

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

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Submission

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About Queensland Independent Schools

Community confidence in the independent schooling sector remains strong with more than 147,000 students enrolled in 236 independent schools across Queensland. These schools educate approximately 16.5 percent of the state's total school-age population.

Independent schools are valued institutions and a pivotal part of Queensland's education system. They are valued schooling choices for families, hubs of human and community connection, places of intellectual, civic and social development, employers and employment generators, education innovators and change-makers.

Independent schools are as unique as the communities they serve and offer parents a choice in the education of their children. Common to all independent schools is their commitment to strong student outcomes, high standards of behaviour, and the welfare and wellbeing of students.

Many independent schools educate international students or specialise in the education of students with disability. There has also been strong growth in the number of Special Assistance Schools for students who have disengaged from mainstream schools, and trade training schools that combine senior year studies with practical vocational education and training.

Over the past five years, enrolments at Queensland independent schools have increased by more than 11 percent. This growth is a clear indication that parents value an independent education and are prepared to invest their after-tax incomes in their child's schooling.

Independent Schools Queensland (ISQ) is the peak body representing Queensland's independent schooling sector. Independent Schools Queensland represents the interests of its member schools, fosters choice in education and protects the autonomy of independent schools. ISQ is a not-for-profit organisation and membership to ISQ is voluntary.

Submission

Independent Schools Queensland (**ISQ**) appreciates the opportunity to contribute to the public consultation on the Queensland Government implementation of the next stage of amendments to the *Working with Children (Risk Management and Screening) Act 2000 (the WWC Act)*, which embeds recommendations from the *Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission)* in its *Working with Children Checks Report (Royal Commission WWCC Report)* and *Keeping Queensland's Children More than Safe: Review of the Blue Card System (QFCC Blue Card Review Report)*. ISQ supports the introduction of the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024 (the Bill)*.

ISQ acknowledges and supports in principle the purpose of the Bill, being to strengthen and simplify the Blue Card System by:

- implementing, either in full or part, 12 recommendations arising from the **QFCC Blue Card Review Report**
- implementing recommendations made by the former *Legal Affairs and Safety Committee (LASC)* in *LASC Report No. 38 on its examination of the Working with Children (Indigenous Communities) Amendment Bill 2021 (Private Member's Bill) (LASC Report)*, the *Women's Safety and Justice Taskforce (WSJ Taskforce)* and the *Youth Justice Reform Select Committee (YJRS Committee)* highlighting the need to consider the decision-making framework
- making a range of other amendments to simplify, streamline, and improve the operation of the blue card system
- implementing 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 (QFCC Kinship Care Report)*
- providing for the sharing of Children's Court child protection records with other Australian courts and tribunals in particular to facilitate information sharing under the *National Strategic Framework for Information Sharing between the Family Law Courts and Family Violence and Child Protection Systems (National Framework)*.

ISQ is only making written submissions in relation to the amendments for which it has specific comments to make. The following is ISQ's submission in response to particular amendments.

Parent Volunteer Exemption

ISQ supports the rationale for change in relation to parent volunteer exemptions and the implementation of recommendations from the Royal Commission and National Standards for Working with Children Checks. However, ISQ considers the amendment to section 156 of the WWC Act to be ambiguous, resulting in difficulties to administer in a school setting.

ISQ notes the amendment to this section and removal of the parent exemption from Schedule 1, s3 of the WWC Act will narrow the exemption for parent volunteers in a school setting by introducing a new requirement that parent volunteers are required to hold a Blue Card if the children to whom the service or activity is provided do not include their own child (new section 156(4)(B)).

This will require a greater and deeper analysis of volunteer roles by school staff. For example, many schools utilise parent volunteers in the school tuck shop and uniform shop. While the services may be available to all students, some guidance and discretionary decision-making will be required by the

school to determine if the service is provided to a parent's own child. Due to the nature of these services and activities, this will be difficult to determine on a case-by-case basis.

Other examples are school sporting teams or artistic performances in which the parent volunteer's child is usually involved. Under the amendments, because of the child's involvement in the school sporting team or artistic performance, the parent is not required to hold a Blue Card to provide a service or activity on a voluntary basis for the school sporting team or artistic performance. However, if their child is injured, unwell or absent from the activity, under the amendment the parent volunteer may be required to obtain a Blue Card for a short period of time when previously they had not. It is noted that the frequency test would apply, however, this will also be a contributing factor for the decision maker, further complicating assessments for schools. ISQ considers an unintended consequence may be a tendency for schools to avoid discretionary decision-making and future-proof arrangements and activities by requiring all parent volunteers to obtain Blue Cards. This may encourage a school to adopt a policy approach to working with children screening that does not align with the intent of the Blue Card System. This type of over-compliance has been highlighted as an issue by Blue Card Services and the LASC Report; however, because the penalties for non-compliance with Blue Card screening requirements for independent schools are significant under the *Education (Non-State Schools Accreditation) Act 2017* they are likely to tip the balance in favour of over-compliance by schools from a risk mitigation perspective.

