



Department of Justice and Attorney-General  
Office of the Director-General

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Education, Employment and Small Business Committee  
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Dear Ms Linard

I refer to the public briefing for the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018 held on 16 January 2019.

Please find enclosed the Department of Justice and Attorney-General's (DJAG) response to the questions taken on notice at the briefing.

In addition, I provide some further information about the operational implications of the Working with Children Legislation (Indigenous Communities) Amendment Bill 2018 to assist the Committee.

Should the Committee Secretariat require any further information, they should contact Mr Greg Bourke, Project Director, Blue Card Legislative Review, Strategic Policy, DJAG on [REDACTED], or at: [REDACTED].

I trust this information is of assistance.

Yours sincerely

Jennifer Lang  
**Acting Director-General**

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## **Responses to Questions on Notice**

### **Background**

The following responses are provided to questions on notice from the public briefing on the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018 (the Government Bill) held on 16 January 2019.

### **Question 1**

The following question from Ms Leanne Linard MP, Chair and Member for Nudgee, was taken on notice:

*More information being sought was mentioned in a previous transcript from the Legal Affairs Committee, I believe, which considered this matter last year. It was mentioned there that there was a large percentage maybe not responded to. There are obviously some trends that you are responding to as a department and there are lots of things happening. I am happy for you, Assistant Director-General, to take that on notice and provide more detailed information. With regard to those trends, could you provide the percentage of applications where more information is sought but you do not hear anything back so that we understand the complexities that you are dealing with?*

### **Response to Question 1**

The Department of Justice and Attorney-General (DJAG) is committed to increasing individual and community participation in the blue card system, particularly in relation to Aboriginal and Torres Strait Islander peoples and communities.

The vast majority of people identifying as Aboriginal and/or Torres Strait Islander who apply for a blue card are issued with a blue card. In 2017-18, Blue Card Services (BCS):

- received 11,701 applications from individuals identifying as Aboriginal and/or Torres Strait Islander;
- issued 10,312 blue and exemption cards; and
- issued 103 negative notices.

However, as identified in the Queensland Family and Child Commission (QFCC) report, *Keeping Queensland's children more than safe: Review of the blue card system* (QFCC Report), Aboriginal and Torres Strait Islander peoples experience contact with the criminal justice system at much higher rates than non-Indigenous Australians. As such, this can have a specific impact on engagement with the blue card system for Aboriginal and Torres Strait Islander peoples, as the blue card check determines a person's eligibility to work with children based on an assessment of their known police or disciplinary information.

Additionally, BCS is aware through its own engagement activities of specific challenges for Aboriginal and Torres Strait Islander applicants residing in remote discrete Aboriginal and Torres Strait Islander communities, which include:

- geographical remoteness, which can make contacting applicants by phone or mail difficult;
- language or literacy barriers, which may make it difficult for applicants to engage with documents sent by BCS and respond to requests for further information;
- misconceptions about when a blue card is or is not required, which can lead to organisations incorrectly requiring a person to undergo a blue card check and creating a barrier to that person accessing employment (e.g. a person does not require a blue card to work with adults receiving care in aged care facilities and generally);
- individual and community misconceptions that any type of criminal history or request for information will result in the refusal of a blue card; and
- concerns or shame in discussing past criminal history and offending.

Historically, where applicants have not been able to engage with the process, their application has been either withdrawn, or a negative notice issued where they have been unable to provide submissions to address the potential risks of harm to children suggested by their criminal history.

#### *Initiatives to support Aboriginal and Torres Strait Islander applicants*

BCS has initiated a number of strategies to support Aboriginal and Torres Strait Islander peoples, including:

- partnering with an Indigenous creative agency to develop and launch a series of YouTube videos, radio plays and print material which focus on promoting key messages in a culturally sensitive manner. The resources address some of the barriers and debunk some of the common misconceptions about the blue card system, including:
  - the idea that any criminal history makes a person ineligible for a blue card;
  - how applicants can access assistance to help them with the blue card process; and
  - clarifying that not all employment activities involving children require a blue card.

