EDUCATION, EMPLOYMENT, TRAINING AND SKILLS COMMITTEE

Members present:
Hon. MC Bailey MP—Chair
Mr JP Lister MP
Mr N Dametto MP (via videoconference)
Ms M Nightingale MP
Mr BL O'Rourke MP (via videoconference)
Mr B Head MP (via videoconference)

Staff present:
Dr A Cavill—Committee Secretary
Dr K Kowol—Assistant Committee Secretary

PUBLIC HEARING—INQUIRY INTO THE WORKING WITH CHILDREN (RISK MANAGEMENT AND SCREENING) AND OTHER LEGISLATION AMENDMENT BILL 2024

TRANSCRIPT OF PROCEEDINGS

Wednesday, 17 July 2024

Brisbane

WEDNESDAY, 17 JULY 2024

The committee met at 10.15 am.

CHAIR: Good morning. I declare open this public hearing for the committee's inquiry into the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024. My name is Mark Bailey. I am the member for Miller and chair of the parliamentary committee. I would like to respectfully acknowledge the traditional custodians of the land on which we meet today, the Turrbal people, and pay my respects to elders past, present and emerging. We are very fortunate to live in a nation with two of the oldest continuing cultures in Aboriginal and Torres Strait Islander peoples, whose lands, winds and waters we all now share.

Welcome to everybody. Thank you for supporting the committee's work. With me here today are: James Lister, the member for Southern Downs and deputy chair; and Margie Nightingale, the member for Inala. Joining us via videoconference are: Nick Dametto, the member for Hinchinbrook; Barry O'Rourke, the member for Rockhampton; and Bryson Head, the member for Callide, who is a substitute for the member for Ipswich, who is an apology today. Thanks for making yourself available, Bryson.

This hearing is a proceeding of the Queensland parliament and is subject to the parliament's standing rules and orders. Only the committee and invited witnesses may participate in the proceedings. Witnesses are not required to give evidence under oath or affirmation, but I do remind witnesses that intentionally misleading the committee is a serious offence. I also remind members of the public that they may be excluded from the hearing at the discretion of the committee.

These proceedings are being recorded and broadcast live on the parliament's website. Media may be present and are subject to the committee's media rules and my direction at all times. You may be filmed or photographed during the proceedings and images may also appear on the parliament's website or social media pages. I remind people to turn off your mobile phones or put them on to silent mode so you are not the person who gets a lot of attention. That would be very helpful.

CORBYN, Ms Ebony-Lee, Senior Policy Officer, Promotion, Prevention and Early Intervention and Suicide Prevention, Queensland Mental Health Commission

FRKOVIC, Mr Ivan, Commissioner, Queensland Mental Health Commission

NUCKEY, Ms Tegan, Senior Project Officer, Lived-Living Experience, Queensland Mental Health Commission

CHAIR: I invite you to make a short opening statement of no more than five minutes, after which committee members will have some questions for you.

Mr Frkovic: Good morning. I will start also by acknowledging the traditional owners of the lands that we meet on, the Turrbal and Yagara people, and pay my respect to elders past, present and emerging.

The Queensland Mental Health Commission appreciates the opportunity to speak to the committee on the proposed Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill. As you have indicated, Chair, I am accompanied by my two colleagues from the commission. One has obviously a strong lived experience background and one has a strong senior policy role but also a strong legal background so some of the things around legalities of some of this I may throw to some of these colleagues that are with me.

Can I just say at the outset that the commission is an independent statutory agency established to drive ongoing reform towards a more integrated evidence-based, recovery oriented mental health, alcohol and drugs and suicide protection system in Queensland. Our primary function is to oversee the actual development but also the implementation of a whole-of-government strategic plan to improve the mental health and wellbeing of Queenslanders, particularly people living with mental illness or problematic alcohol and drug use and also those affected by suicide.

The commission supports and welcomes the review of the decision-making within the bill and agrees that the overarching priorities should always be the safety and wellbeing of children in all decision-making. However, we believe there are opportunities to avoid the potential for unintended consequences of the decision-making process on people with experiences of mental ill health and also those experiencing alcohol and other drug use.

In our written submission we have made several recommendations, including not requiring a mental health report in all circumstances when people apply, ensuring the bill is consistent with the Queensland government's commitment to harm minimisation and health responses regarding drug related offences. As identified in the Queensland Family and Child Commission's report, given extensive structural bias in decision-making for individuals with drug related offences, even where the offence did not invoke the risk to the safety of children, addressing the implications for people with drug related offences in obtaining particularly employment is critical in this discussion. Also, requiring cultural context assessments to be carried out by our First Nations advisers or an advisory committee would be welcome. Finally, the bill should address the significant impacts for the emerging and critical peer workforce, particularly as we are moving forward in mental health and drug and alcohol. A peer is a person who uses their lived experience and living experience of mental ill health, alcohol and drugs and suicidal distress to provide support to others.

Developing a peer workforce is a key action of the whole-of-government strategic plan to improve the mental health and wellbeing of all Queenslanders and also aligns with various other Queensland government commitments. The commission supports peer workers being required to obtain a blue card if they are providing peer support to a person who is under the age of 18. However, the decision-making process as articulated in the bill could have unintended consequences for peer workers and may be affected by structural bias and stigmatisation towards people with experiences of mental ill health and drug and alcohol use. In particular, we are concerned that, while most who experience mental ill health do not commit crimes, there is an over-representation of people with mental illness in the criminal justice system. The fact that an individual has come into contact with the criminal justice system should not impact on them obtaining a blue card when offences have not involved or posed a risk to children.

Approximately 65 per cent of people at magistrates courts are sentenced for personal possession of drugs as their most serious offence—possession. These individuals may end up with a criminal record regardless of the context of their use. Also, according to the Australian Institute of Health and Welfare, the majority of people who use drugs use them infrequently and most do not experience extensive problems. As a result, they are unlikely to be a risk to the children, based on substance use alone. In fact, the former Queensland Productivity Commission's inquiry into imprisonment and recidivism uses possession of illicit drugs as an example of a victimless crime.

Given that lived and living experience is a mandatory, genuine occupational requirement for peer worker roles to be effective, we are also mindful of structural bias that may exclude some people who have developed their expertise through contact with the criminal justice system. Many peer workers are excluded from roles and even from study placements as blue cards are required for offences which did not pose a risk to the safety of children. As we develop peer workforces across diverse settings in Queensland, it is essential that those with specific expertise, such as being treated under forensic orders, whether in community or as an inpatient, and experiences of drug related use and of being in prison and accessing prison mental health services, are also included to maintain the inclusiveness and authenticity but also the effectiveness of the peer workforce.

I want to finish by saying again: the commission agrees that if an individual does pose a risk to the safety of children they should not receive a blue card. However, we believe we cannot move to a measure of real and appreciable risk without addressing structural bias and stigma and moral or character assessments based on how risk to the safety of children is conceptualised. The new system should be evidence-based, consider the context and address the structural bias, the stigma, and reduce discrimination. To finish, I might ask my colleague to give you a real-life example of how this plays out in the real world.

