

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

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Queensland Aboriginal and Torres Strait Islander
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**Submission to Working with Children (Risk Management and
Screening) and Other Legislation Amendment Bill 2024**
qatsicpp.com.au

Acknowledgement of Country

QATSICPP would like to acknowledge the traditional custodians across all the lands that make up the state of Queensland. We would like to acknowledge the oldest living culture of Aboriginal and Torres Strait Islander peoples and the continued connections to Country, language, and tradition. We would like to acknowledge Elders past and present and acknowledge future generations of Aboriginal and Torres Strait Islander children and young people and the bright future they will have.

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Introduction

The Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) is the peak body representing thirty-eight (38) Aboriginal and Torres Strait Islander community controlled child and family organisations working in child, youth and family support across Queensland. From practical resources to policy advice, our team work to ensure improved outcomes for Aboriginal and Torres Strait Islander children, young people, families and communities.

QATSICPP’s vision is for all Aboriginal and Torres Strait Islander children and young people to grow up physically, emotionally and spiritually strong and that they can live in safe, caring and nurturing environments within their own families and communities. This includes ensuring Aboriginal and Torres Strait Islander children are afforded the same life opportunities available to other children and young people to achieve their full potential. Achieving this vision requires robust government and community systems for protecting children from harm and ensures Aboriginal and Torres Strait Islander people hold the responsibility and the authority for supporting our children and families.

QATSICPP welcomes the opportunity to provide input on the *Working with Children (Risk Management and Screening) and Other Legislation Amendment Bill 2024* (the Bill). This legislation has significant impacts on the operations of QATSICPP member organisations around the state, including the ability for Aboriginal and Torres Strait Islander communities and families to make decisions about the care of their children. Our submission is informed by ongoing discussions with our member organisations as well as a research project we conducted in 2023 where QATSICPP spoke with over one hundred and thirty people who work in Community Controlled Organisations (CCOs) about the Blue Card system. Participants in our research identified a range of structural biases, processes and barriers that many participants believed prevented Aboriginal and Torres Strait Islander people from applying for or being approved to provide care for children in their family.

QATSICPP acknowledges the Bill’s intention to address these issues through a range of measures aimed at reforming the Blue Card system to improve outcomes for Aboriginal and

Torres Strait Islander children. We are broadly supportive of the amendments contained in the Bill, however a number of areas require further amendment to ensure the legislation is not obstructive to progress for Aboriginal and Torres Strait Islander communities, including the ability of family to care for family.

QATSICPP Feedback on aspects of the Bill

Enshrinement of First Nations Decision Making Processes

QATSICPP welcomes the Bill's amendments to the current principles of the Working with Children Act (the 'WWC Act') focused on ensuring that, for Aboriginal children and Torres Strait Islander children, the WWC Act is administered in a way that promotes the child's wellbeing, including recognising the importance of connection with the child's family, community, culture, traditions and language. However, this is a hollow commitment without the Bill introducing an enshrined decision-making role for First Nations people in the administration of the WWC Act. Without such a First Nations led decision making mechanism, the Bill positions non-Indigenous people as decision makers about how to administer the Act in a way that ensures cultural connection, which we would not consider to be culturally safe.

Whilst the Bill currently introduces a role for experts and advisory committees to advise on risk assessments undertaken as part of the Blue Card system, it does not explicitly establish a role for Aboriginal and Torres Strait Islander people in the administration of the WWC Act, which means that the involvement in First Nations people in decisions about First Nations applicants is left at the discretion of government officials.

This is concerning, because, both QATSICPP and the Queensland Family and Child Commission's (QFCC) research has found that current Blue Card Services processes and systems are not culturally appropriate, despite concerted efforts the Department of Justice and Attorney General (DJAG) to improve practice in this regard.

This submission builds on previous advice provided to DJAG regarding reform to the Blue Card system and highlights multiple ways in which to enable First Nations led decision making, such as:

- Through stipulating that Aboriginal and Torres Strait Islander people should be primary decisions makers regarding assessments for Aboriginal and Torres Strait Islander Blue Card applicants. The current proposal for an advisory committee would not enable a sufficient level of cultural authority for First Nations people in the Blue Card assessment process.
- Through establishing that Aboriginal and Torres Strait Islander people should have a lead role in decision making about the release of de-identified data for research purposes from the Blue Card system pertaining to Aboriginal and Torres Strait Islander people.
- Through establishing a decision making role for Aboriginal and Torres Strait Islander people on case by case decisions regarding the requirement for a blue card in certain contexts, e.g. in overnight camps or where family members (other than kinship carers) are residing in a house with children.

