

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

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Sisters Inside Inc. is an independent community organisation which exists to advocate for the human rights of women in the criminal justice system

10 July 2024

Committee Secretary
Education, Employment, Training and Skills Committee
Parliament House
Brisbane QLD 4000

By email only: EETSC@parliament.qld.gov.au

Dear Committee Members

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

I write to you in relation to the Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024. Sisters Inside welcomes the opportunity to provide feedback in relation to this Bill.

About Sisters Inside

Established in 1992, Sisters Inside is an independent community organisation that advocates for the collective human rights of women and girls in prison and their families, and works alongside criminalised women and girls to address their immediate and individual needs.

Our work is guided by our *Values* and *Vision*.¹ We are uniquely placed to contribute to this consultation as we see the daily realities of life for criminalised women and girls throughout Queensland and the wider consequences of policies and practices within our systems.

Introduction

Sisters Inside has directly witnessed the significant barriers the Working with Children Clearance (WWCC) system presents for criminalised women. In our experience, virtually any criminal history is considered grounds to deny an individual a positive WWCC, even where it is not a 'serious' or 'disqualifying' offence under the Act. This prevents women from accessing many opportunities which would better their lives, such as obtaining employment or becoming a volunteer at their child's school. It also prevents women from becoming kinship carers for members of their own family.

Sisters Inside is uniquely placed as an organisation that actively prioritises employment of staff with lived prison experience and recognises their contribution to our work with and for criminalised women and their children. Whilst a large portion of our management committee and staff are criminalised women, the restrictiveness of the WWCC system means that we are often unable to employ individuals with lived experience within our programs.

¹ Sisters Inside Inc., 'Values and Visions'. Available at: www.sistersinside.com.au/values.htm.

Social work academics have identified that exclusion of individuals with lived experience of institutionalisation is a serious issue affecting many community service and support organisations.² In effect, the current system excludes women with criminal histories from being able to participate fully in society. Sisters Inside welcomes some of the proposed reforms and we wish to provide the following feedback in relation to the proposed amendments.

1. New Decision Making Framework - s233 & 234

As it currently operates, the WWCC system individualises violence through its process of individual assessment of a person's criminal history and other relevant information (such as Department of Child Safety and Domestic Violence Order information). As a result of colonisation, and ongoing dispossession, poverty and intergenerational trauma, Aboriginal and Torres Strait Islander adults and children are criminalised at a much higher rate than the rest of the population. In our experience, the WWCC system does not adequately contextualise the criminalisation of Aboriginal and Torres Strait Islander people, and related experiences of systemic violence. This results in the Department's practice of blanket denials of Blue Card applications by individuals who have been imprisoned or criminalised has a highly discriminatory and racist effect. First and foremost, Sisters Inside supports the amendment that requires the decision-maker to consider the effect of systemic disadvantage and intergenerational trauma and the historical context for Aboriginal and Torres Strait Islander applicants. It is hoped that these amendments will enable decision makers to consider more appropriately cultural contexts and considerations.

Sisters Inside has long advocated for changes to the current decision making threshold. Over the years that we have supported criminalised women, we have seen a concerning level of overreach by the Department in denying women with non-serious and non-disqualifying offences a Blue Card. The Act states that the decision-maker must be "satisfied it is an exceptional case in which it would not be in the best interests of children" in order to refuse to issue such an individual with a Blue Card. However, it is the experience of Sisters Inside that in the vast majority of cases where an individual has received a sentence of imprisonment or has a conviction for any indictable offence – even non-violent property or dishonesty offences – the Department will issue that person with a negative notice. It is against this background that Sisters Inside encourages the implementation of the new risk assessment criteria and reasonable person test. It is anticipated that this may reduce the number of individuals being excluded from being issued with a blue card in the first instance.

It is our view that this new decision making framework may also reduce the number of decisions that are reviewed through QCAT. These decisions by the Department have resulted in numerous women supported by Sisters Inside having to seek a review of the decision through QCAT. This is very costly and time consuming. In our experience, a very limited number of women that we support are able to fund their own QCAT proceedings and in our experience, it generally takes about two years for a Blue Card matter to be finalised at a QCAT hearing from the time of initial application. In that period of time women's lives are put on hold. They are often unable to undertake the practical training required to complete university degrees, secure employment, or become kinship carers for family members.

Whilst Sisters Inside does support a fulsome framework with respect to the decision making criteria process, we suggest that consideration be given to including a statutory time limit for decision making. Individuals are routinely waiting for extremely long periods to get a decision and experiencing extensive hardship as a result. Administrative decisions are routinely subject to statutory timeframes and we do not

² see Angella Duvnjak, Victoria Stewart, Peter Young and Leah Turvey, 'How does Lived Experience of Incarceration Impact Upon the Helping Process in Social Work Practice?: A Scoping Review' (2021) *British Journal of Social Work* <https://doi.org/10.1093/bjsw/bcaa242>; Peter Young, Clare Tilbury & Melanie Hemy, 'Child-related Criminal History Screening and Social Work Education in Australia' (2019) 72(2) *Australian Social Work* 179.

consider the WWCC system should be any different. Accordingly, we propose that the amended to require the chief executive to make a decision within 8 weeks.

2. Changes to QCAT jurisdiction -s 354B

As you may be aware, it is our experience that there is an overwhelming amount of women who are required to appeal a negative notice through the QCAT jurisdiction. This issue is so significant and widespread that Sisters Inside has historically employed a Blue Card Advocate to support women through the application and appeal process.

