

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

Submission No:	21
Submitted by:	Non-State Schools Accreditation Board
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Attachments:	See attachment
Submitter Comments:	

Submission to Education, Employment, Training and Skills Committee - Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024

Submission by Non-State Schools Accreditation Board

Background

- 1 On 12 June 2024, the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024* (**Amendment Bill**) was introduced into Queensland Parliament and referred to the Education, Employment, Training and Skills Committee (**Commission**) for detailed consideration.
- 2 The Committee has invited submissions on any aspect of the Amendment Bill from all interested parties by 10 July 2024. The final report of the Committee is due to be completed by 2 August 2024, and it will be considered at the Amendment Bill's Second Reading in the Queensland Parliament.
- 3 The Board makes this submission in response to the Committee's invitation with reference to specific provisions of the Amendment Bill which the Board submits should be considered in the Committee's final report.

Considerations for the Committee

Chapter 8: Working with children checks and authorities

Section 186: Meaning of disclosable matter

- 4 Section 188 of the Amendment Bill introduces self-reporting obligations in respect of police information and disclosable matters on those who seek to make a working with children check application and makes it an offence to fail to disclose such information.
- 5 Schedule 7 of the Amendment Bill proposes to make a minor amendment to the definition of *police information* to mean:
 - (a) a person's criminal history;
 - (b) investigative information about the person;
 - (c) information as to whether the person is or has been:
 - (i) a disqualified person;
 - (ii) the subject of an application for a disqualification order; or
 - (iii) named as the respondent to an application for an offender prohibition order.

- 6 Section 186 of the Amendment Bill introduces the definition of a *disclosable matter* as any of the following:
- (a) a domestic violence order made, or police protection notice issued, against the person under the *Domestic and Family Violence Protection Act 2012* (Qld);
 - (b) an adverse interstate WWC decision against the applicant;
 - (c) an allegation of harm caused by the person substantiated by the chief executive (child safety) or the chief executive of the department of another State administering a child welfare law of the State;
 - (d) a type of disciplinary action taken against the person that is prescribed by regulation; and
 - (e) another matter relevant to whether the person poses a risk to the safety of children prescribed by regulation.
- 7 The Board considers that the definition of *police information* contemplates the disclosure of information which relates to matters outside of Australia. For instance, the definition of *criminal history* relates to a conviction or charge of an offence in Queensland or elsewhere and the definition of a *disqualification order* considers *disqualification offences* and *serious offences* which includes an offence under a law of another jurisdiction that, if it had been committed in Queensland, would have constituted an offence in respect of a provision of an Act mentioned in Schedule 2 or 3 (particularly in relation to children).
- 8 The Board submits that the definition of *disclosable matter* does not clearly articulate whether it allows for matters which arise outside of Australia to be considered as part of a persons working with children check application. While the amendment to the definition of *disclosable matter* does include "another matter relevant to whether the person poses a risk to the safety of children prescribed by regulation", there is no such regulation which the Board is aware of that would allow the consideration of information received from outside of Australia.
- 9 The Board makes this submission as it may be relevant to the Board's functions under the *Education (Accreditation of Non-State Schools) Act 2017* (Qld) (**Accreditation Act**) and *Education (Accreditation of Non-State Schools) Regulation 2017* (Qld) (**Accreditation Regulations**).
- 10 For example, under section 26(3) of the Accreditation Act, a governing body of a school is not suitable to be the governing body unless each director of the governing body holds a working with children authority. Accordingly, a director of a governing body, whether they reside inside or outside of Australia, will require a working with children authority.
- 11 However, the Board has experienced at least one instance where Blue Card Services has refused to allow a person who resides outside of Australia to apply for a working with children authority because information within the working with children check application is limited to information within Australia. **Attached** to this submission is correspondence between the Board and Blue Card Services between 17 October 2022 and 28 June 2023 in respect of this issue.
- 12 The Board seeks clarification as to the intention of this definition as, in the Board's submission:
- (a) one part of the disclosable material, being *police information*, allows for material outside of Australia to be considered and, accordingly, both definitions should allow for this to ensure consistency; and
 - (b) the current position of Blue Card Services (at least in one instance) prevents those who reside outside of Australia from making a working with children application where they

are required to do so under the Accreditation Act and would otherwise be able to obtain a working with children authority if they were to reside within Australia.

