

# Working with Children (Indigenous Communities) Amendment

## Bill 2021

### Explanatory Notes

#### Short title

Working with Children (Indigenous Communities) Amendment Bill 2021.

#### Policy objectives and the reasons for them

This Bill primarily amends the Working with Children (Risk Management and Screening) Act 2000. A number of other Acts, including the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984, are amended however those amendments are consequential.

The objectives of this Bill are to provide a new Blue Card framework that empowers Indigenous communities to make decisions which best serve their interests in relation to child protection and employment of community members.

The health, safety and wellbeing of all children is paramount and must continue to be the number one priority of the community however, the “one size fits all” approach to the Blue Card system is having a negative impact on Indigenous communities within Queensland where unemployment is chronically high and work opportunities are statistically low.

The current Blue Card system contains significant limitations in the way it applies to the unique circumstances of Indigenous communities, which is resulting in missed opportunities for social and economic development.

There have been many instances where individuals have been denied access to work due to the inflexibility of the current system. In a number of cases, the local community, through community leaders, law enforcement and judicial representatives, has determined that the person poses no risk to children and their employment would have broader positive community impacts. It is imperative that the legislative framework in Queensland recognises the different circumstances of remote Indigenous communities and supports the process for job seekers in Indigenous communities whilst protecting the interests of children.

The existing system, whilst well-meaning in its intention, is not practical in its application to remote Indigenous communities. Numerous examples exist where individuals who have made significant progress reforming their behaviour are faced with no hope of accessing employment due to the Blue Card system. Feedback from community leaders, law enforcement and judicial representatives indicates that handing more decision-making power to the communities themselves would assist in opening up employment opportunities whilst maintaining child safety standards.

Specifically, the current Blue Card system contains the following limitations:

- There is no mechanism to allow the local community to have input into the issuing of Blue Cards for employment in that community;

- No mechanism exists that recognises behavioural improvements and the positive impact employment of an individual may have on the community;
- The current application process has no set timeframe for the issuing of a Blue Card for individuals in Indigenous communities, which creates a significant barrier to accessing employment;
- The current application process does not allow an applicant to undertake work during the application process, even if it can be determined that the individual poses no risk to the safety of children. This can often result in the loss of long-term employment opportunities.

This Bill creates a framework that overcomes these limitations by enabling the local Community Justice Group (as defined in the Aboriginal and Torres Strait Islander Communities [Justice, Land and Other Matters] Act 1984) to make a binding recommendation to the chief executive to issue a *restricted working with children clearance* to an individual for work within that community even if the individual would be issued a negative notice by the chief executive due to previous criminal offences.

A Community Justice Group typically includes Elders, Traditional Owners, respected persons and community members of 'good standing'. There are currently close to 50 Community Justice Groups operating across Queensland.

It is vitally important to note that none of the offences which can be assessed by the Community Justice Group in making a recommendation to issue a *restricted working with children clearance*, are sexually-based offences. If an applicant has sexually-based offences they are considered through the standard Blue Card process and if these offences are classified as serious offences or disqualifying offences a Blue Card will not be issued.

Additionally, the Bill creates a time limit of three weeks for the chief executive to notify the Community Justice Group of the proposed decision in relation to a *community area application*.

## **Achievement of policy objectives**

The policy objectives are achieved through the development of a new Blue Card assessment framework.

This framework enables a Community Justice Group to use its judgement, based on the knowledge of the specific circumstances and individual involved, to issue a binding recommendation to the chief executive to issue a *restricted working with children clearance* (previously known as a *restricted positive notice*), where a negative notice would have been issued by the chief executive due to previous *serious offences* being committed by the applicant. The type of *serious offences* that can be considered under the new framework are limited to the following:

- Criminal Code offences
  - o Sections 409, 419 and 427, which relate to stealing with violence, burglary and unlawful entry of a vehicle;
- Drugs Misuse Act offences
  - o Sections 5,6,8 and 9D, which relate to trafficking dangerous drugs, supplying dangerous drugs, producing dangerous drugs and trafficking in relevant substances or things.

