

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

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Submitted by: QuIVAA - Queensland Injectors Voice for Advocacy and Action
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Committee Secretary
Education, Employment, Training and Skills Committee
Via email: EETSC@parliament.qld.gov.au
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QUEENSLAND INJECTORS VOICE FOR ADVOCACY AND ACTION (QUIVAA).

Re: WORKING WITH CHILDREN (RISK MANAGEMENT AND SCREENING) AND OTHER LEGISLATION AMENDMENT BILL 2024

Dear Committee members,

QuIVAA is grateful for the opportunity to make a submission to the Working with Children (Risk Management and Screening) And Other Legislation Amendment Bill (the Bill), which can directly improve the rights of all Queenslanders, with particular view to the infringements of rights suffered by people who use drugs (PWUD) and people who inject drugs (PWID).

About us:

Since 1989, QuIVAA has been Queensland's peer-led drug and alcohol organisation. QuIVAA works to improve the rights of Queenslanders who use or have used substances via policy reform, research, and service provision, such as the Hi-Ground project, the Statewide PeerQnect telephone support line, and CheQpoint – Queensland's first drug checking service.

Why Blue Card Legislation Matters for People Who Use Substances:

Communities of people who use drugs are diverse and intersect with many other historically marginalised communities, including but not limited to, Aboriginal and Torres Strait Islander peoples, migrant and multicultural families, Lesbian, Gay, Bisexual, Transgender and Intersex persons, people living with HIV, Sex Workers and incarcerated and formerly incarcerated persons. These are populations who already experience barriers to employment opportunities due to stigma and discrimination. These populations are also subject to over-policing and surveillance which increases their likelihood of contact with the carceral system¹. For those with documented histories of substance use there currently exists active gatekeeping to meaningful employment.

Due to the criminalisation of substance use and dependence, many people who use or have used substances have encountered the carceral system and hold convictions for serious offences that were committed at times when their drug use was significantly impacting their wellbeing. Once an individual holds a criminal record, accessing a Working with Children clearance (Blue Card) becomes a lengthy and arduous process, with extended wait times for an outcome, only for many applicants to then be rejected². The "no card, no start" policy has exacerbated the negative impacts of this lack of timely response, as individuals lose employment and education opportunities while waiting for decisions to be reached. Processing delays from both the Department and QCAT on appeal cause harm and disadvantage to PWUD who are seeking to establish themselves after a period of addiction and adverse circumstances.

¹ O'Brien, G. Racial Profiling, Surveillance and Over-Policing: The Over-Incarceration of Young First Nations Males in Australia. *Soc. Sci.* **2021**, *10*, 68. Retrieved from <https://doi.org/10.3390/socsci10020068>; White, R. Ethnic Diversity and Differential Policing in Australia: the Good, the Bad and the Ugly. *Int. Migration & Integration* **10**, 359–375 (2009). Retrieved from

² LawRight, 2021. Submission in response to the Legal Affairs and Safety Committee's Inquiry into the Working with Children (Indigenous Communities) Amendment Bill 2021. Retrieved from <https://documents.parliament.qld.gov.au/com/LASC-C96E/WCICAB2021-050A/submissions/00000004.pdf>

Gendered Violence and Criminalisation

There is a critical need to address criminalised women and girls as their own separate and specific population when assessing Blue Card eligibility, and to better understand the nexus between victim/survivors and criminalisation for women and girls with lived experience of violence. Literature unequivocally recognizes the overwhelming majority of women prisoners have a history of gender-based violence in all its forms¹. In 2018, the General Manager of Brisbane Women's Correctional Centre (BWCC) acknowledged the very different profile of women prisoners compared to men and the central role of trauma in these women's lives:

"...80 per cent of women that come to gaol, or more, are victims before they're perpetrators... It's just a different environment" ²

The Blue Card process currently lacks recognition of the myriad ways DFSV, institutional abuse, and intersectional factors such as sexism and racism, impact women and girls, particularly when it comes to engaging in criminogenic behaviour and problematic substance use. Conversely, there are many examples of lived experience of victimisation being used to declare a person an 'unacceptable risk'.