Schedule 7 Dictionary

Definition of executive officer

- 13 Pursuant to section 14(2) of the *Working with Children (Risk Management and Screening) Act 2000 (WWC Act)*, a person is taken to be carrying on, or proposing to carry on, a regulated business, by being or proposing to be an executive officer of the corporation. Section 14(3) of the WWC Act provides that this only applies if the person's principal residence is Australia.
- 14 Under schedule 7 of the WWC Act, an *executive officer* of a corporation is defined as any person by whatever name called and whether or not the person is a director of the corporation, who is concerned or takes part in the management of the corporation. This definition is broad enough to include some directors of a governing body under the Accreditation Act.
- 15 However, under Schedule 1, Part 2, section 25 of the WWC Act, a person is taken to be carrying on a regulated business by being:
 - (a) a director of a governing body of an accredited school under the Accreditation Act; or
 - (b) an authorised person under the Accreditation Act.
- 16 The Board submits that there is a potential inconsistency between Schedule 1, Part 2, section 25 of the WWC Act which provides that a director of a governing body (whether they reside inside or outside of Australia) is carrying on a regulated business and section 14 of the WWC Act which states that an executive officer can only be taken to be carrying on a regulated business if their principal place of residence is Australia.
- 17 While the Board does not suggest that section 14 of the WWC Act has the effect that a person resident outside Australia *cannot be* considered to be carrying on a regulated business, there is a risk that section 14 could be interpreted in this way (for example, the circumstance described in paragraph 11 above).
- 18 The Board considers that this potential confusion could be addressed by adding a further section 14(4) of the WWC Act as follows:

"Nothing in this section has the effect that a person whose principal place of residence is outside Australia is not or may not be in regulated employment, or is not or may not be carrying on a regulated business."

Conclusion

19 Thank you for considering the Board's submission.

20 If you have any questions or wish to discuss this submission further, please contact [REDACTED]
Manager Non-State Schools Accreditation Board Secretariat by email [REDACTED]
or phone [REDACTED].

Y

[REDACTED]

Patrea Walton PSM
Chairperson

From: [Admin, NSSAB](#)
To: [Blue Card Services - Info](#)
Subject: RE: Blue card enquiry - Overseas committee member
Date: Wednesday, 28 June 2023 8:53:00 AM
Attachments: [image003.jpg](#)
[image004.png](#)
[image005.jpg](#)

Dear [REDACTED],

We have received legal advice on the interpretation of the Working with Children Act ("WWC Act") and the Education (Accreditation of Non-State Schools) Act 2017 ("Accreditation Act"), given the apparent inconsistencies between the two Acts.

Under Schedule 1, Part 2, s 25, the WWC Act states:

25 Non-State schools—directors of governing bodies and authorised persons

A person is taken to be a person carrying on a regulated business by being—

(a) a director of the governing body of an accredited school under the Education (Accreditation of Non-State Schools) Act 2017.

Section 176B of the WWC Act provides that there is requirement to have a working with children clearance in order to carry on a regulated business, as follows:

176B Clearance required to carry on regulated business

A person must not carry on a regulated business unless the person holds a working with children clearance.

Maximum penalty—500 penalty units or 5 years imprisonment.

Note—

Under section 14, particular executive officers of a corporation that carries on a regulated business are taken to carry on the regulated business (noting your details below regarding the definition of executive officers).

The fact that s 25 of part 2 of schedule 1 of the WWC Act is a specific provision about the directors of governing bodies that was inserted by the Accreditation Act itself suggests that the general definition of executive officer is not intended to apply to them. That interpretation makes sense because s 26(3) of the Accreditation Act is quite specific about governing body suitability and does not appear to give the Board any discretion about that. If the WWC Act is interpreted as if the definition of executive officer does not apply to directors of governing bodies, then the director will be required to hold a working with children clearance (as there will be no inconsistency between the provisions in the WWC Act or between the WWC Act and the Accreditation Act).

