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

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Queensland Mental Health Commission

Introduction

The Queensland Mental Health Commission (the Commission) welcomes the opportunity to make a submission on the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024* (Qld) (the Bill).

The Commission is an independent statutory agency established under the *Queensland Mental Health Commission Act 2013* (Qld) to drive ongoing reform towards a more integrated, evidence-based and recovery-oriented mental health, alcohol and other drugs and suicide prevention system in Queensland.

One of the Commission's primary functions is to develop a whole-of-government strategic plan to improve the mental health and wellbeing of Queenslanders, particularly people living with mental illness, problematic alcohol and other drugs use, and those affected by suicide. The current strategic plan is *Shifting minds: The Queensland Mental Health, Alcohol and Other Drugs, and Suicide Prevention Strategic Plan 2023-2028* (*Shifting minds*). *Shifting minds* is complemented by two sub-plans:

- *Achieving balance: The Queensland Alcohol and other Drugs Plan 2022-2027* (*Achieving balance*)
- *Every life: The Queensland Suicide Prevention Plan 2019-2029* (*Every life*).

The Bill has numerous points of connection to strategic priorities under the *Shifting minds, Achieving balance* and *Every life* plans. The Commission has made submissions relevant to its remit and these strategic priorities, however, has also identified issues in the appeal process.

The Commission welcomes the review of the decision-making framework of the *Working with Children (Risk Management and Screening) Act 2000* (Qld) (the Act). A shift in the threshold for assessing applicants with an offence to a real and appreciable shift of risk to the safety of children creates a more definitive threshold for assessment rather than focusing on broad 'best interests of children'. To be clear, the Commission agrees that if an individual does pose a risk to the safety of children, then they should not receive a blue card. However, the Commission is concerned that assessments may be impacted by stigma or moral or character assessments based on how risk to safety is conceptualised. The Commission has made a number of recommendations with respect to:

- concerns with the impact of the proposed amendments on the **development of the mental health, alcohol and other drugs and suicide prevention workforce**
- **destigmatising mental ill-health** in the decision-making process, including contextualising any requirements for an applicant to provide a mental health report
- concerns that the proposed amendments **do not adopt a harm minimisation and health response when considering drug-related offences**
- ensuring that the amendments are consistent with **whole-of-government commitments to First Nations peoples and recognise First Nations cultural authority and leaderships**
- concerns with the use and application of the **reasonable person test**
- **embedding mental health, alcohol and other drugs and suicide prevention lived-living experience and First Nations representations** in any advisory committees established under the proposed amendments.

1. Peer workforce

> "*Society expects people who have had mental health issues and substance use problems to rehabilitate and give back to the community however many are unable to do this due to the blue card process and the discrimination towards people with lived experience.*"[1]

The Commission supports people working in the lived-living experience of mental health, alcohol and other drugs and suicide prevention peer workforces being required to obtain a blue card if they are providing peer support to a person under the age of 18. However, the Commission is concerned that the decision-making process as articulated in the Bill may have unintended consequences and may be affected by structural bias and stigmatisation towards people with a lived-living experience of mental ill-health and/or alcohol and other drugs use.

Developing the mental health, alcohol and other drugs and suicide prevention peer workforces are key whole-of-government priorities under *Shifting minds, Every life* and *Achieving balance*. These priorities are consistent with the Commission's commitment to enhance the capability of the workforce, including the lived-living experience workforce, and to deliver integrated, personalised and trauma-informed care. This was also recommended in the Queensland Parliament Mental Health Select Committee's *Inquiry into the opportunities to improve mental health outcomes for Queenslanders* report.[2]

Case Study - Sarah[3]

Sarah applied for a Combined Application Process for Workers Screening and Blue Card as she was pursuing a career in the mental health and alcohol and other drugs sector. Prior to this experience, Sarah reports that she understood that with her studies completed, her good conduct in the community and her employment focussed on helping people, it would be acknowledged that she would make valuable contributions to the workforce. Over 10 years before her application, Sarah had been convicted of offences relating to misconduct in public office and dishonesty. One year before her application, Sarah also had one minor drug-related possession charge that was withdrawn (thrown out, discontinued with no plea entered) by police due to insufficient evidence. Sarah's conduct did not involve any children and her minor drug-related charge occurred in the context of her experiencing domestic and family violence by her then-partner.

When applying for a Combined Application Process for Workers Screening and Blue Card, Sarah was informed as part of the Workers Screening that there was an interim ban imposed against her with further information required. It was also then explained that the application process was separate and until the process was finalised with the workers screening a blue card could not be obtained. Sarah provided submissions, references, and psychology reports. After this, Sarah received an exclusion letter that identified her previous criminal history posed a risk and her circumstances were analysed against criminal case law precedent involving a female teacher being in a 'position of power' and sexually assaulting a student. It was also mentioned that her choice in men was unfavourable, amongst other factors. Sarah reports that the examples provided in the assessment were demeaning and unfair, particularly in the context of her experiences of violence.