Kelly: *I was a ward of the state at 13 and subsequently abused within foster care and residential care settings. I began using drugs at 13 and was first incarcerated briefly at 15 after running away from my foster carer. Once you have been incarcerated, you are much more likely to be incarcerated again for similar or lesser offending. In my most recent sentence, I studied a Bachelor of Arts in prison and did every course I possibly could. On release I found a whole new world, now I was substance free and had a degree. The best day of my adult life was when I gained employment in a role I loved helping other survivors of violence – far from being a liability, my history was viewed positively by community organisations who recognized the insight, experience and compassion these experiences gave me. To my surprise, none of this mattered when it came to applying for Blue Card. After a 3-year ordeal in which I was required to recount my entire history to all my supporters, I was eventually denied due to the 'length of my offending history' (all offences related to the funding of my then opioid addiction – no actual violence or harming children). What really distressed me was Blue Card mentioning my having suffered DV in the presence of a 7-year-old child (my ex's child) – apparently, I was meant to not experience DV anywhere near a child. The child witnessed me being victimised – I did not myself engage in violence, but this didn't matter. In the eyes of Blue Card, victims are responsible for the actions of DV perpetrators. This experience has been incredibly re-traumatizing and has completely removed my ability to work in meaningful employment which I'm trained in and love.*

Brenda-Lee: *I have been in and out of prison my entire life- over 20 years - but have been drug and crime free since 2019. My criminal history includes stealing, fraud, supply, and armed robbery. I tried to explain that all of these except the stealing were done whilst I was in a severely violent and coercive relationship in which both of us were addicted to opiates – unfortunately it didn't matter, and I didn't have the \$10 000 needed for a lawyer to appeal the decision at QCAT. Anyone who knows me knows how staunchly anti-violent I am and how much my past relationship controlled and influenced my life. When you're in a DV relationship you're just trying to survive – you don't have the luxury of being able to question your partner or do anything that is seen as disloyal, so I simply couldn't question taking charges for my ex-partner so he wouldn't go back to prison – you just do it, it's unspoken. I was able to get into safe accommodation in 2019 - I would probably be dead now if I hadn't.*

After completing a Certificate in Community services, I was recently promoted to Family Support Worker at an Aboriginal and Torres Strait Community Health organization which I love. A month into it my boss said my new role meant I needed to appeal my negative notice – after contacting Blue Card Services, we discovered this meant I had to stop working as the process itself can take years.

I wish the decision makers would talk to women like me and see who we really are. I've done time for both my own and my ex's offending and now I'm also being punished in community. When you can't contribute to your community you become disconnected, socially excluded and isolated - then you're at greater risk of falling into vulnerable situations all over again. You don't just take away our ability to work – our ability to participate in society is everything.

Enhancing Inclusion in the Alcohol and Other Drugs Peer Workforce

Many people who have a lived-experience of alcohol and other drug use are highly motivated to reengage with active and meaningful community participation, and to use their lived expertise to work in the community services sector. The Lived - Living experience (LLE) peer workforce play a pivotal role within the AOD (Alcohol and Other Drugs) sector, enhancing service delivery and contributing to the support system's effectiveness

The AOD peer workforce encompasses individuals with personal experience in substance use. QuIVAA expresses concerns that current decision-making frameworks may inadvertently exclude these peer workers from obtaining necessary blue cards.

Developing this peer workforce is a crucial strategic goal of initiatives such as Achieving Balance and Shifting Minds and Better Care Together. These efforts aim to bolster the skills and knowledge of the alcohol and other drugs workforce, promoting social engagement and community integration. Many roles within this workforce involve interaction with children and young people, necessitating blue card certification. Given the criminalisation often associated with substance use, some peer workers may have prior drug-related offenses. This could potentially disqualify them or require rigorous assessment under *section 234* of the relevant legislation.

This is a sector that almost universally requires a Blue Card as a condition of employment. Furthermore, educational institutions often require students to obtain Blue Cards as a condition of placement- which is mandatory for the successful completion of qualifications. The consequences of not being eligible to obtain this clearance has significant flow-on effects for an individual's mental, social, educational and economic wellbeing as evidenced by the following accounts submitted to QuIVAA by members of the PWUD community:

Bruce: *In jail I did courses that helped me to understand my drug use at a deeper level. I became motivated to work in this area. I enrolled in Tafe from within jail, and started the next day after I got out. I didn't have any crimes other than drug offences. I was working at [Non-government AOD organisation] in a 4 hours per month casual Client Advocate Role, and there were some other roles coming up that I was interested in. So, I applied for a Blue Card. This was rejected, but they also wrote to my manager to let them know I wasn't approved and the letter basically implied that I was a risk to the organisation and should be kept away from children like I was a rock spider. Disgusting. Even now that enrages me. No one from Blue Card called me, no support about this decision, just a generic letter. The laws that say people who have drugs charges are a risk to children are outdated and were almost a barrier to me not pursuing my dream of working in this sector.*