In the past financial year, we have supported a number of women. During that time, one woman reached final hearing at QCAT and successfully had the chief executive's decision set aside. At the conclusion of her matter it was brought to her attention that she was further required to lodge an application to cancel the negative notice before being issued with a blue card. This application is at an additional cost and is an additional mechanism to prevent women from accessing a blue card. We strongly support the removal of this process to allow for the issuing of the card at the conclusion of the QCAT hearing if the Member determines the person sought to be issued clearance.

As previously noted a significant issue is the exceptionally long wait times to get a decision from the chief executive – usually in the vicinity of 8 – 9 months. It generally then takes a further 1 – 1.5 years to get a final decision from QCAT on review. During this wait period, applicants are often prevented from commencing suitable employment, which may have significant negative effects on their lives and wellbeing. The women we support have described the WWCC system as an instrument in the 'forever punishment' criminalised people experience in our society.

In addition to this there is the added barrier of the Department appealing a QCAT decision which delays matters for women further. Sisters Inside recently supported a woman who was successful at the QCAT hearing and was informed by the Department that she would be required to await for a transcript to be provided so they could review their right to appeal the decision. It is pertinent that at the conclusion of the QCAT those women are not left waiting further due to the significant impacts the delays have on women we support and as such, we support this amendment so that Blue Card can better effect QCAT decisions.

3. Removal of blue card requirement for kinship carers

Sisters Inside is aware that the current WWCC system has a great impact on Indigenous communities. Given the high rates of Aboriginal and Torres Strait Islander children in out-of-home care placements these amendments are necessary. In our experience finding a placement for a child within their own family or kinship group is of the utmost importance. This is reflected in the Aboriginal and Torres Strait Islander Child Placement Principle. The current WWCC system, for the reasons discussed already, therefore poses significant barriers for Aboriginal and Torres Strait Islander people in becoming carers. Sisters Inside therefore welcomes these amendments.

4. Commercial Services s615

In relation to the amendment regarding commercial services Sisters Inside submits that while commercial services such as amusement parks and play facilities centres cater predominantly to families and children, the nature of the interaction between staff and children in these environments often lacks the depth or unsupervised proximity that might necessitate a Blue Card. Most interactions in these settings are brief and occur within the public view, such as facilitating rides or managing queues. These are not intimate or private interactions where children are vulnerable or at significant risk of harm. Employees typically work in highly visible areas and are not alone with children, which substantially reduces the risk of inappropriate behaviour that the Blue Card system is designed to mitigate.

Furthermore, there are already comprehensive internal safety measures and protocols that include background checks, training, and continuous monitoring of staff behaviour. These protocols are designed to ensure safety and security without the specific framework of the Blue Card system. The business model of these facilities relies heavily on maintaining a safe environment for all guests, which incentivises the implementation of robust protective measures independent of the regulatory requirements of a Blue Card.

In conclusion, while child safety is paramount, our view is that the requirement of a Blue Card in commercial settings should be carefully weighed against the nature of interactions in these settings, the effectiveness of existing safety measures, and the practical implication

5. Parent Volunteer Exemptions - s156

Exempting parents who volunteer on overnight excursions from needing a blue card (WWCC) requires weighing the importance of child safety against the advantages of parental participation in these activities. It is our view that parent volunteer exemptions should remain. Below is a detailed argument supporting the continuation of this exemption:

1. Parental Presence Enhances Safety and Comfort - Parents volunteering bring a familiar and comforting presence that can enhance the safety and well-being of children, particularly in unfamiliar settings. Children often feel more secure and less anxious when their parents are involved, which can lead to a more positive experience and better participation in activities.
2. Practical Implications of Mandating WWCCs - Requiring parents to obtain a WWCC for activities such as overnight excursions could significantly reduce the number of available volunteers, as the process might be seen as too cumbersome or intrusive for an activity involving their own children.
3. Existing Safety Mechanisms - Organisations typically implement rigorous safety protocols for overnight excursions, including constant supervision, group activities, and strict rules of conduct. These measures are designed to protect all participants, making the additional layer of security from a WWCC for volunteering parents potentially redundant, especially if these parents are primarily interacting with their own children.
4. Limitation of Scope - The exemption could be narrowly tailored to apply only when parents are volunteering in capacities that primarily involve their own children, with additional adult supervisors who have undergone full WWCC clearances present. This maintains a safe environment while acknowledging the unique role that parents play in their children's lives.

While the safety of all children is paramount, creating a flexible approach that recognizes the low-risk nature of parental involvement in specific scenarios like overnight excursions can be beneficial. By maintaining an exemption for parents on such trips, organisations can continue to foster inclusive, engaging, and well-supervised activities that benefit from strong parental participation. This approach, combined with robust overarching safeguards, can provide a balanced solution that prioritises child safety while recognising the value of parental involvement.

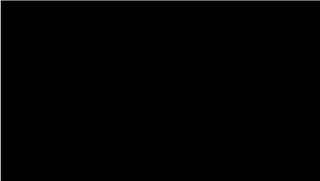
6. Justice and Detention Facilities - s4B

Sisters Inside is committed to the safety and wellbeing of all children. In this context, we wish to highlight that children often experience significant harm within institutions operated by or on behalf of the State. Often these institutions claim to operate in accordance with the best interests of the child; however routine forms of violence are standardised in their policies and operating procedures; for example, strip searching in youth prisons or police watch houses or criminalisation in residential care facilities. Routine forms of violence by or on behalf of the State are not subject to oversight by the WWCC system. It is our

view that all staff who work in detention centres, residential care facilities or performing functions under the Youth Justice Act must require a blue card.

Thank you for considering this letter. If you would like to discuss this letter further, please do not hesitate to contact me on (07) 3844 5066.

Yours sincerely



Debbie Kilroy
Chief Executive Officer
Sisters Inside Inc