Sarah has withdrawn her application and accepted the five-year exclusion and was advised to wait a further 12 months before applying for her blue card as a separate application. Sarah acknowledges that whilst her crime was serious in form and deception, it did not pose a risk to the safety of children or where children involved. However, Sarah reports:

> *"To this day I am exhausted and traumatised from this process and can't ever see myself having the strength to go through the blue card process. There is so much stigma attached, and the shame is unbearable."*

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[1] Direct quote from Sam (de-identified real-life case study that has been included in this submission with the permission of the person involved.

[2] Mental Health Select Committee. (2022). *Final Report - Inquiry into the opportunities to improve mental health outcomes for Queenslanders.* Queensland Government, Brisbane.

[3] The Commission has provided a real-life case study with de-identified information and this has been included in this submission with the permission of the person involved.

As outlined in this case study, it is important to enhance our blue card system so that it is trauma-informed and responsive to supporting a rehabilitative and harm-minimisation approach, which ultimately goes to the core of the Commission's submissions on this Bill.

Mental health peer workforce

The Commission is concerned that the decision-making framework may have the unintended consequence of excluding mental health and suicide prevention peer workers from obtaining blue cards. Developing this workforce is a key strategic priority of *Every life* and *Shifting minds* to enhance the leadership of people with lived-living experience of mental ill-health and suicide in delivering peer-based services.

This workforce may operate in environments with children and/or young people where a blue card may be necessary or appropriate. While most people who experience mental ill-health do not commit crimes,[4] there is an overrepresentation of people with mental illness in the criminal justice system.[5] There are several underlying factors contributing to overrepresentation including poverty, homelessness and unemployment, deinstitutionalisation, substance abuse, a lack of early intervention and a lack of mental health services in the community.[6]

Given this overrepresentation, the mere fact that an individual experiencing mental ill-health has come into contact with the criminal justice system should not preclude them from obtaining a blue card where any reports and/or offences have not involved or posed a risk to the safety of children. People who experience mental ill-health should be empowered to live fulfilling lives, including by participating in and leading the development of the mental health peer workforce.

Given that lived-living experience is mandatory and a genuine occupational requirement for peer work roles to be effective we are mindful of structural biases that may exclude some people with lived-living experience who have developed the mandatory elements of their highly valued expertise through contact with the criminal justice system. 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 (inpatient and community settings) and/or experience of being in prison and accessing prison mental health services are also included to maintain the inclusiveness, authenticity and effectiveness of peer work.

With recognition of the inequity faced by people living in rural and remote regions of Queensland in regard to access to mental health and alcohol and other drugs treatment and community support services, it is a priority to support the expansion of the peer workforce in these regions, particularly First Nations and alcohol and other drugs peer workforces. It is also known that opportunities for peer work employment and lived-living experience leadership positions in rural and remote locations has been more limited and that discrimination against people with lived-living experience is often amplified with significant concerns around privacy, confidentiality and support for those employed in identified peer worker roles.

While this should not exclude peer workers from getting blue cards, the nature of the employment should be considered when assessing a person's suitability for a blue card, particularly when the person's experience of the forensic mental health or criminal justice system is critical to their employment.

Case Study – Sam[7]

In 2016, Sam applied for a working with children's check in Victoria after completing a Diploma of Community Services in alcohol and other drugs and mental health. Sam had previously been charged with offences relating

[4] Victorian Institute of Forensic Mental Health. (2004). *Consolidating and Strengthening Clinical Programs: Addressing Dual Diagnosis and Offending Behaviour in Forensic Services*. Victorian Government, Melbourne.
[5] Senate Select Committee on Mental Health First. (2006). *A national approach to mental health – from crisis to community First Report.* Commonwealth Government, Canberra.
[6] Senate Select Committee on Mental Health First. (2006). *A national approach to mental health – from crisis to community First Report.* Commonwealth Government, Canberra.
[7] The Commission has provided a real-life case study with de-identified information and this has been included in this submission with the permission of the person involved.

to theft and robbery and had attended and completed rehabilitation. In Victoria, Sam was asked to provide a submission outlining the circumstances surrounding the charges, what they had done to rehabilitate and demonstrate that they were no longer a risk to the community. Sam provided details outlining their history of trauma, experiences of homelessness and domestic violence, sexual assault, psychiatric admissions for mental health, substance use and that they had voluntarily sought treatment and changed their life. This was accepted in Victoria and Sam was granted a working with children's check and worked with youth in residential care and an in under 25 youth rehab for multiple years.

When Sam moved to Queensland, they applied for a Blue Card and provided the same details. Sam reports that they did not know how challenging and defeating the process would be in Queensland for their own mental and emotional health, and their career. Sam was denied and was unable to obtain a blue card and could not continue volunteering at youth centres or working in a disability support service in Queensland. Sam was also attending university at this time and was advised that they would not be able to obtain a placement without a blue card, therefore, would struggle to complete their degree.

Sam articulates that *'This was soul destroying for me and I can now see why many people do not go through the appeal process with QCAT.'* Despite this, and loss of employment, Sam decided to fight for themselves and appeal the decision which took over 18 months. Sam struggled to obtain employment and had no support in the appeal process. Sam supplied letters of support, and these people were required to speak at the hearing and Sam reports they were 'picked apart' by the respondent's lawyer. Sam was required to provide a detailed life story and explain why they were an 'exceptional case', however, blue card provided no definition of what an 'exceptional case' is.