Susan: *I was offered my dream role after completing 2 years of study. I was not working directly with children, but the organisation required it and only serviced clients over 18. I waited 2 months for my blue card to get notification that I was not successful. I had bought all new work clothes and was in debt. I did not receive any support from anyone. I never returned to the workforce after this.*

Jess: *I completed 3 years of my university degree and only found out when I went for my blue card, I was not eligible. My charges were only around the period that my drug use had gotten out of control. I was told I could not continue my degree. There was no support to fight this and felt alone. I have never reoffended but never studied again.*

Rita: *I completed my studies and had got my first interview and was excited. The place said I had to apply for my BlueCard and I could do with them. I was really embarrassed because I got a negative notice and that everyone knows that I didn't get it. I got references and fought it and this was traumatic because I had to keep telling my story which I had long buried. It was worse than the original charges. Having changed my life and have my history paraded to a room of people. They had everything in that file. I had a massive panic attack reading all this history I have never seen before and what people had written about me. To have people ask about the domestic violence I suffered like it was my fault. I finally got it but was really humiliated and I hate that everyone knows my story.*

Emmett: *As well recognised member of the [redacted] workforce, I encountered significant challenges in securing my blue card, a process that extended from [dates redacted] to [dates redacted]. I was initially requested to submit evidence in [date redacted], which underwent prolonged review into [date redacted]. Subsequently, I was required to engage with the Queensland Civil and Administrative Tribunal (QCAT), necessitating the setting of hearing dates and the thorough review of extensive documentation. This experience was considerably re-traumatising. The proceedings included a two-day hearing with Blue Card Services and QCAT. Despite Blue Card Services' persistent focus on previous drug-related offences, the Tribunal adeptly managed the issue. However, the process of organising character witnesses, managing my own case, and navigating the hearing was profoundly challenging. Ultimately, I secured the blue card almost three years after my initial application. Had the blue card been a requisite for employment during this period, I would have faced severe professional impediments. This experience is not uncommon for MANY people with lived-living experience of drug use. These people and communities are not just affected when attempting to work in the AOD sector, but many other sectors. Given the systemic nature of drug use and the intersectionality present structural elements (e.g., courts) and systems (e.g., criminalisation), it is unsurprising that people with lived experience may have some interactions (charges) with police. What these Blue Card impediments do, pragmatically, is feed stagnation and prevent people from progressing in their lives – potentially giving back to the community in the process through vocational 'callings' in the workforce. What they do at their core, is feed structural stigma and systemic inequities experienced by drug-using people and communities.*

These accounts highlight several important issues. Those that have already suffered the harms of having their substance use positioned as a criminal rather than health issue- experiencing continued discriminatory characterisation as 'risky' individuals limit their ability to improve their circumstances and reengage in meaningful social participation. This characterisation lacks nuance, compassion and fundamentally undermines the belief that individuals can fully rehabilitate and reintegrate after a period of difficulty. Exclusion from employment increases individuals' risk of recidivism³ and compounds negative stereotypes held by society around PWUD as serial offenders, contributing further to stigma and discrimination. Challenging the perception of people who use drugs as inherently dangerous can be achieved by reviewing the inclusion of drug related charges under disqualifying offences.

There is little to no support available to applicants before, during or after the application and/or appeal process. The QCAT review process requires applicants to have sufficient literacy, time and financial resources to navigate a highly complex system effectively. Applicants are required to file multiple documents, including a comprehensive 'Life Story', that do not consider cultural and linguistic considerations, literacy skills nor the emotional burden of recounting periods of significant trauma. This is particularly harmful for a population that experiences an increased level of mental health concerns⁴

Many applicants find the process invasive and overwhelming, and many withdraw even meritorious claims due to the personal cost and complexity of the process. Improved decision-making processes within the Department would increase the likelihood of claims being approved internally and reduce the need for applicants to engage in the appeal process. Increased resourcing for Peer-led organisations to support PWUD before, during and after the application process would improve psychosocial safety, reduce barriers to successful completion of the process and reduce feelings of stigma and marginalisation.

³ Sullivan, E., Ward, S., Zeki, R., Wayland, S., Sherwood, J., Wang, A., Worner, F., Kendall, S., Brown, J., & Chang, S. (2019).