Ms Nuckey: I am going to share Alex's story today,

Alex's passion has always been to help people. Alex's partner works in the community services sector and Alex felt that his lived experience of being in prison, addiction and mental health meant that he had a lot of valuable insights to offer to people getting out of prison and battling addiction. Alex has been in and out of prison for 25 years and has battled with addiction since he was 14 which was the root cause of his offending. Alex has been abstinent from drug use for four years, works fulltime in the construction industry, and is on parole with bi-monthly reporting conditions. Alex has had no police contact since being released.

Alex has never committed crimes against a child, or any sexual or violent offences. Alex states 'I have 2 children a 21 year old son and 8 year old daughter—neither of them have been involved with child safety and are thriving.' Alex was awarded a scholarship to complete a Certificate IV in mental health peer work. However, after recently discovering he will need a blue card to do placement, he was 'absolutely shattered.' Alex cannot apply due to being on parole and because of his disqualifying offences. Alex reports that it would be almost impossible to find a job without a blue card as many positions in the community services sector require one even when not working with children under 18.

Alex states:

> "How are people like me supposed to reform and change our lives around if we keep getting punished for the rest of our lives? I am 46 now and my life of drugs and crime is over. There is a huge need for male lived experience workforce and a greater need for lived experience of people who have been in prison. By giving people jobs in the sector that are from Prison this helps the person by giving them purpose, deters from reoffending and serves the community by helping others.
>
> I am at a loss to be truthful. If I had a mentor or a lived experience worker when I was a young bloke, I believe my life could have taken a different path.
>
> I really hope that one day I will be able to be a peer worker and do something I am passionate about and … truly give back my community."

Alex goes on to say—

If this government is truly taking lived experience as a priority, then they need to value it. To do that, they need to remove some of the excessive barriers against people who have changed. They need to give people opportunities to give back to the community. I would love to support youth who have taken a wrong path like I did. However, with the current strict blue card process I can't see that happening. Again, I will stress that I have never and would never harm a child or put a child at risk including my own. It is almost insulting to be honest. Just because I've used drugs in the past does not mean I pose a risk to any child.

CHAIR: Does anyone online have questions for the commissioner or the officers?

Mr O'ROURKE: Thank you for your presentation. I am really interested to explore a little bit more around the exemptions and of people who are unable to get that blue card because of prior offences. I do not know how we would balance it across the whole of the service system. Have you given that a bit of thought around the blue card—not just in the peer support role but across the whole of the blue card system?

Ms Corbyn: Thank you for your question. Just to clarify, do you mean in terms of how the blue card may be able to work across the community sector broadly?

Mr O'ROURKE: Yes, for those with prior offences that exclude them from being able to get the blue card. I do apologise.

Ms Corbyn: One of the recommendations that the commission made was in relation to a conditional blue card, which may be attached to a particular type of employment. For example, an individual may be able to apply for a blue card in respect of a lived and living experience peer worker role and it would be attached to that use. That is one of the recommendations that the commission has made which is used in some other states.

CHAIR: In terms of people who might have had previous offences that are not related to children, what would be your submission around how that should be handled? Should there be a condition, such as committing no offence for a certain period, that might assist in people being eligible? I take your point, for instance, that someone might have had a drug offence 20 years ago and therefore may be ineligible. I understand the submission, but in an affirmative way what do you think would be a reasonable way—obviously committing an offence in any shape or form is an indication, but people make mistakes at young ages. Should they be penalised for that permanently? It is an interesting question, so I would be interested to see how you see it from an affirmative point of view.

Mr Frkovic: We just discussed that prior to coming in here in terms of thinking about some of those options. I think it is about really understanding the assessment process and individual circumstances in context, so what has occurred. Obviously where there has been no incident in relation to children then I think that process should take a broader assessment process of what has occurred, particularly where the person has an opportunity to be working in a peer role. I think in a broad sense, we have to be able to give people opportunities. They have done their time, they have done their crime and there has been rehabilitation and they are back in the community. Employment is a critical aspect, and giving people the opportunity to go back into some level of employment is a critical aspect in all of this.

In terms of some of the aspects that we looked at, and particularly the Queensland Family and Child Commission, who are coming up next, identify various case studies and they talk about where people with drug offences receive character assessments. They are some of the issues that I think need to be really looked at—that is, the character type of assessment, which, again, can be

subjective. My personal views on certain issues may impact on how I exercise my role, so it is about how we have some subjectivity. Obviously, also we are dealing with some of that system, structural or even community stigma around mental health, drug and alcohol et cetera. How do you put a process in place where we take the circumstances as they are, trying to eliminate some of that stuff?

In that report by QFCC they talk about the ability to role-model respect of authority, exercise self-control and exercise restraint. There is a whole range of things that you can look at to be able to make those assessments, but I think it has to be more at the context level and moving away from how we create an assessment environment where some of those subjective issues do not impact on that assessment, because those decisions impact people's lives long term. If they have a criminal record—whether it is serious or other types of things—how do we manage that to give people opportunity to re-engage with employment? However, keeping children safe is the primary issue while still not disadvantaging or unintentionally disadvantaging people from being able to engage in meaningful employment and contributing back to society.

CHAIR: That is very helpful. I know that Margie has a question, but I have a follow-on question from there. One aspect of the bill is consistency across jurisdictions so that we do not have people finding a jurisdiction that has a much weaker framework and exploiting that. With regard to the context that you have just outlined, has that been done in other jurisdictions in Australia, to your knowledge?

Mr Frkovic: For example I will just use, say, Victoria. One of our case examples that we have—and we do not have time to go through it—is where a person was able to get a blue card in Victoria but when they moved to Queensland they were not able to get a blue card because their system takes into consideration a whole range of other issues compared to Queensland. There is a clear distinction and difference. They said, 'In one state I was able to work as a peer worker and if need be I got my blue card, even though there was a history. In another state such as Queensland that's not possible, which has major implications for me, my family, my ability to earn an income and all those things,' and, again, in that situation children were not involved in that particular incident. It is about how we make sure the review of the bill takes that into consideration in an objective way. I think that is the critical aspect.

CHAIR: Yes, so you are saying there are inconsistencies between different states currently in terms of the ability to take into account those sorts of things?

Mr Frkovic: Yes.

Ms NIGHTINGALE: My question is about the reasonable person test. I would be really interested in hearing more from you around the ways in which you are concerned that there is likely to be that structural bias that will apply there. Could you talk us through that a little bit more?

Mr Frkovic: I might go to my colleague first and then I will add to that.

Ms Corbyn: We are concerned about the one-size-fits-all approach and the potential for embedding systemic bias or stigma into the concept of reasonable person. Given some of the case studies and examples that we have seen, including in the QFCC report and our own case studies obtained in relation to decision notices, someone with a drug related offence appears to experience more structural bias in the decision-making process. By having a one-size-fits-all approach to a reasonable person and what a reasonable person would think did not pose a risk to the safety of children, there is a risk of further embedding that. Also, our communities are diverse and individuals have diverse opinions and values on what safety looks like for their own children, so we are concerned that the existing issues with the decision-making process would be further embedded by adopting the broad reasonable person test.