Sam states that:

> *"As a result of this process, I was forced to relive all the trauma I had experienced and once again prove to a broken system that I had rehabilitated and was of no risk to the community. At the time of the hearing my most recent criminal conviction was 6 years old with the offences in question being the armed robbery charges were 9 years old. On the day of the hearing, I had to appear via telephone due to COVID 19 and lock down rules. The hearing was a very traumatic experience. The lawyer for blue card services picked apart my life and I felt like I was on trial for the crimes I had committed and already been punished for in 2011. I was given no warning as to how that lawyer would treat me and I had to explain everything in detail including why I didn't think I would relapse on substances again as I had attended multiple rehabs in my past therefore how could I guarantee I wasn't going to return to drugs and crime. Furthermore, though there were no children involved in any of my criminal offences the lawyers exact words were "I put it to you that there were children there that day and that you are a danger to the community." I felt attacked and spent most of the hearing in tears."*

After two years of heart ache, continuous knock backs, unemployment and seeking help from a therapist, Sam was successful in appealing the decision and granted a blue card. However, Sam identifies that

> *"I am one of few willing and able to go through the gruelling process and was fortunate enough to have the university's support. I am now a fully qualified social worker in the alcohol and other drug field and I am proud to have lived experience.*
>
> *The fact that I was deemed safe to work with children in Victoria and did for multiple years and then told I was unsafe in Qld years later and unable to work and volunteer almost broke my spirit of continuing to fight for myself and others. This system is broken and needs to change."*

This case study demonstrates the significant barriers experienced by the peer workforce in Queensland. While it is critically important that the blue card system exclude people, who pose a risk to children, this should be evidence-based and structural barriers and discriminatory processes which limit access to employment due to stigma should be removed. People with lived-living experience have highly developed professional expertise and may have experienced trauma in relation to exclusion from employment in peer work positions due to unfair blanket exclusions based on past criminal charges or care in forensic mental health settings without robust, evidence-based and fair assessment of suitability and safety in the specific role.

In addition to these needed changes, it is important to ensure that the removal of these barriers is communicated to communities across Queensland via the way we advertise and recruit for peer work and lived-living experience leadership positions. There currently exists a high level of fear around being excluded from employment due to past contact with the criminal justice system or forensic mental health services or previous rejection due to 'failing' criminal history checking/blue card/disability positive notice screening which often leads to avoidance of applying for positions which they may be highly suited to and effective in. Inclusive, evidence-based and fair assessments of applications for blue cards will be a step forward to address social injustice and inequity in our communities as well as supporting the expansion of peer workforce which is recognised as highly effective in creating community connections and fostering healing from trauma.

Recommendation 1.1

The Bill must address the implications for the emerging mental health peer workforce. This must include, but is not limited to:

- consideration in section 234 of the nature of employment, for example where an applicant intends to engage in a lived-living experience role and has come into contact with the criminal justice system and will use this experience in the scope of their employment
- consideration of blue cards with conditional requirements, for example that the applicant is authorised to work in a peer workforce role in the context of the nature of the specific employment
- reducing stigmatisation in alignment with Recommendation 3.2 of this submission to ensure that there is no structural discrimination in the decision-making process for peer workers to obtain a blue card.

Alcohol and other drug peer workforce

> *"If this government is truly taking on 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 the opportunities to give back to the community. I would love to support youth who have taken the wrong path like I did however, with the current strict blue card process I cant see that happening. Again, I will stress that I would never and have never harmed a child or put any child including my own at risk, its almost insulting to be honest. Just because I have used drugs in the past does not mean that I pose a risk to any child."*[8]

The alcohol and other drugs peer workforce may include those who have lived experience of using alcohol and other drugs and are no longer using substances, or who are currently using substances.

The Commission is concerned that the decision-making framework will operate to exclude alcohol and other drugs peer workers from obtaining blue cards. Developing this workforce is a key strategic priority of *Achieving balance* and *Shifting minds* to strengthen the skills and knowledge of the alcohol and other drugs workforce to facilitate social participation and community connection. There is a risk that the decision-making framework will be contrary to Queensland's whole-of-government strategic direction as outlined in *Shifting minds* and *Achieving balance*.

This workforce may operate in environments with children and/or young people where a blue card may be necessary or appropriate. Given the criminalisation of people who use drugs and Queensland's shift towards expanding the use of a lived-living experience peer workforce in the mental health, alcohol and other drugs and suicide prevention sectors, it is likely that some portion of this workforce may have a drug-related offence that would either be disqualifying or warrant an application of the risk assessment process in section 234 of the Bill.

Lived-living experience peer workers in the alcohol and other drugs sector are a critical part of the alcohol and other drugs workforce to support service delivery and these roles are built into the structure of the alcohol and other drugs support system. The below case studies outline the significant impact for the lived-living experience workforce:

[8] Direct quote from Alex (de-identified real-life case study that has been included in this submission with the permission of the person involved.

Case Study - Jane[9]

For over 15 years, Jane has dedicated her career to social services. Jane's professional experience, combined with her lived experiences, uniquely qualifies her to support and advocate for individuals facing similar challenges. However, challenges in obtaining or even applying for a blue card have significantly restricted Jane's employment opportunities.