In developing the resources, workshops were held with community members in Napranum and Wujal Wujal to confirm the language and key messages proposed in the resources to ensure that they were appropriate for their target audiences;

- attending Aboriginal and Torres Strait Islander community events, delivering tailored workshops, teleconference/Skype meetings and other information provided via social media;

- increasing travel to discrete Aboriginal and Torres Strait Islander communities to provide information, education and individualised assistance to applicants to increase participation in the blue card system. In 2017-18, BCS travelled to Mornington Island, Aurukun, Doomadgee, Palm Island, Napranum and Yarrabah. In 2018-19 to date, BCS has travelled to Aurukun, Hopevale, Cherbourg, Kowanyama and Pormpuraaw;
- commencing work to establish an identified position within BCS and ensuring all BCS staff complete cultural capability training; and
- intensifying the efforts to support applicants through the application and assessment processes through the implementation of specific initiatives in discrete rural and remote Aboriginal and Torres Strait Islander communities to:
  - increase the frequency of engagement with service providers at the outset of an application process where an incomplete application has been lodged and further information is required before an application can proceed; and
  - establishing a small dedicated team focused on reducing disengagement by Aboriginal and Torres Strait Islander applicants with a criminal history who have been asked to provide a submission to support their application. Through these processes, applicants are assisted with providing background information about their history, the steps they have taken to address the triggers for their offending behaviour, evidence of rehabilitation, and character references from people in the community, such as Elders who could attest to their positive contributions within the community. This increased level of engagement by applicants has resulted in a better quality of information being provided to inform the decision-making process, and there has been an increase in the issue of blue cards in circumstances where a negative notice may otherwise have been issued, had the person not provided a submission.

The outcomes of these specific initiatives in these communities has been positive, which is evidenced by a reduction in the percentage of applications being withdrawn due to lack of response to requests for further information or a request for a submission from 17.8% in 2015-16 to 2.4% in 2017-18.

#### *Development of a strategy and action plan*

Recommendation 73 of the QFCC Report recommends that DJAG develop and implement a specific strategy and action plan to provide more support for Aboriginal and Torres Strait Islander peoples and build cultural capacity in the blue card system, including:

- identifying ways to partner with other agencies for consistency with other Queensland Government initiatives designed to improve outcomes for Aboriginal and Torres Strait Islander peoples;
- establishing a reference group made up of Aboriginal and Torres Strait Islander stakeholders to co-design the strategy and action plan;

Department of Justice and Attorney-General  
Responses to Questions on Notice  
Education, Employment and Small Business Committee

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

- developing a specific community engagement plan to address common misconceptions about the blue card system, build understanding and improve participation in the process;
- developing a suite of culturally appropriate information and resources;
- funding and providing community-based support to assist with all stages of the WWCC process in all discrete communities;
- funding and establishing identified positions in BCS to provide greater support to Aboriginal and Torres Strait Islander peoples and provide regular cultural capability training for all BCS staff;
- developing guidelines to embed an appropriate consideration of culture in WWCC decisions;
- considering ways to empower communities to be involved in decisions about their community;
- establishing appropriate governance structures—led by Aboriginal and Torres Strait Islander stakeholders—to implement the strategy and action plan; and
- developing an evaluation strategy to measure the effectiveness of the strategy and action plan.

The work to deliver the strategy and action plan will be carried out by an external consultant with relevant experience and cultural expertise.

BCS has formed a project board, developed project and procurement plans and formed an evaluation panel to select the consultant. Three out of the four evaluation panel members identify as Aboriginal and/or Torres Strait Islander.

