Queensland Law Society

Law Society House, 179 Ann Street, Brisbane Qld 4000, Australia
GPO Box 1785, Brisbane Qld 4001 | ABN 33 423 389 441
P 07 3842 5943 | F 07 3221 9329 | president@qls.com.au | qls.com.au

Office of the President

26 April 2019

Mr David Janetzki
Shadow Attorney-General and Shadow Minister for Justice
PO Box 3005
TOOWOOMBA
QLD 4350

Our ref: CrLC: BDS

By post and by email: [redacted]

Dear Shadow Attorney

Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018

We write in relation to the Parliamentary Education, Employment and Small Business Committee's Inquiry into the Working with Children Bills. Due to time constraints and the workload of the volunteers of our policy committees, the Society did not have time to make submissions in response to the Inquiry. Having now reviewed material we are in a position to provide these brief views to you and the Attorney-General.

The Society is the peak representative body for the solicitors of Queensland and has a mission to work for good law, good lawyers and the public good. We are an apolitical body focusing on achieving good law and respect for fundamental legislative principles in Queensland legislation.

The Society is supportive of measures, which protect the vulnerable members of our community, children and young people. As such, the Society supports legislative measures that promote these objectives.

We note in the introductory speech to the Bill, this Bill was intended to be the first stage of a series of legislative reforms and we would be keen to be consulted on this ongoing program as it develops and as the recommendations of the Queensland Family and Child Commission are implemented. There has been some discussion of aspects of the Bill in the media and potential future amendments to be moved during debate. On the issues raised, we can offer the following views.

1. Expanding the list of disqualifying offences

The Bill contemplates some expansion of disqualifying offences for issuing a Blue Card and further offences have been raised as part of the debate.

Any expansion of disqualifying offences must been seen in the context that each Criminal Code offence captures a wide range of conduct. For example, the offence of torture may include conduct from smacking a child to the infliction of severe pain and suffering. While the offence on its face may appear serious in nature, the lower range of conduct may not be appropriate in all cases to constitute a disqualifying offence.

Further to this, prescription of general offence provisions may not involve consideration of the length of time which has elapsed between the offending and the application, nor any treatment, programs, rehabilitation or change of life circumstances which has occurred.

It is also possible that in some cases the commission of lesser offences such as certain assaults or privacy breaches may warrant the disqualification of a particular Blue Card applicant.

For these reasons, the Society is supportive of maintaining the broadest discretion in the application process for the deciding agency and resisting blanket expansion of disqualifying offences without a thorough exploration of the factual circumstances of each case.

If there is a desire for further expansion of the disqualifying offences we would welcome consultation on statutory guidelines to support decision-making to ensure the primary purpose of keeping children safe is paramount and preserving fairness to individuals.

2. Removing the eligibility declaration process

We have raised a number of reasons why a broad discretion is necessary for the deciding agency and in this regard an eligibility declaration process may be warranted in certain targeted circumstances, if led by specific statutory guidelines.

We understand the Queensland Family and Child Commission made recommendations on this topic and that the *No Card, No Start* policy will prevent an inappropriate applicant from having contact with children under the regime.

3. Considering international criminal histories prior to obtaining a blue card

While we support the most thorough checking of an individual's application for a Blue Card possible, considering international criminal histories may prove to be operationally unviable. In our view, the potential for cost, delay, translation, jurisdictional variations in offences and inaccuracy of international criminal history checks would render this process impractical.

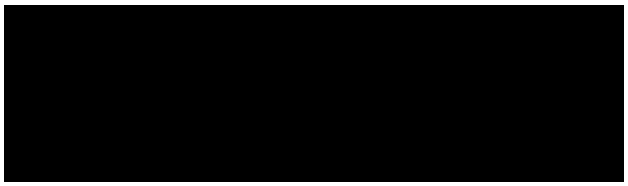
We also fear that criminal history checks from some countries may not be reliable or that convictions evidenced may have been procured through inappropriate means. It would be particularly difficult for the deciding agency to look behind an international criminal history check to ascertain the bona fides of any alleged conviction and as such expanding this consideration in all but a handful of nations would be obstructive to good decision making.

We note that we have written in similar terms to the Attorney-General.

We would be happy to meet with you to discuss these matters further.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Legal Policy team by phone on (07) 3842 5930 or by email at policy@qls.com.au.

Yours faithfully



Bill Potts
President