Queensland Law Society

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Office of the President

22 July 2024

Our ref: KB-MC

Committee Secretary
Education, Employment, Training and Skills Committee
Parliament House
George Street
Brisbane Qld 4000

By email: [redacted]

Dear Committee Secretary

Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024 – further supplementary submission

We write again in response to the Committee's inquiry examining the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024 (**Bill**) following the publishing of submissions and the public hearing held on 17 July 2024 where a number of stakeholders raised concerns with the new self-disclosure obligations.

Our previous submission objected to certain types of information being used by Blue Card Services (**BCS**) to determine applications; however, upon reviewing the other stakeholder submissions and the public hearing transcript, we consider it is important to raise concerns about the self-disclosure obligations more broadly.

The Bill amends the form of application to introduce a requirement for applicants to disclose particular police information and disclosable matters. If a person fails to do so, the Bill proposes penalty provisions. This is a substantial departure from the current form of application which provides a "consent to employment screening" that is used by the Chief Executive to undertake employment screening checks.

The justification for this change is that the effective and timely disclosure of information is crucial to the operation of the blue card system and its objective of promoting and protecting the rights, interests and wellbeing of children. However, for the reasons outlined below, the processes will create a number of unintended consequences.

The self-disclosure obligations require that applicants are providing truthful and accurate information to the Chief Executive. Long experience suggests that what members of the community consider appropriate to disclose will differ from applicant to applicant and will depend on a number of factors such as time passed since the disclosable event. As a result, consent to criminal history screening has long been considered critical to the effective consideration of risk, character and fitness.

Further, the creation of an offence provision relating to a failure to disclose will likely lead to significant consequences for an applicant even if there is a general intention, as expressed by the explanatory notes, that those who make an honest mistake will not be penalised. We are also concerned that, if an applicant is required to make the disclosure at the time of submitting, this could also inadvertently lead to some information not being provided.

The Bill proposes self-disclosure of particular police information. To mitigate the risk that a person does not disclose their criminal history, the Chief Executive already accesses the QPS Police Information Centre to conduct police information checks. The requirement for self-disclosure in these circumstances will not lead to the provision of any further information and will likely only create delays as investigations in relation to failures to disclose are conducted. Rather than improving the risk assessment process, this requirement may only prove to penalise a person who considers 'particular police information' not relevant to a working with children employment screen, particularly where many individuals in the working with children space have police information which is decades old and, on its face, unrelated to working or volunteering with children.

Secondly, the Bill proposes self-disclosure of 'disclosable matters'. Our members, and we note the discussions with other stakeholders throughout the public hearing,are concerned about this aspect of the self-disclosure process in two primary respects:

1) Domestic violence orders and police protection notices are not necessarily relevant to the risk assessment process and their disclosure and disclosure of other related information may serve only to delay the assessment process; and
2) In some cases, disclosable matters are not known to or remembered by applicants and criminalising a failure in those circumstances is unlikely to lead to any improved outcomes for Queenslanders in the working with children space.

Our previous submission raised concerns in relation to the proposal for domestic violence protection orders and police protection notices to be the subject of self-disclosure. As a result of this information being assessed by the Chief Executive, there are assessments being made of incidents of domestic violence which have previously not been the subject of any findings or evidence. The stated facts contained within applications are often disputed allegations. There are often no sworn statements from witnesses in police material if matters are finalised without admissions. Seeking those statements from applicants may, by itself, re-traumatise victim survivors in cross-order circumstances. Further, in many cases, the existence of a protection order or police protection notice is not conclusive that an applicant caused harm to any child or exposed any child to domestic violence.

In some cases, disclosable matters are not known to or remembered by applicants and criminalising a failure in those circumstances is unlikely to lead to any improved outcomes for Queenslanders in the working with children space. The proposed definition of disclosable matter includes 'another matter relevant to whether the person poses a risk to the safety of children prescribed by regulation'. It is not appropriate that factors relevant to an offence provision are left to a regulation.[1] Further, we are unable to comment on reasonableness of this broad aspect

[1] Section 4(5)(c) of the *Legislative Standards Act 1992* states that subordinate legislation should contain only matters appropriate to that level of legislation. QLS submits that factors relevant to an offence provision ought to be placed in primary legislation.

of the definition where the regulation is not able to be viewed. However, for the same reason that reservations are expressed about the self-disclosure of police information, in that it relies on applicants volunteering information that they may not consider relevant to the Chief Executive's employment screening processes, we are concerned that making 'disclosable matters' a requirement for self-disclosure will not improve the Chief Executive's risk assessment process and will lead to a number of unintended consequences. We also have concerns about how the information that is disclosed could be used if it is not relevant to assessment process.

Recommendation

QLS strongly recommends that the current form of application in section 188, which includes a consent to obtain employment screening information, be retained. Employment screening information would include the police information and could include a domestic violence history in the first instance. If there is relevant information in this history, follow-up enquiries can be made to the Queensland Police Service and submissions sought at that time.

Given the issues identified with the proposed self-disclosure process by QLS and by other stakeholders, we ask that the Committee recommend the legislation is not passed until the issues are reconsidered and potentially, further consulted on. While QLS is pleased to see reform in this area, a review and re-drafting of these new provisions will ensure that a more efficient and effective system is created.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team via [redacted] or by phone on [redacted]

Yours faithfully

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Rebecca Rogerty
President