## **Question 2**

The following question from Mrs Jann Stuckey MP, Deputy Chair and Member for Currumbin, was taken on notice:

*Can the department provide a breakdown list of the 81 recommendations in the blue card review report showing which have been implemented, which are in progress, which were rejected and which are still to begin?*

## **Response to Question 2**

On 7 September 2017, the Government released the QFCC Report and indicated its broad support for the intent of all 81 recommendations. At this time, the Attorney-General noted, 'These recommendations are significant and will require a planned and considered implementation to ensure that Queensland's blue card system continues to be one of the strongest in Australia. It is important we get the staging of these reforms right.'<sup>1</sup>

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<sup>1</sup> Ministerial Statement, 7 September 2017, Hansard, page 2782.



Department of Justice and Attorney-General  
Responses to Questions on Notice  
Education, Employment and Small Business Committee

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

In relation to the Government Bill being considered by the Committee, a total of seven recommendations from the QFCC Report will be met, or partially met, through the implementation of the Government Bill. These are:

Rec no.	Summary
19	Remove the requirement for a person to have an agreement to work with an organisation prior to applying for a blue card
20	Require all applicants to have a blue card prior to commencing work
28	Remove the ability for a 'high risk' person to rely on an exemption
29	Expand the range of disqualifying offences
63	Develop and implement an online application process and improved alternate manual process
69	i) Remove the positive notice letter as an outcome of a blue card application ii) Include a photograph on the blue card product
71	Develop an organisational portal

These recommendations are multi-faceted, and require not only legislative amendments but significant operational changes, including systems improvements and the development of a comprehensive stakeholder education and awareness campaign.

In relation to the remaining recommendations from the QFCC Report, DJAG refers to the response from the Attorney-General to Question on Notice 1655 tabled in the Queensland Parliament on 13 December 2018.

The Government Bill being considered by the Committee also implements three recommendations from the QFCC *Recommendation 28 Supplementary Review: A report on information sharing to enhance the safety of children in regulated home-based services*. These are:

Rec no.	Summary
28.1	Establish a register of home-based care services
28.5	Require all adult household members of stand-alone care services to hold a blue card
28.11	Make the Department of Education the 'notifiable person' for changes to the blue card status of family day care educators and adult household members of family day care residences

### **Question 3**

The following question from Ms Leanne Linard MP, Chair and Member for Nudgee, was taken on notice:

*Ms Fraser, you quoted some statistics there. Were they from the annual report? Can I ask what the source was just so that we can look at them because they would be of interest to us for the report? If you wanted to table any statistics or take that on notice and provide some overall statistics, which would be of benefit for our reporting processes.*

### **Response to Question 3**

In 2017-18, 362,766 applications and authorisation forms (also known as link forms) were processed by BCS, made up of:

- 266,761 applications; and
- 96,005 authorisation forms (this form links an applicant/cardholder to a new organisation).

In 2017-18, 2,946 cases were identified where individuals represented a high risk and were consequently prohibited from working with children.

The statistics provided by Ms Fraser are consistent with the statistics published in the DJAG Annual Report 2017-2018<sup>2</sup> and also provided on page one of the Parliamentary Committee Briefing Note submitted to the Committee by DJAG.

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<sup>2</sup> Department of Justice and Attorney-General Annual Report 2017-2018, page 28.

**Working with Children Legislation (Indigenous Communities) Amendment Bill 2018**

**Further information on the Working with Children Legislation (Indigenous Communities) Amendment Bill 2018**

***Background***

As part of the written briefing on the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2018 (the Government Bill), the Department of Justice and Attorney-General (DJAG) provided some information about the interaction of the Government Bill with the Working with Children Legislation (Indigenous Communities) Amendment Bill 2018 (the Private Member's Bill).

At the public briefing on the Government Bill held on 16 January 2019, officers from DJAG provided further advice about the operational implications of the Private Member's Bill.

By email on 16 January 2019, the Committee confirmed that should DJAG wish to provide any further written commentary in relation to the evidence already provided, that would also be welcome.

In response, DJAG provides the following additional information to assist with the Committee's examination of the Private Member's Bill.