No other offences that are currently classified as *serious offences* or *disqualifying offences* can be considered by the Community Justice Group under the new framework.

A *restricted working with children clearance* issued in this way can only be used in the specific community area as defined by the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984.

Under the Bill a new ‘class’ of Blue Card is created by the issuance of a *restricted working with children clearance* by the chief executive. This allows the holder to work only in the specific community to which the *restricted working with children clearance* relates.

### **A new Blue Card framework for Indigenous communities**

The new framework creates the following process to enable the issuance of a *restricted working with children clearance* to an applicant who would otherwise have been issued a negative notice under the existing framework.

The new regime is outlined in the following points:

- An application (*community area application*) for a Blue Card is made to the chief executive and the applicant indicates that the application is for a *restricted working with children clearance*, in a *community area*.
- A *restricted working with children clearance* only allows the person to undertake employment in the community in which the Community Justice Group has jurisdiction (the *community area*) so there is no risk that they will undertake relevant employment in other areas.
- Where a *community area application* is made, the treatment of a narrow range of offences that would be classed as *serious offences* under a normal application is augmented to enable the application to be determined by the Community Justice Group. These offences relate to stealing, burglary and unlawful entry of a vehicle and drug-related offences.
- Upon receipt of the application the chief executive has five (5) business days to notify the Community Justice Group that a *community area application* has been made. The notice must be in writing and include a copy of the application.
- Once the Community Justice Group has been notified of the application they may make a binding recommendation to the chief executive that an *interim restricted working with children clearance*, is issued. This enables the applicant to undertake the regulated employment while the application is being considered. When deciding to issue such a recommendation the Community Justice Group must have regard to the following:
  - Any police information, investigative information or disciplinary information about the person that the group is aware of and considers relevant;
  - Whether, and in what capacity, the person has previously worked with children;
  - The person’s social standing and participation within the community area;
  - Whether, in the group’s reasonable opinion, withholding the recommendation would have a negative impact on the social or economic wellbeing of the community area’s inhabitants;
  - Anything else the group reasonably considers to be relevant to the decision.
- Once a community area application is made, the chief executive has 21 days to decide whether to issue a positive or negative notice to the applicant.
- If the chief executive intends to issue a negative notice to the applicant, and the applicant is not subject to any non-assessable serious offences or disqualifying offences, the chief executive must notify the Community Justice Group prior to issuing the negative notice to the applicant. The notification must include the information considered by the chief executive and the reason for deciding to issue a negative notice.
- Prior to a negative notice being issued to the applicant, the Community Justice Group may make a recommendation for the chief executive to issue a *restricted working with children clearance*, enabling the person to undertake regulated employment in the community area. The chief executive must issue a *restricted working with children clearance*, if that recommendation is made by the Community Justice Group.

- The Community Justice Group has eight (8) weeks to make a recommendation to the chief executive and a decision is made when a majority of members agree to a recommendation.
- When deciding to issue such a recommendation the Community Justice Group must have regard to the following:
  - Any police information, investigative information or disciplinary information about the person that the group is aware of and considers relevant;
  - Whether, and in what capacity, the person has previously worked with children;
  - The person's social standing and participation within the community area;
  - Whether, in the group's reasonable opinion, withholding the recommendation would have a negative impact on the social or economic wellbeing of the community area's inhabitants;
  - Anything else the group reasonably considers to be relevant to the decision.
- If at any time during a period where an *interim restricted working with children clearance* or a *restricted working with children clearance*, has been issued, the Community Justice Group becomes aware of any change to relevant information, they may revoke the notice.

### **Transitional provisions**

A number of transitional provisions are incorporated into the Bill to deal with any existing application which could be classified as a *community area application* under the new regime. These transitional provisions allow any existing application that would qualify as a *community area application* to be treated as a *community area application* by notice by the applicant to the chief executive.

### **Dictionary changes**

A number of key new terms have been added to the dictionary.