Overnight Camps and Excursions

ISQ supports the rationale for change in relation to overnight camps and excursions and the implementation of recommendations from the Royal Commission, the QFCC and the National Standards, noting that overnight activities pose a significant risk to children.

ISQ has considered the impact of this change, particularly as it affects emergency and contingency planning for its member schools. For example, disruption to travel related to school events may require an unexpected overnight stay, where parent volunteers may be relied upon to house or supervise students. ISQ anticipates that schools would need to ensure they have a resource pool of an adequate number of Blue Carded volunteers to draw upon, to ensure any emergency or contingency accommodation requirements could be met. This would require some parent volunteers to obtain a Blue Card with no expressed immediate requirement. The number required would depend on the specific activities where this contingency plan was considered.

A potential unintended consequence may be a tendency for schools to over-prepare and require a large number of parent volunteers to obtain Blue Cards in order to be in the resource pool. This may further encourage a school policy approach to working with children screening that has already been highlighted as an issue by Blue Card Services and the LASC Report.

ISQ appreciates and supports the clarity provided in the explanatory note in relation to who is not captured by the overnight stay provision:

"Examples of circumstances that are not intended to be captured include where an informal arrangement, such as a parent who is hosting a sleepover with one of their children and their friends or family, or a student who is 18 years of age and attending or participating in their own school camp. These matters are not considered to meet the threshold of employment or volunteering to provide services or conduct activities and a blue card would not be required."

Screening Requirements for Schools

ISQ acknowledges that the aim of amendments to the 'schools' category of regulated employment in Schedule 1, section 3 of the WWC Act is to improve the operation of the Blue Card System by reframing school screening requirements to provide clarity and reduce over-compliance. ISQ acknowledges the rationale for change in this area and the differing perspectives of the recommendations from the Royal Commission, the QFCC and the LASC.

ISQ agrees with the comments in the Explanatory Notes for the Bill that the current wording of Schedule 1, section 3 of the WWC Act that prescribes when employment will be regulated employment in a school lacks clarity.

Over time, Blue Card Services have provided ISQ member schools with differing advice around when a person will be considered by Blue Card Services to be working in regulated employment in non-State schools, requiring a Blue Card. However, ISQ understands that Blue Card Services do not currently make an assessment of whether an applicant is working in regulated employment before proceeding to process an application. ISQ considers that if Blue Card Services made this assessment and refused applications made by persons it considers are not within scope, that schools would be in a better position to know which persons are outside the scope of the WWC Act requirements.

Currently, a common practice of non-State schools is to require all paid workers, who work or are likely to work, for more than seven days in a calendar year and to whom another exemption does not apply, to complete Blue Card screening. This 'all-in policy approach' would, for example, require all cleaners in a school, regardless of when they work, to hold a Blue Card. This practice has been largely supported by Blue Card Services who continue to process applications where the application may not be legally necessary.

ISQ considers that the proposed amendment may see a reduction in the scope of persons covered by the Blue Card screening requirement. ISQ anticipates that requiring schools to reduce the number of persons who are currently screened by the Blue Card System will be a difficult adjustment for schools to make as it may be perceived as a weakening of current practice. This may also mean there will be 'workers' captured under the Reportable Conduct Scheme under the proposed *Child Safe Organisations Bill 2024* (Qld) who will not be required to hold a Blue Card under the amended WWC Act. This has the potential to reduce the efficiency of the Reportable Conduct Scheme and cause confusion for schools.

ISQ does not consider that the proposed amendment in clause 122 of the Bill, to replace Schedule 1, section 3 of the WWC Act, would strengthen and simplify the Blue Card Screening requirements for its member schools. The language is unclear and provides significant room for discretionary decision-making about which persons would be required to obtain a Blue Card. Specifically, an interpretation of section 3(2)(b) leads to ambiguity by providing that employment is not regulated employment if the employment involves undertaking work that is not directed towards children and the nature of the work does not permit or facilitate contact with children, other than incidental contact.