***Royal Commission and QFCC recommendations***

The framework proposed in the Private Member's Bill runs contrary to the recommendations of both the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) in its *Working with Children Checks Report*, and the Queensland Family and Child Commission (QFCC) in its report, *Keeping Queensland's children more than safe: review of the blue card system* (QFCC Report) by proposing a conditional blue card, limited in application to a certain community area and placing weight on situational factors as part of the decision-making process.

Both the Royal Commission and the QFCC did not support the use of conditional cards or different types of clearances, noting that imposing conditions on a working with children check limits its portability across child-related roles and/or employers within the jurisdiction that issues the clearance, and such cards create challenges for monitoring and enforcing compliance.

The QFCC emphasised that, of most concern, conditional cards would allow people to work with children in circumstances where they would not otherwise be given a blue card. Making provision for the issuance of a restricted positive notice to a person who would otherwise have been issued a negative notice creates inconsistent levels of protection for children within a community area compared to children outside of that community area.

The Royal Commission's view was that situational or organisational factors should not form part of an assessment of a person's eligibility for a working with children clearance. Rather, applicants should be assessed as either suitable to work with children or not, regardless of the situation or organisation. The Royal Commission recommended that all state and territory governments amend their laws to provide that the outcome of a working with children check application is either that a clearance is issued or it is not and there should be no conditional or different types of clearances (Recommendation 28(b)).



**Working with Children Legislation (Indigenous Communities) Amendment Bill 2018**  
***Compatibility with Government Bill***

The Private Member's Bill is incompatible with the Government Bill in two key respects.

*Contrary to 'No Card, No Start'*

The Private Member's Bill provides that, at any time before the working with children check application is decided by the chief executive, a Community Justice Group (CJG) may recommend the issue of an interim restricted positive notice, enabling the applicant to work in child-related employment in the community area until the application is decided.

The introduction of an interim restricted positive notice would operate as an exception to the 'No Card, No Start' requirement introduced by the Government Bill.

The 'No Card, No Start' requirement represents a key safeguard that strengthens the system by ensuring that persons working in regulated environments have been issued with a working with children clearance before commencing work. To allow a person to work with children for any period of time pending the grant of a valid clearance undermines the intent and safeguards provided by the 'No Card, No Start' policy.

*Suspension mechanism*

Currently, under section 240 of the *Working with Children (Risk Management and Screening) Act 2000* (WWC Act), if a person is charged with a disqualifying offence while holding a blue card, the positive notice is automatically suspended. This represents a key safeguard which complements the ongoing monitoring of the Queensland police information of all blue card holders.

The Private Member's Bill is silent on any suspension mechanism. The chief executive's powers of suspension do not appear to apply to interim restricted positive notices nor restricted positive notices.

***Scope of Private Member's Bill***

The Legal Affairs and Community Safety Committee (LACSC) has previously considered a similar Private Member's Bill in 2017, the *Working with Children (Indigenous Communities) Amendment Bill 2017* (the 2017 Bill), which has since lapsed.

Stakeholder consultations held in Doomadgee, Hopevale and Yarrabah by the LACSC in their consideration of the 2017 Bill highlighted confusion amongst communities as to which offences triggered the rejection of an application or cancellation of a blue card.

Those communities consulted were largely concerned about the criminal history of persons relating to minor alcohol (Alcohol Management Plan) related offences or State Penalties Enforcement Registry (SPER) fines which were reportedly preventing people from obtaining a blue card.

Similarly, the submission from the Aboriginal and Torres Strait Islander Legal Service to the Private Member's Bill states that 'lower level convictions are standing in the way of some potentially very good young people and older people getting jobs'.

**Working with Children Legislation (Indigenous Communities) Amendment Bill 2018**

The Bill does not extend the role of CJGs to consider low level convictions, such as street offences, minor alcohol related offences or SPER fines, but are limited to the consideration of offences under the Criminal Code, which relate to stealing with violence, burglary and unlawful entry of a vehicle (sections 409, 419 and 427 respectively); and offences under the *Drugs Misuse Act 1986*, which relate to trafficking dangerous drugs, supplying dangerous drugs, producing dangerous drugs and trafficking in relevant substances or things (sections 5, 6, 8 and 9D respectively).