Mr Frkovic: It is about providing additional guidance to people making assessments and having some sort of clear regulation and guides for people to use to be able to make those assessments. For example, it is hard enough if you have a mental illness, which is not a crime, to get a blue card if you have had a mental illness and you have had some time in a secure facility or even as an inpatient—even with the new sort of approach to when you may be picked up under the influence, you have had various substances in your system and you can be diverted now to a health response, which, again, poses additional challenges. We are trying to get people to get a health response who have—and I will use this word; I am sure some people may have views about it—an addiction, who have a health problem. How do we move them into getting a health response rather than a criminal justice response which then means they end up with a criminal history record?

This is an opportunity for us to look at things differently within both the blue card and other things that are happening in our community, with drug checking and also police diversion for all substances. An opportunity about that reasonable person test is around thinking that could also apply

differently to people with mental illness and drug and alcohol problems. It is not illegal to have a mental illness, even though you may engage with the criminal justice system and you may engage with restrictive care and all those things, but illicit substances are still illicit. I think there is a difference particularly in this, so, in terms of the nuancing around the bill and how we assess people who have a history of drug and alcohol offences, how do we make sure they are taken specifically into consideration? That is why we say that context is important in this situation. There is a slight difference between mental illness and drug and alcohol because one is not illicit but the other is illicit.

Mr HEAD: You have recommended that the bill be consistent with some whole-of-government commitments made in *Shifting minds* and *Leading healing our way*. I am just curious if you could share with the committee aspects of the bill where you consider these inconsistencies may lie.

Mr Frkovic: It is inconsistencies, but it is also taking those strategic directions and commitments which government has made in different policy directions which impact on this bill. For example, there is a clear push in Queensland as well as nationally and internationally about developing our peer workforce both in mental health and in drug and alcohol. In fact, if you look at the history, most of our drug and alcohol services were established by people who had their own experiences and then wanted to give back to the community and support others. I think it is important to keep in mind that we are—again speaking broadly and again keeping the safety of children in mind—also looking broadly about how we build a workforce that is in addition to what we currently have—a workforce where your lived experience contributes to supporting people who may be going through those challenges around mental health or drug and alcohol currently. How do you actually support that?

It is a valid role, as we tried to put into our submission, and the benefit that someone gets from engaging with someone who has a lived experience or a living experience is critical in their own recovery journey. They are going to have a much better link and a much better understanding than, for example—with all due respect to my colleagues who are psychiatrists—a relationship with a psychiatrist, which is important and can provide a whole range of supports, but the support that they will get on an everyday basis from a peer worker who has been through the prison system, who has been through inpatient services in public mental health, who has had a drug and alcohol problem or who is living with mental illness and managing well and also has a family and a whole range of things. Having support from people like that who are good role models to help them in their own recovery journey I think is critical.

Most of our documents, in mental health and drug and alcohol but also in suicide prevention and a whole range of areas, talk about the development of a peer workforce to complement particularly our workforce that we have. It is particularly important for rural and regional Queensland, where workforce is a real challenge—not that it is not in the south-east corner—but particularly in those areas where we can supplement some of our services out there through the lived experience workforce. That is a critical aspect as we move forward. Not just in Queensland but internationally, this is the direction.

Mr LISTER: I was interested in what you were just saying about a support workforce and the assistance it provides us in terms of mentorship as an example and also being of value in their own path to healing and so forth. I happen to know that the veterans peer support workforce on occasion has been decimated by retraumatisation, particularly in the context of combat induced PTSD and so forth. What is the broader picture here in terms of care and responsibility for that peer support workforce that we need to grow in terms of looking after them whilst acknowledging that it is of assistance to the peer support workers themselves but also can be a threat to their wellbeing?

Mr Frkovic: I would probably start with suggesting that in Queensland and in Australia we have made a strong commitment about addressing psychosocial hazards in the workplace for all of our workforce, including our peer workforce. I think that is a really great universal step in terms of ensuring that our workforce—whether it is lived experience or the broader workforce—is managing their own trauma, if I can use that word, in terms of dealing with people who may be seen as clients of those services et cetera but also may experience internally within the workplace a whole range of other risks and challenges. The psychosocial hazards are certainly an overarching thing that we are doing generally, both within government and in the broader community, which will assist in this process.

Specifically around the lived experience workforce, it is not just employing a person who has a lived experience—we have ticked the box, it is fine et cetera; it is employing someone who has a lived experience but can use that lived experience to help others, like you mentioned in the veteran type of community. As employers in that situation, we have a responsibility about how we support, supervise, manage et cetera the lived experience workforce, the same as we have specific responses to our clinicians.

How do we support that workforce? It is not just saying, 'With their lived experience they'll be fine.' You still have to put in place all of those supports specifically around supervision, support, professional development et cetera to ensure that your peer workforce is supported well so that they can deal with their own situations but also be effective in terms of dealing with the people they are actually working with. It is really taking a much more proactive role within your peer workforces and supporting them and putting a whole range of things in place to ensure they are dealing with the experiences they have when they are dealing with people and potentially about their own retraumatisation or reliving some of those things but also at the same time putting those things in place in the organisation to support the workers to be able to deal with that. I think they are critical aspects in this particular situation, so it is not a special response; it should be just a good, comprehensive response that we provide to all of our workforce, particularly the needs of our lived experience workforce, who engage much more with that lived experience every day that people have. How do we make sure we provide the adequate support, supervision, mentoring, debriefing and all of those things that are really critical?

Mr LISTER: Yes; thank you. Have you ever thought of taking a job with DVA, perhaps at the top?

Mr Frkovic: It is certainly an interest area of mine, particularly the mental health of our veterans, and I am looking forward to seeing the outcome of the royal commission into the suicide rates of our veterans which is, again, another story that we could talk about in terms of overall suicides in Australia and Queensland.

Mr DAMETTO: Commissioner, how important do you believe it is in remote Indigenous communities for people to find gainful employment to make sure they are rehabilitating and, therefore, becoming more productive members of society? How has the blue card system restricted that in the past?

Mr Frkovic: My apologies: I probably should have focused more on our First Nations communities both broadly and specifically in some of the discrete communities. From our understanding, from the Queensland Mental Health Commission perspective, the blue card has been a major barrier in terms of access to that. For people who have spent time in prison and returned to the communities where they were originally from or to other communities, not having a blue card has been a major barrier. I think, from a First Nations perspective, it is even more of a barrier than it is for some of the more mainstream communities.

Again, as we clearly indicated, and based on the QFCC report, there is a structural bias that does occur. We have to think about it more broadly than just lived experience because there are some structural biases that, I would suggest, impact on our First Nations people more so even than just people with lived experience of mental health problems. When you have a combination of those things—when you are someone with a mental illness, you have a drug and alcohol problem, you have been to prison and you are a First Nations person—we can see that some of the more subjective assessments around blue cards can certainly impact on your ability to get that blue card. We have seen that. We have cases where people have spoken to us about that. Particularly in the broader social and emotional wellbeing space in our First Nations communities, having people who have that lived experience across all of those different domains that I spoke about is critical in terms of their own rehabilitation, contributing back to their communities and in helping others who might be on that journey as well.