Jane has faced significant challenges in obtaining a blue card due to past convictions, including a conviction for trafficking in dangerous drugs. This conviction has disqualified Jane from obtaining or even applying for a blue card, despite the conviction being unrelated to any child-related or violent offence. After serving time in prison, Jane began the process of seeking a blue card for her work in social services and found the application process daunting, filled with uncertainty and fear of rejection which led to Jane discovering the conviction disqualified her outright.

Without a blue card, Jane is unable to work with vulnerable populations which is a field where Jane's lived experiences could have the most impact. This barrier impacts both Jane's ability to earn a living and hinders her capacity to contribute meaningfully to the community. As a mother, the inability to obtain a blue card also prevents Jane from volunteering at her children's school or sporting club. Jane reports feelings of stigma and shame, and confusion for her children when she declines their requests to participate like other parents. Jane has identified that this further impacts her reintegration into the community and makes her feel isolated and excluded.

Jane shares the following based on her experiences:

> *"To create a more inclusive and supportive system, it is crucial to reevaluate policies to allow individuals with convictions unrelated to child-related or violent offenses to be considered for blue cards based on their current character and capabilities.*
>
> *Thank you for considering my story. I am hopeful that sharing these experiences will contribute to meaningful changes in the blue card system, allowing individuals with lived experiences to support and empower others effectively."*

Case Study – Ashleigh[10]

Ashleigh started doing a diploma and could not finish it because they were unable to get a blue card. After 24 months of dealing with blue card, they were able to get a blue card. Then Ashleigh got another charge for a DUI on a road-side swab and the blue card was taken off them for two years. They were advised to reapply for it, but that they most likely would not get it.

Ashleigh had support from a counsellor throughout this whole process. Ashleigh had no violence and child related charges and felt they were treated like they had harmed children. All of Ashleigh's charges were drug-related possession charges and Ashleigh had been to jail twice for drug-related offences over 20 years ago. Ashleigh states that it is impossible to get a job without blue card and when telling an employer that you cannot get a blue card they look at you like you have harmed children.

Ashleigh states:

> *"I was fortunate to be employed as a peer worker in the AOD space without a blue card and been here for over 7 years. I am on the board of a drug user organisation, I have presented at many conferences on my lived experience and am a leader in my community. Without a blue card I will struggle to progress my career, change jobs or do any further study.*

[9] The Commission has provided a real-life case study with de-identified information and this has been included in this submission with the permission of the person involved.

[10] The Commission has provided a real-life case study with de-identified information and this has been included in this submission with the permission of the person involved.

AOD lived experience workforce will never be able to expand or flourish without changes to the blue card laws."

Case study – Alex[11]

Alex's passion has always been to help people. Alex's partner works in the community services area and they felt that their lived experience of being in prison, addiction and mental health meant that they 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 14 which was the root cause to their offending. Alex has been abstinent from drug use for four years and 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 have been involved with child safety and are thriving.'* Alex was awarded a scholarship to complete their Certificate IV in peer work. However, after recently discovering they will need a blue card to do placement, they are *'absolutely shattered*.' Alex cannot apply due to being on parole and because of their 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 crime and drugs is long gone. There is a huge need for male lived experience workforce and a greater need for lived experience of people in prison. By giving people jobs in the sector that are from Prison this helps the person by giving them purpose and deters from reoffending and serves the community by helping others.

I am at a lose 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 easily 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 be able to truly give back my community. "

The above demonstrates the significant barriers for peer workers in the alcohol and other drug sector, and the significant re-traumatisation and stigmatisation experienced during the blue card process. The impact of the current blue card assessment approach is that a peer worker working in certain services may be ineligible to obtain a blue card to provide critical services in the community, or otherwise face additional barriers and stigmatisation in the assessment approach. For example, Queensland has implemented a harm minimisation approach to alcohol and other drugs, including the roll-out of mobile and fixed site drug checking services. These services include alcohol and other drugs peer workers, and these workers may be required to provide peer support to those who use drugs under the age of 18. If these workers are excluded from delivering services due to inability to obtain a blue card as a consequence of historic drug-related offending contextualised against current substance use, this would significantly undermine the workforce and the potential impact and benefits of this harm minimisation approach.

Any reforms to this process must align with Queensland's harm minimisation strategy and whole-of-government strategic direction, including by taking an evidence-based decision-making process to ensure any unintended consequences are limited.

Recommendation 1.2

The Bill must address the implications for the emerging alcohol and other drugs peer workforce. This must include, but is not limited to:

[11] The Commission has provided a real-life case study with de-identified information and this has been included in this submission with the permission of the person involved.

- consideration in section 234 of the nature of employment, for example where an applicant intends to engage in a lived-living experience role and may have a drug-related offence and use this experience in the scope of their employment
- consideration of blue cards with conditional requirements, for example that the applicant is authorised to work in a peer workforce role in the context of the nature of the specific employment
- reducing stigmatisation in the decision-making process to align with strategic priorities in *Shifting minds, Achieving balance* and *Every life.*

2. Mental Health context

Most people who experience mental ill-health are not a risk to the safety of the community or children. Queensland's blue card system must acknowledge that people who experience mental ill-health should be given equal opportunities to participate in the workforce, including by addressing structural barriers and stigmatisation.

