

Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024

Submission No:	1
Submitted by:	<div></div>
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Submission No 1

I believe my submission is relevant to the Bill sections 156 and 188 are being amended, and additionally given a policy objective of the Bill is "making make a range of other amendments to simplify, streamline, and improve the operation of the blue card system".

A variety of international youth movement and organisations (eg churches, youth grounds) across the country invite international adult attendees for events longer than 7 days as part of large national events open to the surrounding Asia-Pacific Region or as part of cross-country activities. These activities often make a significant contribution to the Queensland economy as the international attendees pay registration fees (which are spent on suppliers and local tourist activities), and often spend additional time doing a pre-activity or post-activity tour.

If the international adult attendee (eg a facilitator or leader from the overseas country) is not attending with their own child, they are required to hold a blue card.

Under section 188(3), a person must provide proof of identity as part of their blue card application. My understanding is that this requirement is fulfilled by obtaining a CRN from DTMR.

To obtain a CRN with DTMR, a person can usually simply provide a Queensland-issued drivers licence, photo identification card, industry authority card or marine licence indicator. However, for a person who does not have any of these documents, they must present 1 category A document + 2 category B documents or 2 category A documents + 1 category B document.

Presently, only the following international documents are recognised:

1. Class A – Foreign Passport or a Convention Travel Document
2. Class B – Debit or credit card with an embossed or printed name

Consequently, unless an international person holds two bank cards with an embossed or printed name, it is impossible for an international person to obtain a Blue Card in Queensland.

This need to be fixed. The legislation presently in effect prohibits any children from another country attending an Australian event because no adult facilitator or leader is able to attend with them. Hence, they have no way of getting to Australia and would have no one to support them in Australia. This impacts many youth movements by essentially prohibiting many long running international youth events from ever happening again. This also impacts the local economy.

Kind regards,

A concerned member of the public.

Comment on “providing a consistent exemption for parent volunteers (recommendation 25)”

A significant amount of volunteer organisations which provide services to youth have adopted policies which require all volunteers, even if parents of children whom benefit from the services, to obtain and hold valid Blue Card. I, therefore, question whether these amendments will actually help organisations reduce the administrative burden associated with Blue Card applications and training their volunteer workforces.

First, the parental blue card exception is an insurance issue. Many sexual abuse insurance (still often outdated called molestation insurance) have an exclusion for coverage where the institution ‘ought reasonably to have known that the perpetrator had previously committed an offence’. Some even go so far as to exclude where screening would have identified that the perpetrator was subject to a previous complaint. Consequently, I am unsure whether many responsible and prudent organisations can actually rely on the parent exception without voiding their insurance cover.

Second, the exception for parents, to me, seems like a civil action waiting to happen. How could an organisation possibly convince a court it fulfilled its positive duty to protect a child in its care from harm if it does not require its volunteers, if even parents, to obtain a Blue Card? Applying the main four factors a court considers in deciding whether a reasonable person would have taken precaution against a risk of harm,¹ the factors point to a reasonable person requiring any volunteer, even a parent, to obtain a Blue Card:

- (1) **Probability that the harm would occur if care were not taken**—the probability of child abuse occurring is low. However, the duty to protect a child in one’s care is a special duty requiring positive action; it is one characterised by trust and confidence;² it arises because of the special vulnerability of a child and special responsibility of a carer.³ Consequently, the fact that requiring someone obtain a Blue Card can help reduce the risk means a Court would suggest a reasonable person would do it.
- (2) **Likely seriousness of the harm**—the likely seriousness of the harm, child sexual abuse or other child abuse, is extreme. Although on the point of duty, in the *DC v New South Wales* [2010] NSWCA 15, it was said it is ‘difficult to think of a more vulnerable class of persons than children subjected to sexual abuse’: at [52].
- (3) **Burden**—several years ago, obtaining a Blue Card was a time consuming and delay filled process. However, obtaining a Blue Card now-a-days is quite easy. Additionally, for volunteers, it comes at no cost. Consequently, the ‘burden’ is considerably low.
- (4) **Social utility**—there is social utility in not requiring all people to hold Blue Cards, as it operates a barrier to volunteering. However, given how easy it is to obtain a Blue Card and how quickly one can now be obtained, is it really a barrier which makes it such that a reasonable person would not require volunteers to get them?

