



AASW (Qld) submission to the Working with
Children Legislation (Indigenous Communities)
Amendment Bill 2018

Submission-December 2018

Introduction

Who we are

The Australian Association of Social Workers (AASW) is the professional body representing more than 11,000 social workers throughout Australia. We set the benchmark for professional education and practice in social work, and advocate on matters of human rights, social inclusion, and discrimination. The Queensland Branch has over 2000 members and covers the region from the southern border north to Rockhampton. The branch has engaged with providing public submissions to the Queensland Government on many issues that social workers are involved with.

The social work profession

The social work profession is committed to pursuing social justice and human rights. Social workers aim to enhance the quality of life of every member of society and empower them to develop their full potential. Principles of social justice, human rights, collective responsibility and respect for diversity are central to the profession, and are underpinned by theories of social work, social sciences, humanities and Indigenous knowledges. Professional social workers consider the relationship between biological, psychological, social, and cultural factors and how they influence a person's health, wellbeing and development. Social workers work with individuals, families, groups and communities. They maintain a dual focus on improving human wellbeing; and identifying and addressing any external issues (known as systemic or structural issues) that detract from wellbeing, such as inequality, injustice and discrimination.

At the very core of the social work profession are the “principles of human rights and social justice” (AASW, 2010).¹. A commitment of social work is to “promote policies, practices and social conditions that uphold human rights” and “to ensure access, equity, participation and legal protection for all” (AASW, 2010) . Social work is thus uniquely placed to provide a compelling and evidence based perspective on ensuring that policies and legislation uphold the rights of Aboriginal and/or Torres Strait Islander peoples.

Our submission

The Queensland Branch of the Australian Association of Social Workers (AASW) welcomes the opportunity to provide feedback into the proposed Working with Children Legislation (Indigenous Communities) Amendment Bill 2018 (the Bill).

AASW Queensland Branch recognises that the Bill is based on a desire to “empower Indigenous communities to make decisions which best serve their interests in relation to child protection and employment of community members”.

AASW Queensland Branch submits the following recommendations from a perspective of human rights, social justice, empowerment and self-determination, with a key principle being the safeguarding of children and young people.

¹ Australian Association of Social Workers (2010) *Code of Ethics*, Canberra.

Recommendations

Recommendation 1

The proposed Bill not be passed in its current form.

Recommendation 2

There is more widespread and detailed engagement with the Aboriginal and/or Torres Strait Islander communities to develop an appropriate, sustainable and just process and strategy.

Recommendation 3

Any review of the *Working with Children (Risk Management and Screening) Act 2000* (the Act) is undertaken alongside a national strategy for safeguarding children.

Recommendation 4

The recommendations of the Queensland Family and Child Commission's (QFCC) review of the Blue Card system report, which supports the recommendations of the Royal Commission into Institutional Child Sexual Abuse, are used as the benchmark for safeguarding children and young people.

Recommendation 5

The recommendations made by the QFCC, in particular recommendation 73, should be used as guiding principles in implementing any changes to the working with children check screening scheme.

Recommendation 6

The progress of the QFCC's recommendations are considered in relation to any proposed changes to the Act.

Response to the Bill

AASW Queensland Branch recognises the importance of ensuring a fair and accessible system to enable Aboriginal and/or Torres Strait Islander individuals to access Blue Cards, taking into consideration some of the unique complexities resulting from a history of colonisation, disempowerment and oppression. However, we believe that the draft Bill does not provide the most appropriate mechanism to address the issues that currently result in individuals not being able to access a Blue Card. After engaging with our members, which include consultation with Aboriginal and/or Torres Strait Islander social workers, the Queensland Branch Child Protection Practice Group, and the AASW National Social Policy and Advocacy team, it is our position that the proposed framework will result in a range of unintended consequences that can in fact further disadvantage communities, without further and proper consideration.

