

15 July 2024

Our ref: LP-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

Thank you for the opportunity to provide a submission to the inquiry examining the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024 (**Bill**).

The Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote over 14,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

This submission has been contributed to by a number of QLS's legal policy committees.

Unfortunately, due to time constraints we have been unable to conduct a comprehensive review of this Bill and our comments are limited to some discrete issues identified at this time. We generally consider the reforms proposed will lead to positive change in this area and that continued engagement with relevant stakeholders is important and will assist in the successful implementation of these changes.

Removing the exemption for lawyers

The Bill amends Schedule 1 of the *Working with Children (Risk Management and Screening) Act 2000* (**WWC Act**) to remove the exemption for lawyers and require lawyers or businesses who provide legal support services to children to obtain a blue card.

Lawyers are currently exempt from this process due the requirements of the *Legal Profession Act 2007* that they be admitted to the profession by the Supreme Court of Queensland (or equivalent state jurisdiction) and hold a practising certificate that is renewed annually. To be eligible for admission, a person must satisfy the Legal Practitioners Admissions Board and the Supreme Court of their fitness to practise.¹ This suitability is assessed each year by QLS when

¹ *Legal Profession Act 2007* (Qld) section 31 Suitability for admission (section 9 outlines suitability matters)

a lawyer applies to renew their practising certificate. There are ongoing disclosure obligations and information can be obtained from, for example, the Queensland Police Service.

The removal of the exemption was a recommendation of the *Keeping Queensland's children more than safe: review of the blue card system*' report.² In making this recommendation, the Queensland Family and Child Commission considered whether there were any unintended consequences and noted there would be an increase in the number of applications; however, it did not consider what that meant for the delivery of legal services to young people, nor specify the anticipated length or breadth of the delay, including any reviews or appeals.

The Bill contains a transitional period which will allow a lawyer or person operating a business providing legal support services to a child, and who is currently exempt under the WWC Act, 12 months to apply for a blue card.³

QLS concern

QLS supports a 12 month transition period; however, based on the drafting of section 612 this period will only apply to current lawyers, not to lawyers admitted following the commencement of this legislation. This distinction does not appear to be based on any recommendation and is concerning as it may lead to lawyers needing to wait for a considerable period of time before being able to provide the relevant legal services to clients.

There are also concerns about the removal of the exemption more broadly, even with the transition period, including that this may impede access to legal advice and representation for young people, particularly in remote centres. There is the potential that some young people will be left without advice, including in vulnerable places such as police stations and detention centres, if they are not able to access a lawyer who has a clearance (due to administrative or other delays in the process).

During the 12 month period following the commencement, a lawyer (or their employer) may decide against providing the relevant legal services if there is any uncertainty regarding their application, even where a clearance is ultimately issued. Following the transition period, processing delays could still occur when a lawyer changes practice areas or other circumstances change to necessitate them needing a clearance. There may also be difficulties experienced by lawyers seeking to volunteer in the legal assistance sector or provide pro bono services.

We are aware of previous changes to the requirements for other cohorts, such as firefighters, which led to a number of people being unable to work because they had historical police information, already disclosed to and assessed by their department, which needed to be dealt with. This caused delays of more than 12 months in some instances (including applications to the Queensland Civil and Administrative Tribunal (**QCAT**) to cancel negative notices) before these people were operational again with their positive notices.

² Recommendation 24, [Keeping Queensland's children more than safe: review of the blue card system' report](#)

³ See new sections 612 and 617.

Further, “support services” and “legal support” in the amended section 6 of Schedule 1 could be interpreted quite broadly and it may be that a significant cohort of people will now need to apply for a clearance, further contributing to delays and an impact on service delivery.

Recommendations

1. Section 612 should be amended so that the 12 month transition period applies to all lawyers for that period, regardless of their current status.
2. Based on our concerns, QLS recommends the application processing times for lawyers and related persons be monitored during the transition period and on an ongoing basis with a view to determining whether a priority process is required to ensure there is no adverse impact on the provision of legal advice and representation.
3. QLS would be pleased to work with the Department to provide appropriate education and guidance for the legal profession.

Regulated businesses

The Bill also amends section 16 of Schedule 1 of the WWC Act to include “legal support” within the meaning of *support services* so that, with the removal of the exemption for lawyers, businesses such as law firms will now be regulated businesses under the WWC Act.

There is a similar transition period of 12 months for business where, previously, a lawyer was exempt for needing a clearance.

This change will not only apply to law firms, but to community legal centres (CLCs), who already face resourcing issues. There is a concern that compliance requirements will lead to increased costs and administrative burdens for firms and CLCs which could impact upon service delivery in the legal assistance and pro bono sectors.

Consideration should be given to what assistance may be provided to assist with compliance. QLS would be pleased to engage further with the Department on these issues.

Improving information sharing arrangements - Queensland College of Teachers

We query whether the Chief Executive should be tasked with determining what is relevant to another statutory body’s discretion.

QLS has previously submitted its views on the potential harm caused by providing untested information (without a finding or an admission) to decision-makers in another jurisdiction. We also note that the Queensland College of Teachers (**QCT**) already has a power to obtain police information. Any new information-sharing provisions must balance the need for the information against the impact on the individual.

We note that the Bill does not amend the *Education (Queensland College of Teachers) Act 2005* (**QCT legislation**) and as a result, we are unsure whether there are meaningful consequences for how QCT could receive this information if it is not, under its statute, able to receive it.

While we understand this change will bring this provision in to line with section 344 of the WWC Act, we query whether the provision would be better left unchanged and instead, a provision inserted to allow Chief Executive to provide additional information upon request by QCT, so that QCT is able to determine what information it reasonably believes may be relevant to its determination of suitability.

If these changes are to progress, proactive advice should be given to all teachers prior to the commencement.

Recourses for QCAT

While we broadly support the amendments to Chapter 8 concerning reviewable decisions, this change, together with many of the other amendments in this Bill, will likely create significant additional work for QCAT. Due to QCAT's current workload and resourcing needs, it is critical that support is provided to the Tribunal as these amendments are implemented.

Guidelines

The Bill provides that the Chief Executive must make guidelines, consistent with the WWC Act, about how a risk assessment is conducted. These guidelines should be prepared following consultation with relevant stakeholders and, importantly, published and accessible by the community.

Transitional regulation

The Bill provides for the making of transitional regulations, including ones that would have retrospective application. Given the potential impacts of these regulations, appropriate consultation should be undertaken before they are made.

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



Rebecca Ogerty
President