



Minister for Disability  
Minister for Community Services and Facilities  
Minister for Employment and Workplace Safety  
Minister for Government Services and Procurement  
Member for Yerrabi

Mrs Giulia Jones MLA  
Chair  
Standing Committee on Justice and Community Safety (Legislative Scrutiny Role)  
ACT Legislative Assembly  
CANBERRA ACT 2601  
Email: [scrutiny@parliament.act.gov.au](mailto:scrutiny@parliament.act.gov.au)

Dear Mrs Jones

I write in response to the Standing Committee on Justice and Community Safety (Legislative Scrutiny Role) Scrutiny Report 43 of 2 June 2020, about the Working with Vulnerable People (Background Checking) Amendment Bill 2020, which seeks to establish disqualifying offences to exclude certain individuals from engaging in child-related work or services under the National Disability Insurance Scheme (NDIS).

I acknowledge the Committee's request for further information on whether the Bill potentially limits the right to work by excluding certain individuals from engaging in their chosen trade, occupation or profession.

I advise that the explanatory statement has been revised to consider potential limitations on the right to work for excluded individuals. I intend to table this revised explanatory statement during debate on the Bill.

As requested, please find below further information about potential limits on the right to work:

### Right to work

#### *Nature of the right and limitation*

Section 27B of the Human Rights Act expresses the right to work as being able to freely access employment in a person's chosen occupation or profession and to make that choice without discrimination. The Committee notes that this includes 'access to a system of employment; protection against forced employment; and protection against unfair deprivation of work'.

As a result of measures proposed in the Bill, certain individuals will be treated differently due to their criminal history and may be limited in their choice of work. However, these individuals will not be unjustly deprived of work.

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### *Legitimate purpose*

Certain people must be excluded from the Working with Vulnerable People (WWVP) scheme to ensure the protection of children and other vulnerable people. The best interests of vulnerable people is the paramount consideration that is prioritised over the rights of others involved in the WWVP scheme, including applicants. This means that amendments in the Bill are solely for the purpose of promoting the safety and welfare of vulnerable people in a democratic society.

The amendments address a substantial and pressing concern, clearly expressed by the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission), to ensure that individuals who are deemed to be an unacceptable risk of harm as a result of their criminal history are not permitted to engage in work with children and vulnerable people, including under the NDIS.

### *Rational connection between limitation and purpose*

The limitation on the right to work for certain individuals is necessary to maintain protections for children and vulnerable people and to successfully implement a nationally consistent approach to background screening.

This approach is supported by recommendations made by the Royal Commission and subsequent national agreements including the National Standards for Working with Children Checks and the NDIS Worker Screening Framework.

As the purpose of the amendments is to protect children and vulnerable people from individuals who present the greatest risk of harm, the limitation is an important measure to achieve the objective of preventing harm to vulnerable people across Australian jurisdictions.

### *Proportionality*

Excluding certain individuals from the WWVP scheme because of their criminal history is the least restrictive way of reasonably achieving the protection of vulnerable people, including children. This approach sets clear parameters for the exclusion of people who have demonstrable history of harmful behaviours that present a high risk for children and vulnerable people.

Any less restrictive measures would compromise the intent and objectives of the WWVP scheme and increase the unacceptable risk of harm that a person may pose to a vulnerable person. Further, it is expected that the limitation of the right to work will be restricted to a small group of people in the ACT and will not prevent this group from seeking employment in other sectors.

I thank the Committee for bringing this matter to my attention.

Yours sincerely

Suzanne Orr MLA  
Minister for Community Services and Facilities