At the core of our concerns is the lack of detailed information about consultation with the relevant communities to understand their views and wishes on how to best address the issues. It is recommended that there needs to be more widespread and detailed engagement with the Aboriginal and/or Torres Strait Islander communities, to develop an appropriate, sustainable and just process and strategy. While empowering communities with decision making authority is absolutely essential and welcome, the current Bill's narrow focus does not, in our view achieve this.

AASW Queensland Branch also highlights the importance of developing a consistent national working with children scheme that has at its heart a commitment to safeguarding children. Any such program needs to also be culturally responsive to the unique needs of Indigenous communities. To this end we recommend that prior to significant investment in Queensland, further consideration be given to how this can be achieved to better ensure the protection and wellbeing of children nationally. This is particularly important as Queensland borders on other states and territories and many of our Indigenous communities are located on these borders. This was also an issue highlighted from the Royal Commission into Institutional Sexual Abuse of Children, requiring an urgent national strategy.

AASW Queensland Branch supports the findings of the Queensland Family and Child Commission (QFCC) review of the Blue Card and Foster Care System, which identified that: "Achieving better outcomes for Aboriginal and Torres Strait Islander peoples requires change at every stage of the process. We need to provide opportunities for active involvement in decision-making and we need to improve the system's capacity to understand different cultural approaches. However, in doing so, we must remain vigilant in keeping Aboriginal and Torres Strait Islander children more than safe" (QFCC, p. iv²).

Recommendation 1

The proposed Bill not be passed in its current form.

² Queensland Family and Child Commission (2017). *Keeping Queensland's children more than safe: Review of the Blue Card System. Blue Card and Foster Care System Review*. Queensland Government. Retrieved from qfcc.qld.gov.au

Recommendation 2

There is more widespread and detailed engagement with the Aboriginal and/or Torres Strait Islander communities to develop an appropriate, sustainable and just process and strategy.

Recommendation 3

Any review of the *Working with Children (Risk Management and Screening) Act 2000* (the Act) is undertaken alongside a national strategy for safeguarding children.

Privacy and confidentiality

AASW Queensland Branch argues that privacy and confidentiality are significant issues, and becomes more complex in the context of small communities. The practice experiences of our members working in Indigenous communities highlights that this an important consideration, resulting in people being reluctant to seek support from Indigenous services.

The proposed Bill raises a number of questions about how the privacy and confidentiality of community members who are seeking a Blue Card will be managed and how members of the community will respond to this. There needs to be further consideration of how conflicts of interest will be managed, how much personal information is shared, how information is stored and the implications for breaches of confidentiality. There is also the question of how community members will feel and respond to having their personal information shared with Community Justice Groups (CJGs). This latter point can result in people being reluctant to proceed, along with concerns with conflicts of interest. Concerns have been raised about how issues of nepotism and conflicts of interest that can already exist in small communities will be managed and how these will influence decision making.

Burden of responsibility

In addition the Bill would place a great deal of power and authority with a voluntary and small group of individuals who are themselves members of the community. In this context, conflicts of interest would naturally exist due to familial and other relationships. AASW Queensland Branch is concerned at the burden of responsibility that this would place on these voluntary members. Introducing this Bill would require development of expertise in understanding the legal requirements, there would need to be support with decision making frameworks to ensure consistency and equity. Yet, there is no discussion of how this would occur and indeed be resourced. It is recognised the CJGs are made up of volunteers including Elders and traditional owners, who already have much responsibility placed on them. Adding another significant layer of decision making and the associated responsibilities, requires appropriate resourcing. The resourcing would include the provision of initial and ongoing training as well as ongoing support and guidance by appropriately experienced personnel. Access to appropriate levels of administrative support would also be essential. The Explanatory notes state that costs will be covered by the existing budget. However, we argue that the current funding is insufficient and there is the significant risk that implementation of proposed changes without additional funding would have detrimental effects.

Information sharing and governance

The processes for decision making in the Bill requires effective information sharing between various stakeholders, including the CJGs and Police (see for example Section 231F). AASW Queensland Branch understands that the effectiveness of these relationships currently vary. This raises the question of how information sharing will be facilitated to ensure open and timely communication.