Recidivism, health and social functioning following release to the community of NSW prisoners with problematic drug use: study protocol of the population-based retrospective cohort study on the evaluation of the Connections Program. *BMJ Open*, 9(7). <https://doi.org/10.1136/bmjopen-2019-030546>

⁴ Australian Institute of Health and Welfare. 2024. Health of people in prison. Retrieved from <https://www.aihw.gov.au/reports/australias-health/health-of-people-in-prison>

Criminalisation and stigmatisation of people who use drugs

People who use drugs often face criminalisation, stigma and discrimination leading to higher rates of drug-related criminal histories. Queensland's alcohol and other drugs policies emphasize harm minimisation and health responses. Any changes to the blue card system must align with these government approaches.

Currently, there are concerns about discrimination and structural bias in the blue card decision-making process. A report by the Queensland Family and Child Commission in October 2023 highlighted instances where applicants with certain drug-related offenses received negative assessments. Assessors cited concerns about their ability to serve as role models, exercise self-control, and manage stress, often based on assumptions rather than direct risk to children. Again, the negative notification process lacks a trauma-informed approach and serves to compound stigma and discrimination.

Lillian- *I recently received a negative Blue Card notification. I work in Community Services. I am required to have a Blue Card for my Social Work degree. I am employed in two lived experience roles; one with Government Organisation and I also work for an NGO in the AOD space. Receiving this negative notice was distressing and triggering for me. I received a lengthy negative notification which continued to focus on my past mistakes, and I felt shamed and very upset reading it. The negative notice implied I was not responsible enough to work with children, however, I don't work with children, nor do I intend to, yet a Blue Card is often required for roles within Community Service and the university degree I am studying.. How can I use my live experience in full capacity, when I continue to come up against these sorts of barriers? Moreover, the feelings of shame that comes with not only receiving a negative notice, but being continuously asked to justify my past behaviour only seeks to perpetuates and instigate further humiliation.*

QuIVAA supports a shift towards assessing real and appreciable risks to child safety rather than solely applying a 'best interests' test. However, there are worries that stigma against people who use drugs could influence risk assessments. QuIVAA emphasizes that individuals who genuinely pose a risk to child safety should not receive blue cards. Yet, we advocate for evidence-based guidelines developed with input from those with LLE of drug use to ensure fair and unbiased assessments.

How can the Bill be improved?

Recommendations:

- *Review of risk assessment guidelines and the inclusion of drug related offences as "disqualifying offences":* We recommend that the view of PWUD as inherently "risky" individuals is the result of stigma and discrimination rather than a realistic assessment of risk to children and young people.
- *Legislate for reasonable timeframes for decisions:* Lengthy timeframes result in lost employment and educational opportunities for PWUD and may deter many from engaging in meritorious appeal processes. These lost opportunities further marginalise and disadvantage vulnerable individuals.
- *Improve recognition of rehabilitation and reintegration into decision-making frameworks:* Mandating that behaviour change be given sufficient weight in assessment rather than leaving it to the discretion of individual Department workers increases the likelihood that fair decisions can be made internally, thus avoiding an appeals process.

- *Support for designated Roles within the Department:* Employing workers who have a lived – living experience of Alcohol and Other Drug use can be instrumental in shifting ingrained cultures of stigma and discrimination that exist within many governmental departments. Identified workers can also assist in ensuring internal processes and procedures are trauma-informed and responsive to the needs of marginalised communities.
- *Improved training and induction processes for Blue Card Service employees:* Ensure all workers receive training to improve culturally appropriate and trauma- informed practices, particularly in the areas of gender and race-based violence, systemic violence and institutional abuse.
- *Recognition of women and girls as a separate and specific population:* In recognition of the multiple and compounding traumas experienced by this population, it is recommended that they be overseen by workers with specific training in this area. We advocate that training be delivered through direct with women and girls with lived experience of substance use, DFSV and incarceration (QulVAA and the National Network of Formerly Incarcerated Women and Girls would be delighted to conjointly participate in this process)
- *Increased resourcing for peer support before, during and after the application/appeals process:* Engaging peer-led organisations to provide support to vulnerable individuals mitigates the psychosocial risks associated with the application and appeals processes and reduces access barriers such as additional cultural, linguistic, literacy or practical needs.

Thank you again for the opportunity to make submissions. If you have any questions or would like further engagement with QulVAA on this or other issues, please contact CEO Emma Kill [REDACTED] or [REDACTED]

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