CHAIR: Thank you, Commissioner and officers, for presenting today and answering our questions. We very much appreciate it. It was very helpful.

Mr Frkovic: Thank you for the opportunity.

LEWIS, Ms Natalie, Commissioner, Queensland Family and Child Commission

TWYFORD, Mr Luke, Principal Commissioner, Queensland Family and Child Commission

CHAIR: Welcome. I invite you to make a short opening statement of no more than five minutes, after which committee members will have some questions for you.

Ms Lewis: Good morning, committee. Thank you for having us here this morning. I acknowledge that we meet on the lands of the Yagara and Turrbal people and I pay my respects to their elders both past and present.

As outlined in our written submission, the QFCC welcomes the changes proposed. We are more than happy to discuss our support for the proposed bill and provide further clarification or answer your questions. These amendments are significant. They correct a systemic issue that has caused much harm. I acknowledge the government and departmental leadership for listening and taking steps to address this issue through the introduction of this bill.

I would like to focus on the particular amendments that are related to kinship care. It is important to note that this does not remove a safeguard for Aboriginal children; it removes a structural barrier to the safe care and connection of Aboriginal children. That barrier has effectively compromised the immediate and long-term safety and wellbeing of Aboriginal and Torres Strait Islander children since its introduction.

Aboriginal and Torres Strait Islander people, communities and organisations have raised concern regarding cultural kinship care prior to the commencement of blue cards and have advocated for the removal of the requirement regarding cultural kinship care ever since. In recognising the significance of bringing this issue to the table, acknowledging the impacts of getting this wrong and the opportunity to engage in respectful dialogue to solve this problem in the best interests of children, it would be remiss of me not to raise what I regard as limitations in the current bill to substantively achieve its objectives.

The department have been very clear about their commitment to increase the use of kinship care, to reduce the over-representation of First Nations children and to the full and faithful implementation of the Aboriginal and Torres Strait Islander Child Placement Principle. These are established goals. They are documented in national agreements such as Closing the Gap and the National Framework for Protecting Australia's Children. They are reaffirmed in the Our Way strategy, Queensland's generational commitment to eliminating over-representation, and more recently in the residential care reform road map.

My first concern relates to the retention of the requirement for adult household members to obtain a blue card for the purposes of a kinship care placement. Current child safety practice in the assessment of household suitability for kinship care placements already includes a comprehensive criminal history and child protection history screening process of the primary kinship carer and all adult household members. Where this screening produces information that presents a real risk to children, which includes disqualifying offences and serious offences that are relevant to children, the placement is deemed unsuitable. Carers have a positive obligation to notify not just changes to their own criminal history and circumstances but also changes to the composition of the household. The ongoing safety of the child and the suitability of that placement is reviewed at least every six months.

The same safeguards that exist in relation to primary kinship carers apply to all adult household members. The same structural barriers that exist for Aboriginal and Torres Strait Islander kinship carers exist for all adult household members. Removing the first barrier and leaving a second in its place is contrary to the objectives of this bill. I would suggest that this be amended.

My second concern, consistent with those raised by ATSILS, the Queensland Indigenous Family Violence Legal Service and other submitters, is the commencement date of the amendments to remove kinship carers from the blue card process. The bill proposes to turn off the auto commencement provisions where any uncommenced provisions of the act commence automatically after a year, with those amendments to commence on a date to be fixed by proclamation. This is anticipated to occur some years into the future. In my opinion, this delay is unnecessary.

The implementation of a new assessment process is something that could and should be progressed now. I do not want to see the luxury of a long lead time produce excuses for inaction. Currently, there are Aboriginal and Torres Strait Islander children living away from their families—almost 2,000. Currently, there are over 700 Aboriginal and Torres Strait Islander children in residential care. If even half of those children can safely return to live within their family, their futures will look very different.

I would suggest that the action to establish the alternative assessment process should be approached with a level of urgency commensurate with the stated level of priority. We are not starting from square one. Fundamentally, a placement assessment process already exists that incorporates appropriate screening of suitability to provide kinship care. It is inclusive of a comprehensive criminal history and child protection history screening for both the carer and all household members.

Can this framework be augmented to enhance consistency and efficiency or improve information sharing? Yes, absolutely. Can processes be improved to ensure they are culturally affirming, increase the participation of children and their families and incorporate shared decision-making with Aboriginal and Torres Strait Islander organisations? Absolutely. These things are already enabled within the child protection legislation. A commitment to continual quality improvement is a key expectation in the delivery of all government and non-government services, and this is no exception.

The design and implementation of an optimal assessment process, in partnership with stakeholders, is readily achievable within 12 months. Significant work has already been progressed by Aboriginal and Torres Strait Islander organisations and there is no shortage of evidence to draw upon. Many individuals, committed professionals and organisations are willing and ready to assist. The acknowledgement of this issue has opened a door that has been locked for decades, and I am confident that there is sufficient goodwill and practice expertise to get this done well and in a timely manner so that the benefits of Aboriginal and Torres Strait Islander children are not unnecessarily delayed. I thank you for your time this morning.

Mr LISTER: Thank you very much for coming in and for your very comprehensive submission. I neglected to also thank the Mental Health Commission for their very good submission. The Mental Health Commission talked about this bill in a broader context as it relates to those who face intrinsic barriers to getting a blue card, not just the Aboriginal and Torres Strait Islander community. Does the commission have a view on that in the broader sense?

Ms Lewis: I think some of the amendments in the bill such as the change to the assessment process and the ability for the department to appoint expert advisory committees go some way to addressing the structural barriers. They provide an opportunity to introduce expertise, whether that is lived experience or whether that is cultural authority of Aboriginal and Torres Strait Islander justice group members or community leaders. It allows the opportunity to bring them into the consideration of an assessment. I think that provides a strong safeguard within the bill.

Mr LISTER: I am interested in knowing whether or not people who are not members of the Aboriginal and Torres Strait Islander community, in the view of the commission, ought to be offered the same opportunity to have an alternative process for assessment for blue cards. Does the commission have a view on that?

Ms Lewis: In relation to kinship care, that applies to all kinship carers and not just Aboriginal and Torres Strait Islander kinship carers. In relation to the blue card process and the ability to establish advisory committees or seek expert advice, that is not limited to just Aboriginal and Torres Strait Islander expertise. That can be about people with lived experience of substance misuse. It can be people with a lived experience of incarceration. When interpreted in the intent that is written, which is quite broad, I think that gives an opportunity to improve all processes for all people who are marginalised and for all people who, to this date, have been disproportionately disadvantaged by the structural system.

Mr Twyford: To add to that, in my view this bill is a profound improvement on the current system. It takes us away from what could be an arbitrary decision-making process and introduces a risk-based decision-making framework and a reasonable person test, both of which provide greater discretion in the decision-making around who is or is not able to adequately hold a blue card. That is a universal decision-making framework and a universal test not contingent on it being a kinship carer or, indeed, any particular cohort of Queenslander. In my very strong view, this bill represents a profound improvement from where we are. Whilst we are here talking about what could be added to further improve the current bill, I want to put on the record that it is a great step forward from the current scheme.