Based on the above interpretation, will Blue Card Services reconsider its position that an overseas director does not require a Working with Children Check?

Additionally, is the completion of the remote pack feasible for a director who does not intend to relocate back to Australia?

Kind regards,

Non-State Schools Accreditation Board Secretariat

T: [REDACTED]

E: nssab.admin@qed.qld.gov.au

Level 8 | Education House | 30 Mary Street | Brisbane QLD 4000

PO Box 15347 | City East QLD 4002



Please consider the environment before printing this email.

From: Blue Card Services - Info <info@bluecard.qld.gov.au>

Sent: Tuesday, 2 May 2023 9:56 AM

To: Admin, NSSAB <NSSAB.Admin@qed.qld.gov.au>

Subject: Blue card enquiry - Overseas committee member

Dear [REDACTED]

Thank you for contacting Blue Card Services.

The blue card system is regulated by the [Working with Children \(Risk Management and Screening\) Act 2000](#) (the Act).

Under Chapter one, Part 2, Section 14, the Act states:

Executive officers of a corporation carrying on a regulated business

- 1) This section applies in relation to a corporation that carries on, or proposes to carry on, a regulated business.
- 2) For this Act, other than section 172, a person is taken to be carrying on, or proposing to carry on, the regulated business by being, or proposing to be, an executive officer of the corporation.
- 3) Subsection (2) applies only if the person's principal place of residence is in Australia

As such, a Director or board member who is living overseas **does not** require a blue card.

Applying whilst overseas

Whilst an applicant's work may fall within the scope of the Blue Card System, we are unable to process a blue card application for an individual who resides outside Australia (and has no intention to reside in Australia). There are a number of reasons for this, namely the [blue card check](#) is limited to information within Australia and does not have the ability to consider police information from other countries. All blue card applicants and cardholders are monitored daily by the Queensland Police Service (QPS) and we are immediately notified of any changes to a person's criminal history information, this monitoring is not currently available outside Queensland. Finally, all successful blue card applicants are issued with a physical 'blue card' which requires an Australian address for mail purposes.

Accordingly, it is not reasonable that the director or board member who resides outside Australia obtain a blue card for their work with your organisation. Instead, you should ensure your organisation has clear policies outlined in your [child and youth risk management strategy](#). All organisations regulated by the blue card system need to have a [child and youth risk management strategy](#). This strategy needs to address eight mandatory requirements and will help to create a safe environment for children.

We have [videos](#) and a [toolkit](#) to help organisations understand what their child and youth risk management strategy should include and make sure the policies and procedures identify and minimise the risk of harm to children. As your training will be online, you should carefully consider the information on **page 13** of the toolkit, as this mentions developing relationships with children and young people online and **page 15** which is about the use of social media.

If you need more information please call us on **1800 113 611** or **07 3211 6999** or visit www.qld.gov.au/bluecard. Keep up to date by registering for our [e-news](#) or [register for an online event](#).

Yours sincerely

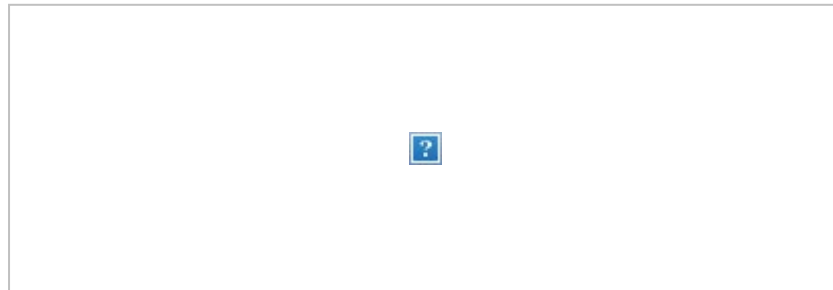


Blue Card Services, Justice Services

Department of Justice and Attorney-General
Level 20, 53 Albert Street, Brisbane Qld 4000

Phone: 1800 113 611 / (07) 3211 6999

Website: www.qld.gov.au/bluecard



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From: Admin, NSSAB <NSSAB.Admin@qed.qld.gov.au>

Sent: Thursday, 27 April 2023 2:10 PM

To: Blue Card Services - Info <info@bluecard.qld.gov.au>

Subject: RE: Blue card enquiry - Committee and board members advice

Hello 

As discussed.