The QFCC Report noted that it is apparent that there are significant levels of misunderstanding about the system, in particular '[t]he fact that Blue Card Services (BCS) considers historic offences causes applicants to think that any criminal history precludes a successful application. Given the amount of misinformation in communities about the likelihood of successfully obtaining a blue card, applicants are reluctant to approach an organisation in any capacity if the outcome is likely to be a negative notice' (page 202).

A key component of the work that BCS is undertaking to improve outcomes for Aboriginal and Torres Strait Islander people is attempting to dispel many of the misconceptions about the blue card system.

Where a person has known police or disciplinary information, BCS undertakes a thorough assessment which is underpinned by decision-making framework and guided by the legislative provisions of the WWC Act.

If a person's criminal history is for offences other than disqualifying or serious offences (as defined by the WWC Act), then a blue card must be issued, unless an exceptional case can be established in which it will not be in the best interests of children. Minor offences, for example shoplifting, public nuisance and possession of alcohol, unless accompanied by other more concerning behaviour would not generally prevent a person from being issued with a blue card.

Where a person's police information is concerning, BCS considers a broad range of information (e.g. police and court briefs, sentencing submissions, child protection information etc.), including affording applicants natural justice by inviting them to provide a submission supporting their application where their police or disciplinary information suggests they may pose a risk to children.

BCS takes into account a range of factors when assessing whether an exceptional case exists, including the recency of the offence, patterns of behaviours, relevance of concerning to child-related activities and evidence of attempts to change/address behaviour or triggers for offending.

***Operational issues***

***Compliance and monitoring***

The Private Member's Bill is silent as to how the geographical compliance of a person who has been issued a restricted positive notice or interim restricted positive notice to work in a defined community area would be monitored.

**Working with Children Legislation (Indigenous Communities) Amendment Bill 2018**

*Decision-making framework*

The Private Member's Bill introduces a new decision-making framework for certain applications within a defined community area and provides that, in considering whether to recommend an interim restricted positive notice or restricted positive notice, a CJG may have regard to:

- 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; and
- the person's social standing and participation within the community area.

The primary purpose of the blue card system is to minimise the risks of harm to children and young people by contributing to the creation of safe and supportive environments, and is founded on the principle that all children have a fundamental right to be protected from harm. Consideration of the social or economic wellbeing of the community area's inhabitants would arguably not be relevant to such a risk assessment.

A person's social standing in the community may act as a barrier to the disclosure of child sexual abuse. In its Final Report, the Royal Commission noted that '[t]he perpetrator's relationship to the victim can be a central factor influencing disclosure...When the perpetrator is a significant caregiver however, a child may withhold or delay disclosure as a result of attachment or traumatic bonding with the perpetrator, or a desire to protect the integrity of the caregiving relationship or surrounding family unit. For Aboriginal and Torres Strait Islander children, family is a broad concept and this desire to protect relationships can extend to the entire community'<sup>1</sup>.

*Shifting responsibility*

The Private Member's Bill provides that a CJG can make a recommendation to the chief executive for a restricted positive notice, and mandates the chief executive to issue a positive notice upon receipt of such a recommendation. Shifting responsibility to enable a 'binding recommendation' by a CJG raises questions of liability, which would require much more detailed exploration and legal analysis.

*Multiple CJG recommendations*

Although the Private Member's Bill foreshadows that an application may relate to multiple community areas (see, for example, proposed section 231D(1)), the Private Member's Bill does not indicate what is to occur if conflicting recommendations are received from different CJGs. The Private Member's Bill provides that a CJG may make a binding recommendation that an interim restricted positive notice or restricted positive notice be issued by the chief executive. It is unclear how two contradictory recommendations by different CJGs would be interpreted.

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<sup>1</sup> Royal Commission into Institutional Responses to Child Sexual Abuse, 2017. Final Report, Volume 4, page 41.