

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

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SUBMISSION TO THE WORKING WITH CHILDREN (RISK MANAGEMENT AND SCREENING) AND OTHER LEGISLATION AMENDMENT BILL 2024

10 July 2024

INTRODUCTION

The Justice Reform Initiative welcomes the opportunity to provide a submission to the Education, Employment, Training and Skills Committee inquiry into the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024 (Bill). It is acknowledged that the Bill has five principal objectives:

1. implement 12 recommendations from the Queensland Family and Child Commission (QFCC) report Keeping Queensland's children more than safe: review of the blue card system;
2. implement recommendations made by the former Legal Affairs and Safety Committee (LASC), the Women's Safety and Justice Taskforce (Taskforce) and the former Youth Justice Reform Select Committee (YJRSC) to alter the decision-making process surrounding blue cards;
3. simplify, streamline, and improve the operation of the blue card system;
4. implement the first stage of the Government's response to the QFCC report, A thematic analysis of provisionally approved kinship carers who receive a subsequent blue card negative notice by removing the requirement that kinship carers hold a blue card; and
5. provide for the sharing of Childrens Court child protection records with other Australian courts and tribunals.

Due to the feedback timeframes for this inquiry (2 weeks), the following submission does not provide a detailed response to the proposed changes as outlined in the explanatory notes for the Bill. Instead, it provides a high-level response to the proposed changes as they relate to reducing incarceration in Queensland and building a community where disadvantage is no longer met with a criminal justice system response.

The Justice Reform Initiative acknowledges the voices and expertise of others who have inputted into various reports, inquiries and reviews that have informed recommendations around improving the Working With Children Check (Blue Card) system.¹ This includes the extensive work of the Honourable Margaret McMurdo, a Justice Reform Initiative Queensland Patron, who chaired the Women's Safety Justice Taskforce, which recommended reforms that reduce barriers for women who have been incarcerated to successfully navigate and engage with the Blue Card system.²

REMOVING SYSTEMIC AND STRUCTURAL EMPLOYMENT BARRIERS

The Justice Reform Initiative supports reforms that seek to remove systemic and structural employment barriers for children and adults who have been incarcerated. We agree that the Blue Card system plays an important role in protecting children; however, as noted by the Youth Justice Select Committee:

“the Blue Card system adopts an overly cautious approach and is currently operating in a manner that prevents some people, and in particular, First Nations people, from experiencing the dignity of employment.”³

People leaving prison in Australia have one of the highest rates of unemployment of any demographic.⁴ **78% of adults who are released from prison are released into unemployment.**⁵ There are currently very limited pathways into employment, training and education for people who are in prison, or for those who are preparing to leave. There is a significant body of research that points to the importance of engagement in employment, or education and training as a pathway to employment, as one of the key factors in breaking entrenched cycles of justice system involvement.⁶

The Justice Reform Initiative agrees with the Youth Justice Select Committee recommendation that **reforms must “provide an avenue for people with a criminal or youth justice history to establish their suitability to work with children, subject to safeguards.”** We know that people in Queensland are being systemically and structurally excluded on the basis of ‘failing’ working with children checks – often for historical convictions for offences that have little relevance to their current suitability to work with children.⁷

There are cases where people have been denied a Blue Card because assessors have deemed them as ‘not a good role model for children’ as a result of historical convictions (that are unrelated to harm against children). As noted by the Youth Justice Select Committee, this overly cautious and exclusionary approach for people with a criminal history impedes on the ability for the youth justice sector (and other sectors) to draw on the valuable lived experience of people who have been impacted by the criminal justice system and ‘turned their lives around’. The Youth Justice Select Committee noted that it ‘heard inspiring stories from young people with experience of the youth justice system who shared their aspirations to give back to the community by helping others to turn their lives around’ and emphasised the importance of ensuring the Blue Card system support such people to establish their suitability to work with children.⁸

Systemic and structural exclusion on the basis of ‘failing’ working with children checks is just one of many barriers that people who have been incarcerated face in terms of employment. Other barriers include:

- lack of experience in the (legitimate) paid work force;
- poor literacy;
- absence of formal education and training;
- absence of confidence and associated limitations on work readiness (often as a consequence of the above factors);
- systemic and structural exclusion on the basis of criminal records;
- difficulty accessing mainstream job placement services;
- difficulty accessing the support required to sustain employment;
- homelessness and other forms of housing instability;
- social isolation; and

- difficulty accessing health and welfare services that would support people to become employment ready.

The Australian Red Cross (also a partner organisation of the Justice Reform Initiative) has developed a website with tools to support employers in recruiting, managing, and supporting an inclusive workforce with people with lived experience of the justice system.⁹ This site clarifies some fundamentals about the use and application of police checks in employment.¹⁰ The site provides information that is practical and supportive. For instance, being advised that an applicant for employment has had a prison experience does not mean that they should be automatically excluded from employment. The decision for employers is a matter of balancing the risk if any posed to a business or a not for profit including service delivery, staff, and reputation with the risk of excluding and creating unnecessary barriers to engaging people with lived experience of the justice system. A similar framework and education approach for the Blue Card system would help to remove unnecessary systemic and structural barriers imposed on people who have been incarcerated. As noted by the Australian Red Cross, strengths-based employment practices have enormous potential when it comes to creating employment opportunities for people who have lived experience of the justice system (and addressing talent shortages).¹¹