Employment supports financial independence, health and wellbeing, and social connection. Creating a more inclusive labour market requires an integrated approach to broadening opportunities for people to participate.[12] Many people with mental ill-health face complex and intersecting barriers to employment, such as experiences of stigma and discrimination, which can negatively impact social and economic participation.[13]

The impacts of stigma and flow-on effects for people experiencing mental ill-health were identified in the Mental Health Select Committee's *Inquiry into the opportunities to improve mental health outcomes for Queenslanders* report.[14] These findings included that[15]:

- Stigma is experienced across a range of settings including healthcare, justice and welfare systems, friends, families and communities, and creates barriers to seeking treatment, accessibility, employment, housing and community belonging.
- Destigmatising mental ill-health and alcohol and other drugs issues requires the voices of people with lived experience, including children and young people, and supports their involvement to reduce stigma and encourage help-seeking behaviours in the community.

In response to this, the Commission is delivering a mental ill-health, problematic alcohol and other drugs use, and/or suicidality stigma reduction package including a stigma reduction behaviour change campaign. The Commission recommends the adoption of blue card decision-making which reduces and addresses stigma and structural bias for people experiencing mental ill-health in alignment with the work being undertaken.

Reporting requirements

Under the current and proposed decision-making framework for blue cards, the chief executive must consider other relevant circumstances, including a formal report about a person's mental health, in determining whether an applicant poses a risk to the safety of children.

It is not appropriate to request and/or require a formal report about a person's mental health for all applicants. The Commission is concerned a blanket approach to these reports will have the effect of imposing additional barriers and costs on applicants and perpetuate harmful stigmatisation of people who experience mental ill-health. Any requests

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[1212] Commonwealth of Australia (The Treasury). 2023. *Working Future: The Australian Government's White Paper on Jobs and Opportunities*. Commonwealth of Australia, Canberra.
[13] The State of Queensland (Queensland Mental Health Commission). 2018. *Changing attitudes, changing lives: Options to reduce stigma and discrimination for people experiencing problematic alcohol and other drug use.* Queensland Government, Brisbane.
[14] Mental Health Select Committee. (2022). *Final Report - Inquiry into the opportunities to improve mental health outcomes for Queenslanders.* Queensland Government, Brisbane.
[15] Mental Health Select Committee. (2022). *Final Report - Inquiry into the opportunities to improve mental health outcomes for Queenslanders.* Queensland Government, Brisbane.

for a report must be evidence-based and objective and any weight given to the report in the decision-making process should be based on the expertise of mental health professionals.

Recommendation 2.1

The Bill must clarify that a formal mental health report is not required in all circumstances and provide clarity on where this may be relevant and/or requested in the decision-making process.

Youth justice

The Commission welcomes the inclusion of youth justice and detention centres as child-related work in the Bill consistent with the charter of youth justice principles in the *Youth Justice Act 1992* to uphold the rights of children, keep them safe and promote their physical and mental wellbeing.

Many children and young people involved in the youth justice system have pre-existing vulnerabilities including experiences of homelessness, poverty, child abuse and neglect, domestic and family violence, and the child protection system.[16] Children and young people in youth detention present with complex needs and are more likely to have experienced childhood adversity and trauma, with around 80 per cent of young people in Australian youth justice settings experiencing multiple traumas.[17]

The Commission is currently in the process of developing the whole-of-government trauma strategy which will establish whole-of-government commitments to working within a trauma-informed framework. Requiring employees in youth detention and justice centres to obtain blue cards to protect and safeguard is a critical piece of a broader conversation about promoting the safety and wellbeing of children and young people in youth justice and detention centres within a trauma-informed system.

Youth justice and detention centres are high-risk settings for child abuse and mistreatment due to institutional culture, level of access children have to trusted adults, and the extent to which operational procedures and the physical environment provide opportunities for abuse.[18] In the Royal Commission into Institutional Responses to Child Sexual Abuse, there were reports of institutions failing to undertake basic referee checks that may have revealed a history of inappropriate behaviour, perpetrators circumventing Working with Children systems and institutions that allowed staff to work with children without a background check.[19] By requiring a blue card, this ensures that (at minimum) there is a requirement that the individual passes a Working with Children check before commencing employment in an environment with children and young people experiencing complex needs and vulnerabilities.

Recommendation 2.2

The Bill includes youth justice and detention centres as child-related work as a key safeguarding measure as part of a broader and systematic approach to trauma-informed care in alignment with the developing whole-of-government trauma strategy.

3. Alcohol and other drugs context

Commitment to harm minimisation and health response

[16] Royal Commission into Institutional Responses to Child Sexual Abuse. (2017). *Final report, Contemporary Detention Environments*. Australian Government, Canberra.
[17] The Royal Australasian College of Physicians. (2011). *The health and wellbeing of incarcerated adolescents.* https://www.racp.edu.au/docs/default-source/advocacy-library/the-health-and-wellbeing-on-incarcerated-adolescents.pdf; Australian Child and Adolescent Trauma, Loss and Grief Network. (2013). *Trauma, young people and juvenile justice*. https://earlytraumagrief.anu.edu.au/files/Trauma%20and%20juvenile%20justice%20in%20Australia.pdf.
[18] Royal Commission into Institutional Responses to Child Sexual Abuse. (2017). *Final report, Contemporary Detention Environments*. Australian Government, Canberra.
[19] Royal Commission into Institutional Responses to Child Sexual Abuse. (2017). *Final report, Contemporary Detention Environments*. Australian Government, Canberra.