To assist in interpreting this provision, because of the ambiguity the Explanatory Note to the Bill becomes relevant. When this subsection is read in conjunction with the Explanatory Note, ISQ considers that there is still no clear delineation as to which persons will be within the scope of the section so that they are considered to be working in regulated employment within a school.

Particularly, ISQ does not consider that this amendment provides adequate regulatory guidance for schools to specifically discern whether the roles of cleaning or grounds-keeping and other services should be included in regulated employment. There is likely to be significant overlap in these services and the duties that are entailed. Arguably the role of a cleaner is not directed towards children and only allows for incidental contact, as would the role of an employee in the finance team. ISQ anticipates the unintended consequence of the ambiguity will be schools continuing to maintain Blue Card screening for all those who are currently screened.

Within the Blue Card system, schools are uniquely placed as they represent one of the main organisations with which almost all children and families are required to be in direct contact. Therefore, community expectations of schools in relation to the safety and wellbeing of students are exceptionally high. There is a commonly held belief that anyone working at a school is or should be considered safe to be around children. Independent schools take this responsibility very seriously and manage their risk accordingly. For this reason, many independent schools would prefer an environment-based approach that would capture everyone working at a school. This approach would simplify compliance obligations, align with the proposed scope of a Queensland Reportable Conduct Scheme under the *Child Safe Organisations Bill 2024*, and more adequately meet community expectations.

Blue Card screening plays an important role in creating a child-safe environment and is one tool schools use to ensure they enact robust recruitment practices across the whole organisation. Maintenance of school-based systems and processes that track the currency of Teacher Registration, Blue Cards, blue card exemption declarations and those not captured by the Blue Card System which may include other professional registrations is complicated, labour intensive, poses a risk of non-compliance and risks to the safety of children.

ISQ acknowledges the LASC Report finding that there is an over-reliance on the Blue Card system by employers and that this is disproportionately affecting some Aboriginal and Torres Strait Islander individuals. ISQ and its members value the contribution of Aboriginal and Torres Strait Islander individuals to the education and wellbeing of all students, and particularly Aboriginal and Torres Strait Islander students. ISQ also acknowledges that reducing the unintended consequences of an environment-based approach to screening, while maintaining clarity and consistency in legislation, is a difficult task. However, the current drafting does not appear to strike the right balance and is likely to make it harder for schools to interpret and therefore default once again to a cautionary ‘all-in’ approach.

Information sharing with the Queensland College of Teachers (QCT)

ISQ supports the Bill’s replacement of section 343 of the WWC Act with a new information sharing provision modelled on existing section 344, to enable the chief executive to give information about a person to QCT in relation to an employment-screening decision if the chief executive reasonably believes the information is relevant to the functions of QCT under the *Education (Queensland College of Teachers) Act 2005*.

Transitional provisions

Timeframe for implementation

ISQ notes that Clause 2 of the Bill proposes that sections 618 and 619 in Part 5 of the proposed new Act are intended to commence on a day to be fixed by proclamation. Additionally, the new sections 618 and 619 provide that certain offences in the current WWC Act will not apply for a period of time.

The specific offences in the current WWC Act are:

- s176B - Carrying on a regulated business without a WWC authority
- s176G - Registered teachers carrying on a regulated business without a WWC authority.

It is proposed that the offences will not apply to a person carrying on a business if immediately before commencement they were carrying on a business that was not previously regulated and the person does not hold a working with children authority, if the business is in the following categories of regulated business:

- educational services and activities conducted inside school (schedule 1, s18C). The offences will not apply until 6 months after s618 commences, or if the person has made an application for an authority within 6 months of the section commencing, and that application has been decided or withdrawn.
- child accommodation services for overnight camps (schedule 1, s21(1)(b)). The offences will not apply until 6 months after s619 commences, or if the person has made an application for an authority within 6 months of the section commencing, and that application has been decided or withdrawn.

Because ISQ is not yet aware of the date that will be fixed by proclamation, it is difficult to determine how long schools will have to implement the proposed changes. However, for the amendments to child accommodation services (overnight camps), ISQ's preference is that schools have at least 12 months after commencement to comply. Schools often plan, inform and seek consent from parents/guardians and pay for overnight camps and excursions a year in advance. There may be additional costs and other consequences schools need to consider and adjust.

For amendments to parent volunteers, schools would likely require at least six months after commencement to ensure regular services and activities are not disrupted. There will be an administrative burden associated with schools complying with the amended provision.