¹ See *Civil Liability Act 2003* (Qld) s 9(2).

² *TC v New South Wales* [2001] NSWCA 380, [118]; *SB v New South Wales* (2004) 13 VR 527, 561 [179], 562 [186], 573 [233]; *DC v New South Wales* [2016] Aust Torts Reports ¶82-295, 68,058 [62]. See also Terence Higgins, ‘The Rescuer’s Duty of Care’ (Conference Paper, Royal Life Saving Society Quinquennial Commonwealth Conference, 26 September 2006) 1.

³ See, eg, *Modbury Triangle Shopping Centre Pty Ltd v Anzil* (2000) 205 CLR 254, 270 [43].

Although not talking about litigation prospects and standards of care, the Royal Commission seems to have formed a different view to me – that a reasonable person would not require a volunteer who is also a parent to obtain a blue card – when it said that ‘there are many other strategies that are critical to making organisations child-safe, including family and community involvement, supervision and adequate child protection policies’ and that ‘requiring parent volunteers to get WWCCs would intrude unnecessarily on children’s development and family life, and prove overly burdensome’. However, the *Working with Children Checks Report* came out in 2015, back when the processing of Blue Cards was done via paper forms. One recommendation of the report was for state and territory governments that do not have an online WWCC processing system should establish one’. Further, the Royal Commission’s comment that because ‘parents already interact with children in a wide variety of settings’ they should be exempt from Blue Card requirements seems ill considered, given the same can be said about child abusers; does the mere fact someone interacts with children make them less of a risk to others? After all, most perpetrators are known to their victims.

Whether I or the Royal Commission is correct (I would probably favour the Commissioners given their expertise), the real issue is whether any organisation be willing to go to court over this, given the substantial expense involved in defending a tort claim? I would suggest not, meaning just because organisations can, does not mean they will rely on the parental exception.

Third, the parental exception to requiring a Blue Card would seem to be some at odds with the National Principles which the new Child Safe Organisations Bill will implement (which I support). Child safe standard / National Principle 5 is that ‘people working with children are suitable and supported to reflect child safety and wellbeing values in practice’. Under the National Principles, organizations must do the following:

- 5.1 Recruitment, including advertising, *referee checks and staff and volunteer pre-employment screening*, emphasise child safety and wellbeing.
- 5.2 **Relevant** staff and volunteers have current working with children checks or equivalent background checks.
- 5.3 **All** staff and volunteers *receive an appropriate induction* and are aware of their responsibilities to children and young people, including record keeping, information sharing and reporting obligations.

I note that, in the Royal Commission’s Report, standard 5 includes implementing “thorough, structured interviews”, “stringent and careful reference checks” and, in particular, that:

“The institution:

- requires staff and volunteers to undertake screening procedures including criminal history checks to assess a person’s fitness to work with children as specified in law (for example, Working With Children Checks)
- builds in allowance for revalidation

The institution’s induction for new staff and volunteers:

- is a documented process and tracked through a register for new staff and volunteers
- occurs immediately after appointment and, ideally, before work with children begins
- provides instruction on

Д children’s rights

∩ respect for children, regardless of their individual characteristics, cultural backgrounds, and abilities

∩ the code of conduct and child safe policies and procedures

∩ strategies that identify, assess and minimise risk to children

∩ how to respond to a disclosure from a child

∩ complaints processes, including how to respond to a complaint about behaviour towards children

∩ reporting obligations (including mandatory reporting) and procedures including format, content and destinations for reports

∩ protections for whistleblowers

- is more detailed for staff working in roles and situations with higher risk, for example, with children who may be more vulnerable to maltreatment
- is reviewed regularly”

What exactly the word ‘relevant’ means is unclear. However, given that is said in the Royal Commission’s report, it would appear that an institution is obligated to require all staff to undertake screening processes for youth facing volunteers (eg a WWCC).

Further, even if it does not, it would appear the child safety standard / National Principles require a substantial amount of screening. This seems like a much higher burden / barrier to parents volunteering the requiring them to get a blue card. Likewise, given the level of induction training, which the standards / principles make clear *all* volunteer must do, it would seem unlikely that this training would be completed in the time it takes to get a blue card (it would probably need to be an online module a parent ult would slowly do over a series of nights on top of their parental and work responsibilities).