AASW Queensland Branch has identified limited information in the Bill about the enforcement and responsibility for monitoring an individual who has been granted restricted notice or where a Blue Card has been revoked. There is no information as to who would be responsible for enforcement and monitoring of the individual. This gap needs clarification and resourcing as the potential that CJGs becoming an enforcement agent would change their role and responsibilities. Furthermore, the complexities of managing conflicts of interest given the smallness of many communities requires further attention.

AASW Queensland Branch also identified that there needs to be more detailed discussion about how appeals are to be managed and appropriate access to support for people living in regional and rural communities.

Restricted positive notices

Section 231C of the Bill discusses the ability of Community Justice Groups to provide restricted positive notices. In line with the views of the QFCC and Royal Commission into Institutional Sexual Abuse, AASW Queensland Branch does not support the use of conditional cards or different types of clearances. As reported by the QFCC (2017), the reasons are because conditional cards:

- *create challenges for monitoring and enforcing compliance*
- *create barriers to the transferability of WWCCs across different child-related services and activities.*

Most importantly, conditional cards would allow people to work with children in circumstances where they would not otherwise be given a blue card (QFCC, 2017, p. 131).

AASW Queensland Branch upholds QFCC's position that any compromise to ensuring the safety of children is problematic.

AASW Queensland Branch also highlights the submission into the QFCC Blue Card and Foster Care Systems Review by a Peak stakeholder representing the rights, safety and wellbeing of Aboriginal and Torres Strait Islander children, young people and their families which stated:

"The Aboriginal and Torres Strait Islander child protection sector is strong and committed to working together to achieve better outcomes for our children and families and working alongside the Queensland Family and Child Commission. Our position, while clearly privileging the legitimate role of our families, organisations and communities in growing our children up, strong in culture, does not in any way support a lowering of standards or

safeguards that our children have equitable rights to expect of the adults in their lives and the services and systems with whom they interact” (QFCC, 2017, p. 127).

AASW Queensland Branch supports this view and therefore considers the Bill as not supporting a child safe environment while placing additional burden on one particular voluntary group within communities. The Bill also proposes changes without addressing broader structural, systemic and social issues.

Recommendation 73 of the QFCC’s (2017) report identified a range of strategies to build capacity and better support Indigenous communities in ensuring a child safe environment. In particular, we support the development of multi-disciplinary, and culturally inclusive decision making models that assess whether there is a risk of harm to children, which includes provision of more support for applicants throughout the process, and building the capacity to support Indigenous communities to understand and navigate the processes involved. We believe these recommendations can be implemented through changes in Government policy and practice, and would not be supported by the legislative framework outlined in the Bill.

A broader issue identified by AASW Queensland Branch involves the over representation of Aboriginal and/or Torres Strait Islander young people and adults in the criminal justice system due to a range of significant social, economic and structural issues. People’s past experiences with the justice system can cause significant processing delays as their Blue Card applications require further decision-making and assessment. A lack of transparency in this process and how it accounts for these structural issues is an ongoing concern. It is suggested that without meaningfully addressing the BlueCard application process, there will continue to be ongoing issues and exclusion.

Recommendation 4

The recommendations of the Queensland Family and Child Commission’s (QFCC) review of the Blue Card system report, which supports the recommendations of the Royal Commission into Institutional Child Sexual Abuse, are used as the benchmark for safeguarding children and young people.

Recommendation 5

The recommendations made by the QFCC, in particular recommendation 73, should be used as guiding principles in implementing any changes to the working with children check screening scheme.

Recommendation 6

The progress of the QFCC’s recommendations are considered in relation to any proposed changes to the Act.

Conclusion

AASW Queensland Branch has welcomed the opportunity to input into the Working with Children Legislation (Indigenous Communities) Amendment Bill 2018. We look forward to continuing to support the work of the Queensland Government in this crucial area.