Ms NIGHTINGALE: I am interested to hear more about your views on the reasonable person test. We have heard from the Mental Health Commissioner about concerns relating to inherent bias within the test. I am interested to hear about your perspective and position.

Mr Twyford: In adding that test, of course, there is a risk that subconscious or other forms of bias will come to the decision-maker on any day around the decision that they would make. I would argue that it is far better in terms of providing a decision-making framework than an arbitrary test that

completely excludes the ability of a decision-maker to take into or not take into account certain factors. The concerns must be managed through practice and training of the decision-maker. They must be mitigated through controls that can be put in place around the people making these decisions, including reviews of their decisions and appropriate endorsement and approval pathways.

With any frontline worker making human services related decisions, there is always the risk of subconscious bias entering their decision-making. The practice guidance, the oversight bodies and performance reporting are all designed to reduce and mitigate that risk. I would argue that the addition of the reasonable person test, whilst giving greater rise to that risk, actually takes us away from an arbitrary system and addresses many of the systemic barriers that we have been battling against over decades, as Commissioner Lewis rightly points to. It will be through training, appropriate qualification and professionalisation of the decision-makers that we can mitigate some of the concerns that have been raised.

Ms NIGHTINGALE: For clarification, you acknowledge the risk for potential bias but you believe those risks can be mitigated effectively?

Mr Twyford: Absolutely they can be mitigated effectively. The best way to do that is through the training and qualifications of the decision-makers, not through legal provisions in an act of parliament.

CHAIR: We might go to committee members online. Any there any questions from Nick, Barry or Bryson? No. In your submission you strongly recommend that the adult household members of kinship carer families should no longer be required to hold a blue card. Could you outline that further?

Ms Lewis: The first point to make is that when we did our review—the analysis of blue card decisions—one of the key findings was that there is a very different purpose between when we are doing an assessment about kinship care suitability and when we are doing an assessment about employment. Caring for your family members is not employment. We first tried to approach that as a way to look at the fitness for purpose of the existing blue card system as it applied to kinship carers.

When we are talking about adult household members, we heard from many people who talked to us about the difficulty and the types of decisions that have to be made when a kinship carer may in fact have a blue card but they may have an adult family member, who might be an 18-year-old son who has a juvenile history, who does not present a risk to that child but their inability to get a blue card is going to be prohibitive in terms of that family staying together and their ability to provide safe care and connection for that child.

If we think about care in the context of the household, there are sufficient safeguards that exist through the examination of criminal history and child protection history by the department of child safety before they enable a child to be in a kinship care placement. That same information is available to them. They are informed by an assessment of safety in the household in its entirety. They are able to undertake different aspects of an assessment by doing interviews with people, by visiting the home, by looking at their support networks—all of these things that provide appropriate context to make a far better decision about the real risk that is posed to an individual child in a kinship care arrangement.

CHAIR: Thank you. That is helpful. Are there any further questions from members online?

Mr DAMETTO: I am trying to get a better understanding, because I am just learning about this now, between kinship care and a child who decides to self-place. My understanding is that under the current laws a child can self-place from the age of 12 wherever he or she likes. There is no requirement for people where children self-place to have a blue card, but for kinship carers there is, prior to this legislation being proposed. Is that the case?

Mr Twyford: There is a lot in that question. Children in out-of-home care do self-place. I would not say that there is an age when they are suddenly allowed or permitted to self-place. It is always the role of the department of child safety and the director-general to ensure that child is safe, regardless of where they are. Often that will mean that the child safety system uses both incentive and elements of coercion to bring that child back to a place that is an approved placement where there are approved carers. Ideally, that is how the child protection system should operate—with children safe in approved placements.

I think your question goes to a further point that Commissioner Lewis has just touched on—that the child safety system is very skilled and able to adequately assess the safety for a specific child in the context of where they are and who they are with. That is the type of skill set that the current blue card scheme does not have. It is a very arbitrary, historical-based decision-making system that looks at whether you have been charged or convicted of something in the past and, if so, you are not able to undertake child related employment.

There is a coming together of different risks and different decision-making roles—who is able to be employed in child related employment universally, who is able to provide care to a child in out-of-home care and who approves where that child is. When we put all of those together, particularly for First Nations children, we can clearly see that there are far too many First Nations children in approved residential care placements, notwithstanding the fact that they have family members who are absolutely safe, able and willing to raise that child but who have fallen foul of an arbitrary blue card scheme.

Mr DAMETTO: Thank you very much for your answer, Commissioner.

CHAIR: Are there any other questions from members online?

Mr O'ROURKE: Expanding on the issue of the number of children in residential care and them not being able to go to family due to other adult household members not being able to get a blue card, do you have any idea what sorts of numbers we are talking about in that space?

Mr Twyford: As part of the Residential Care Review that was conducted earlier this year, I was able to attend every child safety region in Queensland and meet with frontline workers and residential care providers, speaking directly to staff. The very clear message they sent me, despite being unable to give a quantum, was that roughly half of First Nations children in residential care did not need to be there. That would equate to many hundreds of children today.

CHAIR: Any there other questions from committee members? There being no further questions, thank you, Commissioners, for your submissions and for answering our questions this morning. It is much appreciated.

ALLSOP, Mr Tom, Chief Executive Officer, PeakCare Queensland Inc.

CHAIR: Welcome. I invite you to make a short opening statement of no more than five minutes, after which committee members will have some questions for you. Thank you for giving us your time this morning.

Mr Allsop: I very much thank the committee for inviting me to speak to you this morning. I, too, want to acknowledge the traditional owners on whose lands we are meeting today. I want to acknowledge the special significance that this bill and this conversation has for First Nations' children and families. I want to acknowledge the First Nations leadership that has brought this conversation to bear today and the years of leadership that has brought us this very important moment and this very important change for us to be discussing.

PeakCare is the peak body for child and family services in Queensland. We provide an independent voice for all organisations, young people and families who intersect with the child and family services system. We represent all of the organisations that are most impacted by this legislation—children and young people in the child protection system, their families, kin and carers. On behalf of our sector, we appreciate the efforts that have been made to streamline and simplify the blue card system and blue card processes for all those involved in the system.

At the heart of any change to legislation that relates to children, we must ensure that their safety is paramount and that all consideration is given to their safety at all times. The blue card screening system is not designed for kinship care. Its processes create additional barriers for Aboriginal and Torres Strait Islander families and kinship carers who are now ready, willing and able to look after their kin. Caring for family is not a job. Grandparents do not work for their grandchildren. Aunts and uncles do not work for their nieces and nephews. They care for them because they are family, and a worker screening system is not the appropriate safeguard for that.

Very importantly, the proposed legislation and changes do not remove the checks and balances that are needed for keeping children safe. These will still be in place. They support the rights of children where it is in their best interest to live safely at home and they meet the requirements of the United Nations Convention on the Rights of the Child.

PeakCare strongly supports the recommendations made in recent reports by the Queensland Family and Child Commission, the former Legal Affairs and Safety Committee, the Women's Safety and Justice Taskforce and the Youth Justice Reform Select Committee. To improve the operation of the blue card system, we believe these amendments in the proposed legislation appropriately address these recommendations, and we look forward to working with the government to implement the recommendations.