- ***Community area*** means a community area under the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984.
- ***Community area application*** means a working with children check (general) application that is for a restricted working with children clearance for a community area.
- ***Community Justice Group***, for a community area, means a community justice group established under the Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984, part 4 for the community area.
- ***Interim restricted working with children clearance***, for a community area, means a working with children clearance that is –
  - a) Only for regulated employment of carrying on a regulated basis in the community area; and
  - b) Issued to an applicant for a community area application for a period until the chief executive decides the application.
- ***Restricted working with children clearance***, for a community area, means a working with children clearance that applies only for regulated employment or carrying out a regulated business in the community area.

### **Amendments of other Acts**

Due to interrelationships with other legislation a number of other Acts have been amended. These amendments are consequential and only reflect the policy objectives and changes to the operation of the Blue Card regime in the Working with Children (Risk Management and Screening) Act 2000 as outlined above.

The other Acts amended are:

- Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984.
- Child Protection Act 1999.
- Disability Services Act 2006.
- Education (Accreditation of Non-State Schools) Act 2001.
- Education and Care Services Act 2013.
- Education (Queensland College of Teachers) Act 2005.
- Public Service Act 2008.

### **Alternative ways of achieving policy objectives**

There are no practical alternative ways of achieving the policy objectives.

### **Estimated cost for government implementation**

The costs associated with augmenting the current framework to incorporate *community area applications* are considered minor and can be covered by existing departmental budget allocations.

### **Consistency with fundamental legislative principles**

The Bill has been drafted with due regard to the fundamental legislative principles (FLPs) outlined in the Legislative Standards Act 1992 (LSA) by achieving an appropriate balance between individual rights and liberties, including that of children, and the need for government to not impede on one's ability to secure gainful employment.

There are, however, a number of FLPs that may be perceived to be impacted by these amendments:

1. It may be perceived that the new Blue Card framework proposed in this Bill loosens the restrictions on individuals with offences that would otherwise result in the issuing of a negative notice;
2. The framework allows people who have not been issued with a Blue Card to work with children whilst their application is being decided;
3. An individual's right to privacy could be impeded with regards to personal information, including one's criminal background, being shared with members of local Community Justice Groups; and
4. The introduction of a new offence for an applicant failing to rescind an interim Working with Children Card when required by the chief executive.

Issues 1 and 2 may be perceived as not having regard to the rights and liberties of individuals (see the Legislative Standards Act 1992, section [2][a]), in that children in community areas could be exposed to particular convicted persons, while children elsewhere are not.

However, the role of the Community Justice Group is to provide the vetting of the individual applicant based on their intimate knowledge of their character and the circumstances of each case. Due to the Community Justice Group's proximity to each case and the individual and community stakeholders involved, they are in a far better position to determine whether an applicant poses a risk to the children they will be working with or around. Due to the role of the Community Justice Group in the decision-making process, the framework ensures that fundamental legislative principles are met.

Issue 3 may also be perceived as not having regard to the rights and liberties of individuals (see the Legislative Standards Act 1992, section 4[2][a]), in that the sharing of private information, including a criminal background, with members of local Community Justice Groups is a breach of privacy. However the amendments to section 594 account for this possible issue by a) allowing for the applicant to notify the chief executive that the application is for a restricted Working with Children clearance for a community area and b) requiring express permission from the applicant for the chief executive to

supply personal documents and information relating to the application to the Community Justice Group for each community area to which the Working with Children application relates.

Finally, Issue 4 relates to the Bill providing for a new offence for an applicant failing to rescind an interim Working with Children card when required. This is a simple offence carrying a maximum penalty of 20 penalty units, which is reasonable for this offence type. Concerns that this new offence may impact upon a person's rights or liberties are mitigated in that the defendant can avoid liability if the person can substantiate a reasonable excuse for failing to comply with the requirement.

## **Consultation**

Consultation has been undertaken with key stakeholders most importantly,

1. Community leaders;
2. Law enforcement; and
3. Judicial representatives

## **Consistency with legislation of other jurisdictions**

The changes proposed in this Bill provide a unique assessment regime that relies on the Community Justice Group program operating in the state of Queensland.