The Commission notes well established evidence that the majority of people who use drugs use infrequently and do not experience problems and as a result, they are unlikely to be a risk to children based on substance use alone.[20] However, people who use drugs can experience a range of structural and systemic barriers to workforce participation due to stigma and discrimination. A lack of knowledge or misunderstanding of the nature of alcohol and other drugs use and problems has the potential to impact blue card assessment and decision-making as noted further below.

To align with whole-of-government strategic direction towards alcohol and other drugs use, the new decision-making framework must be evidence-based, consistent with contemporary approaches to drug possession offences and require the chief executive to consider the context of a drug-related offence rather than the mere nature of the offence.

For example, the Queensland Government has committed to increasing the range of options available for drug possession offences, via changes to the *Police Powers and Responsibilities Act 2000* (Qld) that came into effect on 3 May 2024. These changes mean that people found in possession of small quantities of illicit drugs for personal use, and who have not committed any other offence, will not be charged and will instead be offered an opportunity to attend a health intervention. Contemporary approaches to blue card eligibility should be consistent with such changes.

That is, drug possession charges prior to 3 May 2024 should be considered at a threshold consistent with current legislation. There should not be a circumstance where a person who is found in possession of illicit drugs from 3 May 2024 is assessed differently for blue card eligibility to a person who was found with the same substance prior to this date.

Additional Queensland Government priorities in relation to alcohol and other drugs in *Shifting minds* and *Achieving balance* include:

- developing and implementing innovative models that address barriers and expand employment pathways, programs and options for people living with mental ill-health and problematic alcohol and other drugs use
- addressing barriers to commencing a career in mental health, alcohol and other drugs and suicide prevention
- developing mental health, alcohol and other drugs and suicide prevention skills and knowledge across Queensland Government agencies
- broadening options for police diversion to health responses to encompass people facing minor charges for substance use and possession
- building capacity of health services, law enforcement and other systems to provide strengths-based, culturally safe, and person-centred responses to people with problematic alcohol and other drugs use and encourage help-seeking and acceptance of support
- increasing the availability of health responses for people experiencing problematic alcohol and other drugs use across the service system, including housing and domestic and family violence service
- introducing arrangements to encourage effective health-led support options for people who come into contact with the criminal justice system with holistic and coordinated intervention commencing at the point of contact with the system.

Any decision-making must be contextualised and consistent with these whole-of-government commitments to harm minimisation and health responses to alcohol and other drugs issues. This includes implementing a blue card system which provides equal opportunities to people with a lived-living experience of problematic alcohol and other drugs use to prevent further prejudice and exclusion from the workforce.

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[20] Australian Institute of Health and Welfare. (2024). *Illicit drug use*. Australian Government, Canberra. https://www.aihw.gov.au/reports/illicit-use-of-drugs/illicit-drug-use; United Nations Office on Drugs and Crime. (2023). *World Drug Report 2023*. United Nations, Austria. https://www.unodc.org/res/WDR-2023/WDR23_Exsum_fin_SP.pdf; Department of Health and Aged Care. (2019). *National Framework for Alcohol, Tobacco and Other Drug Treatment 2019-29*. Australian Government, Canberra. https://www.health.gov.au/sites/default/files/documents/2020/08/national-framework-for-alcohol-tobacco-and-other-drug-treatment-2019-29.pdf.

Recommendation 3.1

The Bill must be consistent with whole-of-government commitments to harm minimisation and health responses to alcohol and other drugs use in *Shifting minds* and *Achieving balance*.

There should not be a circumstance where a person who is found in possession of illicit drugs from 3 May 2024 is assessed differently for blue card eligibility to a person who was found with the same substance prior to this date.

Criminalisation and stigmatisation of people who use drugs

People who use drugs are a criminalised population and this means they are more likely to have a criminal history for drug-related offences. Queensland has adopted a harm minimisation and health response approach to alcohol and other drugs policy. It is critical that any changes to and/or implementation of the blue card system are consistent with this whole-of-government commitment.

The Commission is aware of current discrimination and structural bias in the blue card decision-making process, as evidenced by the case study provided below. In October 2023, the Queensland Family and Child Commission released a report that noted that applicants with police obstruction, public nuisance and possession of drug offences have received negative assessments based on their ability to 'role model respect for positions of authority', 'exercise self-control', 'exercise restrain', 'restrain conduct in the presence of children', 'deal with difficult and/or stressful situations in an appropriate manner' and 'in a rational and law-abiding manner' or 'use appropriate conflict resolution strategies.'[21] These character inferences are drawn even where the offending conduct did not involve or pose a risk to children, based on assessor views and assumptions due to the nature of the offence.[22]

The Commission supports a shift to considering a real and appreciable risk to the safety of the child as opposed to a 'best interests' test but remains concerned that stigmatisation of people who use drugs may affect the way this risk is assessed. To be clear, the Commission agrees that if an individual does pose a risk to the safety of children, then they should not receive a blue card. However, the Commission is concerned the assessment could be tainted by stigma or moral assessment of drug use in regard to how risk is conceptualised. An evidence-based decision-making guideline or standard developed with input of people with lived-living experience of alcohol and other drugs use could address the Commission's concern.

