendments to enshrine a child's right to a case plan review or, at very least, ensure this issue is given further consideration in any future reform.

Improved access to independent legal advice

Submitters, particularly Sisters Inside, noted that some changes proposed by the Bill, including 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 better funding for organisations like Sisters Inside, ATSILS, Legal Aid Queensland, and other community legal centres, and I take this opportunity to implore the Government to increase funding to these independent legal advocates.

Unintended consequences of the Blue Card Reforms

Impacts on First Nations people

It is well recognised that the Working With Children Clearance system - better known as the Blue Card system - has disproportionate impacts on First Nations people as a consequence of their overrepresentation in the criminal legal system, which results in significant barriers to taking up employment and volunteering opportunities, and kinship caring roles.

The Report acknowledges that a number of submitters raised concerns that the proposed amendments to the Blue Card system would only exacerbate these barriers. Sisters Inside, in particular, noted that both the amendments around sharing domestic violence information and the adoption of the national system "would only aggravate the exclusionary and discriminatory effects of the WWC Act." This is particularly concerning given the frequency with which women, and First Nations women in particular, are misidentified as perpetrators and become the subject of domestic violence orders, despite not being the primary aggressor.

The Committee's recommendation 3 - that the Department "investigate the nuances and the barriers regarding First Nations persons obtaining Blue Cards so as to improve access to employment" - is a welcome recognition of the issue.

While there is no dispute about the importance of ensuring the safety of children, and the role of the Blue card system in this, it is difficult to support amendments to this process that will further entrench the well-recognised, disproportionate impacts on First Nations people.

Other unintended consequences

I remain concerned about other unintended consequences raised by submitters, including that the amendments may deter domestic violence victims from making applications for a DVO, or lead to more contested applications.

The submission from Women's Legal Service addresses these issues directly:

> The existence of a domestic violence protection order, which will affect the respondent's blue card status, and their ability to obtain and maintain employment, may provide added barriers for women to report the domestic violence and seek protection through domestic violence orders. …
>
> In practice, respondents will be more likely to "consent without admission" to an order, if the order will not affect the respondent's existing blue card status. The amendments proposed will significantly affect this position, and may increase the amount of defended applications in court because the respondent has more to lose if the order is made. This will have a detrimental impact on women who experience domestic violence.

As indicated by WLS and others, in seeking to improve protections for children, these amendments could have the unintended effect of raising barriers and limiting women's access to important domestic violence protections. I remain concerned that the material before the Committee hasn't addressed if or how these concerns can be addressed in practice. For example, ATSILS and LawRight recommend in their respective submissions that the Bill be amended to ensure domestic violence information is only taken into account as adjunct to criminal charges, or at least to 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 and family violence.

Michael Berkman MP

Member for Maiwar

11 November 2021