On a personal note, and building on what the principal commissioner shared, I, too, had the privilege to speak with many frontline staff across Queensland in the Residential Care Review and development of the residential care road map. While in North Queensland speaking with a cultural practice adviser, it was shared that in that region alone at that time there were around 60 young people at the age of 12 in residential care, of which most were First Nations. It was the genuine belief of staff in the child protection system at the time that not a single one of those young people should have been in residential care if their families could care for them by receiving a blue card. I suggest that the principal commissioner's estimation of 50 per cent is a very conservative estimation when it comes to the number of young people who could be returned to family if not for the blue card system that we currently have in place. Thank you for the opportunity to speak.

CHAIR: Thank you for your submission this morning.

Mr LISTER: Am I to take it that the bodies that you represent, like many other employers, are struggling to get good people? If that is the case, do you see that reforms in this legislation would improve the availability of workforce for resi-care providers? Do you have any anecdotal evidence about how many people do not apply for a job because it says 'must have a blue card'?

Mr Allsop: I do want to acknowledge the magnificent people who put their hands up every day to work with children and families across Queensland. We have a valued range of very good people in our sector but we have significant workforce pressures. We have never seen more children and young people come to the attention of the child protection system or more demand placed on our service system across the entirety of the state. We know that we have significant vacancy rates that sit in the south-west and north of our state. That has a direct impact on our ability to provide care and support to children and young people and their families. It also impacts on our ability to support them in their community.

The blue card system is a barrier in terms of attracting the workforce and particularly a peer support workforce. To give you an analogy that draws into a parallel sector, one of the most significant things we can do within our youth justice system is to create a peer support network that can walk alongside young people who have committed an offence to help divert them from future offending. It is very hard to be a peer support worker working with children when you cannot get a blue card to work with them. We know that it is that peer support network that is most disadvantaged.

I have also had the privilege of sitting alongside Robbie Katter speaking with the Indigenous Leaders Forum for the Local Government Association of Queensland. One of their priorities is the impact the blue card system has on regional workforce development. What we can do to ensure we are supporting our communities into employment is critically important not only to their sustainability but also to how their families can flourish through the employment they can gain.

Ms NIGHTINGALE: Can you please expand on your comments regarding the subjective nature of self-disclosable matters? What problems do you foresee and how might these be mitigated?

Mr Allsop: I think one of the greatest challenges of the blue card system is not necessarily in its legislation or its parameters but in the operationalisation of how the department administers the blue card scheme and, with that, the subjectivity that we give people in terms of how they put forward information. In the way that we currently support people to self-disclose, the information that we provide and what we request, there is a lot of nuance that is left and not a lot of support provided. That means that people may feel challenged in terms of what they can self-disclose or leave things out of their self-disclosures that might be important, particularly in the way that language barriers might face certain communities.

We know that we are increasing our cultural diversity in Queensland—which is wonderful. It also means that we need to tailor our supports for communities so they can understand what is appropriate to self-disclose and what would be an inappropriate self-disclosure not required as part of the scheme itself. The least amount of information for the operationalisation of the scheme is appropriate. When we seek too much, that becomes unnecessary and may create trauma for those who are required to self-disclose.

Mr O'ROURKE: Thank you for your presentation today. In your submission you discuss the importance of awareness and the training required. Would you like to expand on where it should be targeted?

Mr Allsop: As I previously mentioned, it is the operationalisation of decision-making that sits under this scheme that is so critical: that we are consistent and fair in the decisions that are being made; that we are able to service through that training; what is the unconscious bias that creeps into decisions; and then to have those wraparounds that identify through the oversight work how we are supporting our staff to make these decisions on significant volumes of information that flow through. When we look at the number of blue card applications, there are very high numbers of applications. We need the best staff who are trained to make very well informed decisions and acknowledge that, when it comes to the offending behaviours people may have historically been charged with, at the core of our system is an opportunity for rehabilitation and growth and the acknowledgement that people do change over time. Decisions and actions that may have happened 20 years ago are potentially associated with a very different person to the person we see today. We need a system that appreciates that nuance, and we need to train decision-makers to understand that nuance—people change—and build that professional discretion into our decision-making processes.

CHAIR: In that context, do you think the current bill achieves that?

Mr Allsop: I believe the current bill takes significant steps towards achieving that, and I think the reasonable person test allows that broader professional discretion. It needs to be complemented by significant investment in the operationalisation of these changes. The barrier will not be in the legislative change itself; it is how it is implemented in practice. Building on the commissioner's observations, we do hold concerns about the delays and timeframes and what that means. This is not something that should take too long to do and it requires significant investment.

I also acknowledge this should not be seen in isolation to the broader child safe standards and child safe organisations. If we over-rely on a worker screening system to create a sense of safety in our communities then we forget all of those other proactive controls that must be in place. Sometimes if we over-rely on a worker screening system we create a perception of safety that exists for those in that worker screening system by forgetting there are nine other standards that also create safety, and those are just as important, if not more important, than the worker screening system that supports them.

Mr HEAD: Thank you for those comments. It is something that governments need to consider more broadly in terms of changing processes across the board. In relation to the proposed decision-making framework, you note in your submission that the consent process outlined in the bill might cause additional confusion for First Nations applicants. Could you expand on those comments and provide more detail?

Mr Allsop: It is very similar to what I previously mentioned. In building additional bureaucratic processes, including consent processes, we need to acknowledge the cultural safety and cultural considerations that need to go into how we support our First Nations communities in particular and understand that process. Additional barriers that we know within the blue card system are not just at the outset of an application; they are in the review of that application. In the operationalisation of changes to the blue card scheme, how can we ensure we are putting in place all of those culturally safe supports that will allow us to walk alongside a First Nations family or a First Nations person who is applying for a blue card for the purposes of employment—ideally not applying for a blue card for the purposes of kinship care—so they can work through that process in a way that is meaningful and safe for them, acknowledging the systemic barriers that have been put in place by the blue card system as well as the impacts of historical colonisation practices that mean First Nations individuals are identified more and screened out because of historical practices? It is about how we walk alongside and make sure we are culturally safe in how we design that.

CHAIR: You outlined the need for a peer support network to support people who may have committed offences in the past. How do you think the proposed bill compares to other states? We heard from the Mental Health Commission that there is a provision in the Victorian blue card framework to allow historical offences not related to children to be taken into account. What is your view on the current bill in relation to that sort of a standard? Will this bring to us a similar standard, or do you think it falls short of that?

Mr Allsop: I think it moves us towards greater equity with the standards that are in place in jurisdictions like Victoria. I do not think it is at the same level. The Victorian scheme has greater nuance to allow for that flexibility. It would be our aspiration that we work towards a nationally consistent worker screening process where, irrespective of where you are in the country, there is a consistent application applied that allows for that discretion, particularly when we work in our border communities. We know that particularly around the Tweed or Mount Isa there are challenges in terms of the interpretation of what that looks like, particularly working with children and families who cross that border. I do want to acknowledge this bill is a very good step forward. It is not the last one, I hope, but it moves us towards where we need to be. In the context of the Child Safe Organisations Bill, which is before a different committee for consideration, it is part of that broader system of wraparound supports that create safety and safeguard children in the context of how we support them to thrive in our communities.