Case study - Charlie[23]

Charlie has provided their personal experience with this process and how it has affected their life. Charlie admitted themselves into a rehabilitation centre about four years ago as they had a history of trauma, addiction and mental health issues. Charlie voluntarily stayed in this program for a period of 18 months where they worked through their challenges to eventually be given a chance. Charlie was strongly encouraged by the rehabilitation centre to get a blue card and use their person experience to hopefully help others in similar situations.

At the time of applying for their blue card, Charlie volunteered with their community as part of giving back, including with SES, multiple AA and NA meetings and as a senior supervisor at the rehabilitation centre where they volunteered as a night staff assistant. During COVID-19, Charlie moved into the facility as staff could not be physically present.

Charlie had some troubles with the law as a minor and an adult, with these resulting in charges and convictions as a minor but non-committal. Charlie applied for a blue card and was told that their past may potentially hold them back from this goal, but Charlie reports they were determined to hold and change their life and use their past for

[21] Queensland Family & Child Commission. (2023). *A thematic analysis of provisionally approved kinship carers who receive a subsequent Blue Card negative notice*. Queensland Government, Brisbane.
[22] Queensland Family & Child Commission. (2023). *A thematic analysis of provisionally approved kinship carers who receive a subsequent Blue Card negative notice*. Queensland Government, Brisbane.
[23] The Commission has provided a real-life case study with de-identified information and this has been included in this submission with the permission of the person involved.

good. Charlie had the full support from the rehabilitation centre and had a full and detailed understanding of their past crimes and traumas.

Charlie's application for a blue card was denied and Queensland police formally charged Charlie for applying for a blue card. Charlie's understanding was that an application was merely an application—and was unaware they were a suspended person. Charlie states:

"The affects this had on me were irreparable, not only being denied but then charged for applying for a blue card for crime that I have already been trialled and convicted of and punished for seemed to me like the most disgusting and in ways worst example of entrapment and injustice."

Structural bias and discrimination in decision-making creates further barriers to workforce and employment opportunities and operates to disempower an already stigmatised and criminalised group of people. People with a lived-living experience of alcohol and other drugs use deserve equal opportunity to participate in workforce and employment opportunities. Creating additional barriers to workforce participation perpetuates stigma and discrimination, which leads to isolation, shame, anger, rejection and feelings of worthlessness and hopelessness for people with a lived experience and for their families and carers.[24] A person's alcohol or other drug use should not, in isolation, exclude a person from working with children.

Recommendation 3.2

In alignment with whole-of-government commitments and to reduce stigmatisation, the assessment process for persons with a drug-related offence must not discriminate based on the nature of the offence in the absence of any context indicating a risk to the safety of children.

Impact on employment opportunities in commercial services

The Commission is concerned that broadening the application of the blue card regime will limit employment opportunities for people with a drug-related offence if existing decision-making approaches to drug-related offences continues. Given the existence of structural bias in the decision-making process, it is likely that individuals with a drug-related offence will have barriers in obtaining blue cards to work in commercial services even where their contact with children is potentially ancillary to the primary purpose of their role.

Existing stigmatisation (as identified above) in the assessment process must be addressed when expanding the application of the blue card regime to ensure that people with drug-related offences do not experience additional barriers to gaining or maintaining employment. If this is not addressed, this may have the unintended consequence of limiting employment opportunities for people with drug-related offences and perpetuating harmful stigmatisation, disadvantage, and discrimination.

Recommendation 3.3

Given the structural stigmatisation in the assessment process, the Bill must address the implications for people with drug-related offences in obtaining employment within commercial service environments.

4. Cultural context

The Commission supports the insertion of a discretionary power to consider the cultural considerations including the effect of systematic disadvantage and intergenerational trauma on the person in section 234(2)(g) of the Bill. The Commission commends the work undertaken following the *Safe children and strong communities: A strategy and*

[24] The State of Queensland (Queensland Mental Health Commission). 2018. *Changing attitudes, changing lives: Options to reduce stigma and discrimination for people experiencing problematic alcohol and other drug use.* Queensland Government, Brisbane.

action plan for Aboriginal and Torres Strait Islander peoples and organisations accessing the blue card system 2021–2025 and the increase in Aboriginal and Torres Strait Islander successful blue card applicants in 2022-23.

The inclusion of cultural context in the Bill must be consistent with whole-of-government commitments in *Shifting minds* and *Leading healing our way: Queensland Aboriginal and Torres Strait Islander Healing Strategy 2020-2040* (*Leading healing our way*), including to:

- embed and support First Nations leadership, expertise and engagement to achieve the highest standard of social and emotional wellbeing outcomes
- integrate approaches across different tiers of government to address stigma and discrimination at individual, system and community levels, particularly for First Nations peoples
- define and embed best practice and co-design into planning, design and delivery of policies, programs and services
- co-design the tools to inform planning, design and the implementation of trauma aware, healing informed models centred on culture with First Nations communities and experts, including a risk assessment in all government decision-making processes to mitigate against trauma and re-traumatisation
- invest in community readiness and build community collective decision-making and governance
- build the capacity and capability of the First Nations workforces across all services and systems.