With thanks in advance



on behalf of the Secretariat

Non-State Schools Accreditation Board

T: 

E: nssab.admin@qed.qld.gov.au

Level 8 | Education House | 30 Mary Street | Brisbane QLD 4000
PO Box 15347 | City East QLD 4002



Please consider the environment before printing this email.

From: Blue Card Services - Info <info@bluecard.qld.gov.au>
Sent: Monday, 17 October 2022 2:12 PM
To: Admin, NSSAB <NSSAB.Admin@qed.qld.gov.au>
Subject: Blue card enquiry - Committee and board members advice

Dear [REDACTED]

Thank you for contacting Blue Card Services.

The blue card system is regulated by the [Working with Children \(Risk Management and Screening\) Act 2000](#) (the Act).

Under the [Non-state schools - directors of governing bodies and authorised persons](#) category of regulated business, a person needs a blue card if they are:-

- a. a director of the governing body of an accredited school under the *Education (Accreditation of Non-State Schools) Act 2017*; or
- b. an authorised person under the *Education (Accreditation of Non-State Schools) Act 2017*.

Read about [governing bodies of non-state schools](#).

Committee and board members

In all circumstances where an organisation provides child-related services or activities, all members of the management committee (Director, board member or committee member) will require blue cards by virtue of their role as a decision maker in relation to the child-related services. A person who is a board member of a Queensland based organisation that delivers child-related services in Queensland and based interstate will also require a blue or exemption card.

Anyone engaged in child-related work **must** have a valid blue card **before** they start any child-related employment or business i.e. be on the management committee.

A person will also need a blue or exemption card if they are an [executive officer](#) of a corporation that operates a business regulated by one of the categories. This includes an executive officer who lives outside Queensland but **does not** include an executive officer who lives outside Australia.

Based on the information above, and our telephone conversation today, a director of a non-state school residing overseas does not require a blue card. However, if they want to apply for a blue card, they can still apply.

Applying for a blue card

We work with the Department of Transport and Main Roads (TMR) to verify your identity and obtain the photo for a blue or exemption card. A person will first need a Customer Reference Number (CRN) from TMR to apply for a blue card. If they are not in Australia, they can do this using a [remote pack](#). Once they have their CRN, they can [apply online](#) for their blue card.

The above advice is limited to the circumstances which you have provided. If relevant information has not been considered or your circumstances change, please contact us for clarification regarding ongoing blue card requirements.

If you need more information please call me on [REDACTED] or visit www.qld.gov.au/bluecard. Keep up to date by registering for our [e-news](#).

Yours sincerely

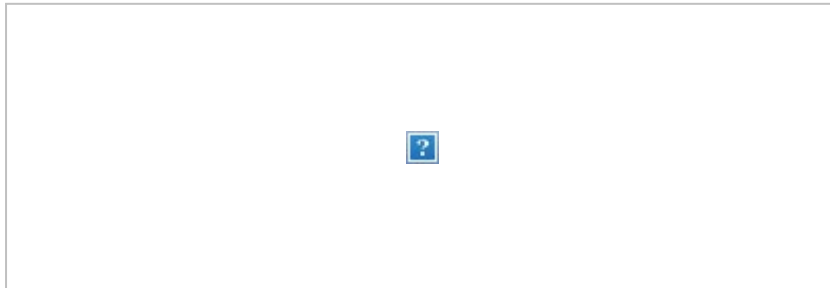


Blue Card Services, Justice Services

Department of Justice and Attorney-General
Level 20, 53 Albert Street, Brisbane Qld 4000

Phone: 1800 113 611 / (07) 3211 6999

Website: www.qld.gov.au/bluecard



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