Mr DAMETTO: Thank you very much for your support for the current bill and working closely with Robbie Katter on other parts of the legislation we have tried to change. Can you speak more broadly on how the current blue card system has negatively affected those in regional and remote Indigenous communities when it comes to not only gaining employment but also moving on after committing a crime?

Mr Allsop: I will look at that in two parts (1) in terms of the intergenerational impacts it has on children and families, particularly from regional and remote communities; and (2) in terms of the workforce element. I will just bring context to the conversation around the impacts we see in Queensland. Queensland has 21 per cent of Australia's children and 40 per cent of all placements for residential care. Queensland leads the nation in the number of children we place in residential care, which is not something we should be proud of. As the commissioner has said, significant work is being done to turn the tide. The commitment that has been made that sits at the heart of how we reduce residential care—70 per cent of children in care being placed with kin by 2026—is a public commitment that has been made by the government. That commitment will not be met without changes to the blue card system. We will fail to achieve that without changes to the blue card system. It is the single biggest barrier to kinship placement. Without that in place, very significant numbers of young people in need of care or in need of protection who are in regional and remote locations are removed from their community, particularly in the north of our state, and placed into care arrangements on the east coast, because that is where they are available, because there is no family who are screened to provide that care, despite family being available in the absence of a blue card being provided.

When we started the Residential Care Review we had 1,759 children in residential care. As of December we have 1,829. We have more children now in residential care than when we started the review. We hope to see those numbers turn around. The vast majority of those children will not receive better outcomes from their placement than they would receive if they were with family. It is the aspiration that we get them back to family.

It is also important to acknowledge, particularly for children coming from regional and remote locations, that Queensland currently has more children under the age of 12 in residential care than other states have children in residential care. Almost 600 young people under the age of 12 are in residential care in a system that is not designed for children under 12. When we looked at that, at the same time Victoria had 45 under 12. We know that we can significantly reduce those numbers and break intergenerational cycles by returning those children to their families. The only barrier that is currently standing in the way for many of those families is their ability to receive a blue card. That extends to an inability for those families to also engage in meaningful employment. I often speak to the idea that education is the pathway to prosperity for our families, but there is not a lot of prosperity if education does not lead to employment. We are not breaking generational cycles if we cannot get our First Nations communities but also our regional and remote communities into meaningful work. Speaking with all mayors at the Indigenous leaders forum, the majority of their biggest barriers into gaining council employment is a blue card. One of the biggest things we can do to help our regions flourish is to get the blue card system out of the way of meaningful employment.

CHAIR: There being no further questions, thank you for answering our questions and your submission this morning.

HANCOCK, Ms Nikki, Assistant Director, Court and Tribunal Services, LawRight

TUCKETT, Mr Ben, Director, Court and Tribunal Services, LawRight

CHAIR: Welcome. I invite you to make a short opening statement of no more than five minutes after which the committee members will have questions for you.

Ms Hancock: Thank you, Mr Chair, and good morning, members of the committee. We thank you for the opportunity to speak today. My name is Nikki Hancock and I appear as a witness with Ben Tuckett. We are the Assistant Director and Director of LawRight, Court and Tribunal Services, and we appear today on behalf of our organisation. LawRight is a community legal centre and the primary facilitator of structured pro bono and legal services in Queensland. Our court and tribunal services assist individuals with current or potential proceedings in the District and Supreme Court, QCAT and some courts of federal jurisdiction. Our QCAT services assist with various matters before QCAT. Forty per cent of applications to the service and 70 per cent of the total legal services we provide in a financial year are related to a blue card decision.

LawRight has made numerous submissions on the blue card system in the past. Broadly speaking, our submissions have outlined the negative impacts of a well-intentioned system on vulnerable individuals and communities. We consider that the bill goes some of the way to addressing this disadvantage. Unfortunately, the major delays and the overall complexity of the process remains, and arguably the amendments will further exacerbate these issues. We have repeatedly called for a legislated timeframe for which an application for a blue card is to be decided by the chief executive and for the creation of an internal review process. This bill is a missed opportunity to make these much needed amendments.

The bill also includes major changes which we are opposed to, including the increase to the sit-out period from two years to three years, and the insertion of section 304G(4). We also consider that the transitional provisions relating to applicants with a current application before QCAT are unsatisfactory. Because of the major delays outlined in our submission, we consider that these changes will effectively punish individuals who have already been engaged in the process for a significant period of time.

Finally, we want to highlight that these reforms will increase the total number of individuals going through this already overburdened system. An urgent injection of funding is needed for Blue Card Services and QCAT to deal with the current backlog and future demand. In addition, we expect that the amendments will increase the number of individuals seeking legal advice about their eligibility for a blue card and other obligations under the act.

There is currently insufficient funding for legal assistance services for an individual with matters being assessed by Blue Card Services or engaged in proceedings before QCAT. We would ask that, as a part of the recommendations, the committee call on government to investigate options to fund future legal assistance services for blue card matters.

We thank you again for the opportunity to engage with this vital area of law reform and welcome any questions from the committee.

Mr O'ROURKE: In your submission you highlight concerns around the self-disclosure system being abused by perpetrators of domestic and family violence. Could you elaborate a little more on that for us, please?

Ms Hancock: Our concern is in relation to a perpetrator of domestic violence, for example, making a private application for a domestic violence order against their partner, or whomever, as a retaliatory measure or systems abuse of the domestic violence system. Once that application is made and if a temporary order is made by the court, the individual who is subject to that order, as the respondent, will have to disclose the fact that that order has been made to Blue Card Services within seven days of the order being made, which could then result in the suspension under the act of their blue card or currently cancellation of their blue card.

CHAIR: You outlined some statistics earlier on in terms of QCAT. Can you go over that again for me, please?

Ms Hancock: The statistics were in relation to the matters that we assist with. In any financial year, on average, 40 per cent of the new applications for assistance we receive are for assistance with a blue card matter. Of the total legal services we provide to individuals, including legal advice, representation and assistance with court documents, 70 per cent of the work that we do is for blue card matters.

Ms NIGHTINGALE: In regards to the statistics that you just outlined, would you see that the bill as it is currently would reduce the number of people seeking assistance from your organisation?

Ms Hancock: Potentially the new decision-making framework may result in less negative decisions being made, based on what we know from Victoria and New South Wales as they have that similar framework, less negative decisions are issued in those jurisdictions. However, more people will require a blue card under the amendments so that increases the total number of the applicants for a blue card, which may then increase the number of people reviewing a decision. We cannot really say. It is increased on one end and maybe decreased on the other; we are not sure.