Recommendation 4.1

The Bill must be consistent with whole-of-government commitments in *Shifting minds* and *Leading healing our way.*

Overrepresentation of Aboriginal and Torres Strait Islander People in the criminal justice system

In Queensland, Aboriginal and Torres Strait Islander peoples are overrepresented in the criminal justice, domestic and family violence, mental health and child protection systems.[25] This is attributable to systemic and institutional bias, intergenerational trauma, patterns of discrimination, and the continued impacts of racism and colonisation. As a result of this, it is highly likely that a First Nations' applicants may have increased factors impacting their eligibility to receive a blue card in Queensland. Further, stakeholders have identified that suitability for obtaining a blue card is based on irrelevant information, over-policing and subjective assessments of an individual's character by police and other sources at the time of an offence, rather than the risk of harm to a child.[26]

While the inclusion of cultural context in the decision-making process is welcomed, it is crucial that this be implemented in a culturally safe and appropriate way. To successfully implement this, any structural bias or discrimination in the assessment process must be addressed across the workforce assessing blue card applications. To entrench cultural context, the Commission recommends that any assessment of cultural context is performed or, at minimum, informed by a First Nations advisors or advisory committees. This recognises the importance of First Nations cultural authorities, and leaderships, and represents a departure from the structural disadvantage that has historically been embedded in the criminal justice and blue card systems.

Recommendation 4.2

A First Nations advisors or advisory committees be established to perform or inform cultural context assessments under section 234(2)(g) of the Bill.

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[25] Australian Law Reform Commission. (2018). *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (ALRC Report 133).* https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/3-incidence/over-representation/

[26] Family Matters Australia. 2022. *The Family Matters Report 2022: Measuring trends to turn the tide on the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care in Australia.* https://www.familymatters.org.au/wp-content/uploads/2022/11/20221123-Family-Matters-Report-2022-1.pdf.

5. Reasonable person test

The Commission is concerned that the reasonable person test for assessing the eligibility of applicants under section 233 of the Bill does not capture the diversity of Queensland and may perpetuate structural stigmatisation and bias.

While the reasonable person test is often used in legislation, there are significant criticisms that this test has inherent bias in gender, (particularly given the historical statutory framing as 'good father of the family'[27] or a 'reasonable man test'[28]), race and class.[29] The problem with the proposed 'reasonable person' approach in the context of the blue card system is that it assumes an objective test which does not take into account different community values and expectations, and instead encourages a subjective character assessment based on an individual assessor's perception of their own or majority community values.

This has the potential to embed structural bias into the decision-making process by assuming a single perspective of a 'reasonable person' when we know that our communities have diverse voices. The Commission recommends that section 233 is updated to require the chief executive to have regard to regulations which reflect community expectations for decision-making and the safety of children. This will provide a more objective, criteria-based threshold and prevent the risk of unconscious bias in the decision-making process.

Recommendation 5.1

Section 233 of the Bill be updated to refer to a decision-making guideline and/or regulations which reflect contemporary evidence and community expectations for decision-making and the safety of children to reflect contemporary and diverse Queensland community perspectives.

6. Advisory Committee

The Commission welcomes the discretion for the chief executive to establish advisory committees to assist in the decision-making process, and recommends that the committee:

- includes the representation of First Nations peopled and leaderships, consistent with the whole-of-government commitment in *Leading healing our way* to recognise the importance of First Nations cultural authorities and leaderships
- has representatives with a lived-living experience of mental ill-health **and** alcohol and other drugs, consistent with the whole-of-government commitment in *Shifting minds* to strengthen effective and meaningful engagement and participation of people with a lived experience, families and carers in policy, planning, evaluation, service delivery and governance
- has the scope to meaningfully participate in, and make recommendations as part of, the decision-making process.

Given the structural barriers highlighted in this submission for particular groups of individuals, it is critical to ensure that these groups are adequately represented to provide context, expertise and knowledge in the decision-making processes. Further, this expertise must be embedded in decision-making and have a meaningful role in the assessment processes to ensure that structural barriers and unconscious prejudice or bias are reduced and ultimately that risk assessments are carried out in alignment with real and appreciable risk.

The Commission is able and willing to provide support and expertise in the establishment of the advisory committee, particularly to embed lived-living experience in the decision-making process.

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[27] Calabresi, G. (1985). *Ideals, Beliefs, Attitudes and the Law*. Syacruse University Press: Syracuse, New York.
[28] Parker,W. (1993). *The reasonable person: a gendered concept?* Victoria University of Wellington Law Review, 23.
[29] Allen, H. (1988). *One law for all reasonable persons?* International Journal of the Sociology of Law, 419.

Recommendation 6.1

The Commission supports the establishment of advisory committees under section 242 of the Bill to aid in the decision-making process with cultural representation including First Nations leadership and representatives with a lived-living experience of mental ill-health **and** alcohol and other drugs.

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[redacted]