Legislative provisions enshrining First Nations led decision making processes are quite common across current legislation in Queensland.

The Child Protection Act, for example, enables a range of Aboriginal and Torres Strait Islander led decision making process, such as Delegated Authority and independent entity reforms. This legislation was introduced in response to and to mitigate the impacts of past and present discriminatory policies and practices contribute to Aboriginal and Torres Strait Islander families and children disproportionately experience statutory child protection interventions in Australia.ⁱ

This Bill provides an opportunity to enshrine a role for First Nations people in the administration of the Blue Card system, which would help support a regulatory framework which protects children whilst ensuring the cultural rights of children and families are upheld, and that systemic barriers (such as structural racism) are accounted for and overcome.

Removing Blue Card Requirement for Kinship Carers and Adult Household Family Members

All children deserve to grow up healthy and safe with their extended family if they are not able to be cared for by their parents for whatever reason. QATSI CPP congratulates the Queensland Government for putting families first and introducing positive reforms via this Bill which will remove unnecessary barriers to families caring for their children. As noted by the QFCC, the Blue Card system is not designed for kinship care. Removing the Blue Card requirement for kinship carers will not put the safety of children at risk given a range of other robust safeguards to ensure children are safe from abuse and neglect are in place.ⁱⁱ

In its current form the Bill fails to recognise or support Aboriginal and Torres Strait Islander children being raised through extended family systems. It is critical that the Bill be amended to extend the exemption for other adult family members living in the same household, noting the same robust safeguards would apply to those individuals too.

Aboriginal and Torres Strait Islander kin who reside in the same home often have a significant cultural responsibility to our children, including role modelling significant cultural behaviour in community and supporting children to have strong cultural identity through helping them to learn their cultural practices including where the child fits in their kinship structure, their role and responsibilities in their kinship structure, as well as women's and men's business (aligned to our lore). By living under the same roof Aboriginal and Torres Strait Islander people grow their children and youth into their kinship responsibilities within their broader kinship, family and community structure.

By continuing to require family members living in a child's household to hold a Blue Card, the Bill continues the practice of applying a system, originally designed for employment regulation, to a familial setting. This is concerning because both QATSI CPP and the QFCC's research has found significant misalignment between the assessment process designed primarily for employment-related suitability and the unique requirements and responsibilities of family. This research identified that the treatment of families as equal to employees is not compatible with Aboriginal and Torres Strait Islander cultural roles and responsibilities, and that **assessing family with the same level of scrutiny as an employee devalues the role of family and kinship connections within Aboriginal and Torres Strait Islander culture.**

The Explanatory Note for the Bill acknowledges consistent feedback that the current approach under the WWC Act is *"too risk averse and is disproportionately impacting First Nations stakeholders"*. It is important to note that both the QFCC and QATSI CPP's research on this issue not only explored the experiences of kinship carers but also adult household members living with the child. The QFCC found the current system *"presents significant limitations to adhering to legislative requirements under the Child Protection Act 1999, particularly regarding self-determination, recognition of cultural child rearing practices and prioritising the placement*

of Aboriginal and Torres Strait Islander children with family and community members, as required by the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP).’’ⁱⁱⁱ

Similarly, QATSICPP’s research found that, given the role of extended family in caring for children, the current system can place barriers to Aboriginal and Torres Strait Islander people wanting to care for kin, as reluctance to apply or the potential issuing of a negative notice on an adult family household member who is not the carer can break up extended family caring arrangements.

A key message from participants in QATSICPP’s research was the requirement for families (with direct lineage and legitimate cultural authority) to hold a Blue Card to care for their family member should be replaced with an entirely new decision-making process that is co-designed with stakeholders and with implementation led by the Aboriginal and Torres Strait Islander community.

QATSICPP therefore proposes an amendment to the Bill to extend the kinship carer exemption to all family members living with the child. If the definition is not expanded the Blue Card system will continue to have negative impacts on our children and families by inadvertently continuing to regulate kinship care arrangements through limiting who can collectively raise children, which will result in both cultural loss and the diminishment of Aboriginal and Torres Strait Islander children’s cultural identity.