Mr Tuckett: I would add that there is the new category of people now seeking advice about whether they are required to have a blue card, which is perhaps only short-term—maybe a year or two years of that uncertainty—but with the expansion of some of those categories of people some of them might not require a blue card. We have seen overcompliance be a problem interstate before. I think you are either going to have that problem in Queensland again, which would create the overcompliance that again adds to the total number of people applying for a blue card, or alternatively those groups recognise, 'Maybe we don't need a blue card for our workforce,' but that advice has to come from somewhere as well. There is that core problem of an increase in the number of people, but then there is the separate group, which is maybe only a short-term thing but will be created by the fact that the law has changed.

CHAIR: In your submission, you express concern about the operation of sections 229 and 230 pertaining to risk assessments for exceptional cases whereby someone who is formally disqualified or convicted of a serious offence may apply for a blue card. Can you elaborate on that to the committee? How do you propose that that issue could be mitigated?

Mr Tuckett: Can I clarify, Chair, which section?

CHAIR: The operation of sections 229 and 230 pertaining to risk assessments for exceptional cases.

Mr Tuckett: The idea of the operation of this inverse test; is that the point we were raising?

CHAIR: Yes.

Mr Tuckett: We struggle with how to define and describe what we were talking about. I think it is too high of a thing to suggest that that is a criminalisation of the system, because I do not think that is the intention and I struggle with that language. The problem we have is the way that that test flips. What we see happen at QCAT and other areas is that when the client gets there they are asked to defend or respond to the event or the serious offence or the disclosable material. It is very much that they have to get up there and give evidence about what happened or why it happened. In some of those cases it is just charges; they are not events that went through a criminal conviction process, or maybe it did go through and there was a finding with the Magistrates Court saying, 'We don't want this to impact your blue card,' or, 'We think you are wonderful member of the community and we don't want to sentence.' However, they still have to respond and give evidence about what is going on.

In terms of the question of how to fix that, I think it is quite difficult to fix because of the operation of the legislation. It is drafted in a way that creates that onus-flipping no matter what, because you have that threshold of the risk assessment and it is treated in the same way. I think in practice what is going to happen is you will see the two categories treated the same way.

One example we gave as a possible recommendation to improve that would be a change to either more investigative ability at the blue card stage. Where someone has a charge that was identified, at the moment there is not a process for that person to go in and for Blue Card to get more details about that and ask it in a way that is not at QCAT or at a final-decision stage. They are limited in their powers, in a sense, of what they can actually investigate and what they can do.

The second point is really about what information is provided when they are receive that notice or when they are receive the negative notice, or even how QCAT itself runs the proceeding. Because of the way the current section is drafted, there is not a requirement to say, 'This is the event that happened and we're worried about it for this reason,' and then the person can respond to that. I will make up an example on the spot. Say it was a charge related to possession of a drug or something along that line. If the response was, 'We're worried about that because you have this charge and we are worried that this is how it is going to impact you,' the individual could go and get a medical report or something else that shows they have done rehabilitation or done all these things. They could say, 'Look, that happened when I was 17. That was 30 years ago.' At the moment it is, 'You have these offences and we're not going to give you a blue card on that basis.' You get to QCAT or you get to the review stage and suddenly you have to respond to, 'You have all these charges and you have this.' It is a change in the way they have to respond to it.

Something we talked about is if you look at, say, the general protections legislation for employment law. It operates with that same idea that once the individual has established that they were discriminated against or treated poorly by their employer for this reason, it then flips to the employer to show that it was for another reason. Obviously that is an opposite scenario because in that case it is being led by the individual. Something like that makes a lot of sense. I think the bit that you are missing here is the requirement on Blue Card Services to actually set out that first threshold of what the problem was before it then kicks over. It kicks over straightaway so the individual is left having to say, 'What do I highlight? Do I tackle this or do I not tackle this?'

Nikki is probably better positioned to comment on it, but we see at QCAT, too, a broadening of those reasons. It might be that one issue was flagged as problematic, but through the QCAT process or through the next stages more evidence is developed, the person goes and gets a medical report because they think that might help, and then the medical report says they have stress, anxiety or something as well, so then that is brought up as a reason to respond to. What ends up happening is that it grows—the things at least that the person feels they have to respond to. It is a challenge, I think, in the system and there are probably no easy answers, but some of the things we have put in the report about changing those notice requirements and what is required to be put into those would go a long way to at least limiting what that person has to respond to.

CHAIR: I do not want to put words in your mouth but it sounds like it is a bit of a blunt tool that needs sharpening in terms of a range of matters being put to people. They are getting caught on all these things that may be historical and not relevant to the question at hand and that is the safety of children. Would that be an accurate way of summarising it?

Ms Hancock: Yes. It is also an overload of information. Under the current act there is a requirement for the chief executive to send a notice to the applicant which essentially contains all of their criminal history or concerning information. However, it is just a bundle of documents; it is not actually something that says, 'Here's the reasons why we find this stuff concerning. Tell us why we shouldn't issue a negative notice.' We know through a lot of our clients, particularly if they have a lower level of education or English is not their first language or they have an impairment, that reading through that bundle of information and trying to figure out what is the concerning information is beyond them. Either people need to get legal assistance at that point in time to be able to respond to the notice appropriately or the notice needs to be more targeted. We have seen examples of similar notices from Victoria under the equivalent legislation which actually have a list of questions for the applicant to address in their submission that is specific to the information that Blue Card find concerning.

CHAIR: I am responding in real time here, but do you think some provision around historical offences that someone might have committed, say, 10 years or longer ago for matters that were not related to the safety of children and were not violent matters—you could categorise things obviously. Do you think it is helpful that things that might have been an offence 15, 20 or 25 years ago should be taken into account if someone, for instance, has not been charged or had an issue since then? Do you think it would be helpful to have that kind of context being considered?

Ms Hancock: Yes. I think proposed new section 234 of the bill does build some of those considerations into the new decision-making process, so it will be mandatory for them to consider how long ago an offence occurred and various things about the actual offence. Some of those already exist in the current legislation but they are not as prescribed. We think that that would hopefully limit some of these circumstances where historical criminal offending or offending that is not directly child related is not given as much consideration.

Mr DAMETTO: I have a question around the QCAT process. In your experience, how many negative blue card applications are being overturned by the current QCAT system? Do you have a percentage around that?

Ms Hancock: In the submission there is a selection of 39 recent decisions that were extracted. I do not have the exact number. It is broken down by represented and self-represented, but there are more positive outcomes at QCAT from that data sample than there are negative.

Mr DAMETTO: Would it be a fair statement to make—once again, I am not putting words in your mouth—that negative applications for the blue card are being overturned more often than not at QCAT?

Ms Hancock: Yes. We did collect data on this from our clients and the most common outcome was for clients to actually withdraw from the process rather than proceed to final hearing because of the complexity. We know that a lot of those clients would have had really good prospects of the tribunal overturning the decision, but because they were unrepresented or because of other life factors, the complexity and the time it takes, they withdrew from that process.

CHAIR: Thank you very much for your submission and for making the time available to answer our questions this morning. It is much appreciated. That concludes this morning's hearing. Thank you to everyone who has participated today. Thanks to our Hansard reporters. A transcript of these proceedings will be available on the committee's webpage in due course. Thanks to the committee secretariat for their work. I declare this public hearing closed.

The committee adjourned at 11.50 am.