REMOVING SYSTEMIC AND STRUCTURAL BARRIERS FOR FIRST NATIONS CHILDREN, FAMILIES AND COMMUNITIES

The Justice Reform Initiative welcomes reforms that remove the requirement for First Nations kinship carers to hold a Blue Card to allow more children to be raised safely with family and retain their connection to culture and Country. We acknowledge the extensive advocacy of the Queensland Family and Child Commission in calling for the removal of systemic and structural barriers that the blue card poses on kinship carers and children in care.¹² As noted above, the Blue Card System has broader implications for First Nations children, families and communities when it comes to employment and delivering culturally-modelled and community-led services and supports. Under priority reform one of the National Closing the Gap Agreement, the government has committed to building and strengthening structures that empower Aboriginal and Torres Strait Islander people to share decision-making authority with governments to accelerate policy and place-based progress against Closing the Gap.¹³ We welcome amendments that will support Blue Card Liaison Officers (BCLO) in First Nations communities who will provide advice and information for applicants and organisations, assist with blue card applications and processes, and make targeted referrals to culturally appropriate support services. We also welcome reforms that require:

- a decision-maker to consider the effect of systemic disadvantage and intergenerational trauma, and the historical context and limitations on access to justice; and
- ensure that, for Aboriginal children and Torres Strait Islander children, the Act is administered in a way that promotes the child's wellbeing, including recognising the importance of connection with the child's family, community, culture, traditions and language.

The Justice Reform Initiative notes that this will be implemented using a 'reasonable person test', whereby the Chief Executive Officer will be required to consider whether a reasonable person would allow their child to have direct contact with the applicant, whether supervised or unsupervised and while engaged in child-related work. There is an opportunity for reforms to share decision-making authority and empower First Nations communities to self-determine working with children systems that work for them, rather than external western

systems and structures making decisions for First Nations peoples and their communities. It is also recommended that reforms designed to reduce systemic and structural barriers caused by the Blue Card system for First Nations children, families and communities are evaluated to ensure they are being implemented as intended and are working to remove such barriers. The Justice Reform Initiative acknowledges and supports reforms in the Bill that seek to enable genuine researchers to access data about the blue card system for approved research purposes.

ABOUT THE JUSTICE REFORM INITIATIVE

The Justice Reform Initiative is an alliance of people who share long-standing professional experience, lived experience and/or expert knowledge of the justice system, further supported by a movement of Australians of goodwill from across the country who believe jailing is failing and that there is an urgent need to reduce the number of people in Australian prisons.

The Justice Reform Initiative is committed to reducing Australia's harmful and costly reliance on incarceration. Our patrons include more than 120 eminent Australians, including two former Governors-General, former Members of Parliament from all sides of politics, academics, respected Aboriginal and Torres Strait Islander leaders, senior former judges including High Court judges, and many other community leaders who have added their voices to end the cycle of incarceration in Australia.

We seek to shift the public conversation and public policy away from building more prisons as the primary response of the criminal justice system and move instead to proven evidence-based approaches that break the cycle of incarceration. We are committed to elevating approaches that seek to address the causes and drivers of contact with the criminal justice system. We are also committed to elevating approaches that see Aboriginal and Torres Strait Islander-led organisations being resourced and supported to provide appropriate support to Aboriginal and Torres Strait Islander people who are impacted by the justice system.

The Queensland Patrons of the Justice Reform Initiative include:

- **Sallyanne Atkinson AO.** Co-Chair of the Queensland Interim Body for Treaty and a member of the Queensland University Senate.
- **Adjunct Professor Kerry Carrington.** School of Law and Society, University of the Sunshine Coast, and Director of her own Research Consultancy.
- **Mick Gooda.** Former Aboriginal and Torres Strait Islander Social Justice Commissioner and former Royal Commissioner into the Detention of Children in the Northern Territory.
- **Keith Hamburger AM.** Former Director-General, Queensland Corrective Services Commission.
- **Professor Emeritus Ross Homel, AO.** Foundation Professor of Criminology and Criminal Justice, Griffith University.
- **Gail Mabo.** Gail is of the Meriam language group and clan of Mer (Murray Island) in the Torres Strait. She is an Australian visual artist who has had her work exhibited across Australia and is represented in most major Australian art galleries and internationally. She was formerly a dancer and choreographer. Gail is also deeply engaged with young people in her community as a mentor and is the daughter of land rights campaigner Eddie Mabo and educator and activist Bonita Mabo AO.
- **Professor Elena Marchetti.** Griffith Law School, Griffith University.

- **The Honourable Margaret McMurdo AC.** Former President Court of Appeal, Supreme Court of Queensland and Commissioner of the Victorian Royal Commission into the Management of Police Informants.
- **Dr Mark Rallings.** Former Commissioner, Queensland Corrective Services.
- **Greg Vickery AO.** Former President, Queensland Law Society and former Chair of the Standing Commission of the International Red Cross and Red Crescent Movement.
- **The Honourable Dean Wells.** Former Attorney General of Queensland.
- **The Honourable Margaret White AO.** Former Judge of the Queensland Supreme Court and Queensland Court of Appeal, former Royal Commissioner into the Detention of Children in the Northern Territory, and Adjunct Professor TC Berne School of Law UQ.

For further information or clarification, please feel free to contact:

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