To continue to uphold high standards of child safety, QATSICPP proposes to replace the Blue Card requirement for adult household family members with an expanded version of the new tailored screening system for kinship carers flagged in the Bill’s explanatory note. This screening process should be conducted separately from the Blue Card system in a joint decision-making process between local Aboriginal and Torres Strait Islander people and DCSSDS. During QATSICPP’s research on the Blue Card system, many community controlled organisations (CCOs) were enthusiastic to explore the possibility of a community led assessment process that reflected their cultural values.

The exploration of a placed based shared decision-making model would support the Queensland Government in meeting its commitments under *Closing the Gap*, including priority reform one that commits to increasing formal partnerships and shared decision-making with Aboriginal and Torres Strait Islander people.

It is critical Queensland’s working with children legislation is fit for purpose and does not result in unintended consequences which disrupt cultural child rearing practises.

New decision-making framework and ‘reasonable person’ test

QATSICPP supports the Bill’s intent to simplify and recalibrate the Blue Card system to ensure it is focused on real and appreciable risk to children. QATSICPP’s research on the operation of the Blue Card system found suitability for obtaining a Blue Card is often 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 on the risk of harm to a child.

A recalibration of the Blue Card system is also aligned with recent Queensland government proposals to amend the Anti-Discrimination Act to introduce the new protected attribute ‘irrelevant criminal record’. The use of irrelevant criminal history information has significant long-term impacts on Aboriginal and Torres Strait Islander communities.^{iv}

QATSICPP also welcomes the addition of Clause 234 (g) in the Bill for blue card decision making to take into account systemic disadvantage, intergenerational trauma, the historical context and limitations on access to justice as step in the right direction. However, it is not only the decision-making framework but the decision-making process itself and its actors that need reform if the Blue Card system is to be fit for purpose for Aboriginal and Torres Strait Islander people. This is supported by QATSICPP's consultation with our members, which identified that the Blue Card Services assessment and determination processes still reflected for many participants a western approach to decision making. A First Nations led decision making Blue Card assessment process is also consistent with Queensland's domestic and international commitments to Aboriginal and Torres Strait Islander peoples including the United Nations Declaration on Rights of Indigenous People and The Queensland Human Rights Act.

In terms of the complimentary test to consider whether a reasonable person would allow their child to have direct contact with the applicant while engaged in child-related work; QATSICPP proposes that to ensure a culturally appropriate approach to this test, the Bill should stipulate that Aboriginal and Torres Strait Islander people are the decision makers of this test for Aboriginal and Torres Strait Islander applicants. Such an amendment would enshrine an important role for First Nations people in the Blue Card system and would enable greater self-determination in decisions that have significant impacts on First Nations communities around Queensland.

Overnight camps and excursions

Aboriginal and Torres Strait Islander organisations deliver a range of beneficial programs for youth that often involve camps on country and the involvement of community Elders. Elders play a critical role in communities as leaders who provide children and young people with a connection to country, traditional practices and Aboriginal and Torres Strait Islander spirituality.

As outlined earlier in this submission, there are a number of instances where Elders have been denied Blue Cards due to historical offences they committed as young people themselves. For many there is a fear of applying for a BlueCard due to the negative interactions that they have had with government intervention in their lives in the past. This amendment to the Bill has the potential to impact negatively on access to on country camps for Elders, hence denying them their right to take on a critical role in Aboriginal and Torres Strait Islander culture.

In addition, QATSICPP is aware of some CCOs who deliver family reconnection camps as part of their family support work. These events are facilitated and supervised by qualified staff at CCOs and may feature family members (including children) who don't live together, coming together on country to reconnect and undertake various healing activities. In these instances, having an enshrining First Nations decision making mechanism embedded into the Blue Card system (e.g. a First Nations advisors or decision-making committee) would assist Blue Card Services to take a more common sense and nuanced approach which upholds rigorous processes for children's safety, whilst not creating unnecessary barriers to healing, family reconnection and overcoming disadvantage.

QATSICPP does not support clause 128 of the Bill and urges the government reconsider this approach to ensure Queensland legislation is in accordance with Aboriginal and Torres Strait Islander children's rights to access their culture and Queensland's human rights obligations.

Sharing data for approved research

QATSICPP supports reforms to make the Blue Card system more transparent and data about its operations. To ensure the Bill is sufficiently aligned with the Queensland Government's commitments under the *Close the Gap* agreement, QATSICPP proposes the principle of Indigenous Data Sovereignty be added to the amendments being made in section 398B of the WWC Act, currently in clause 117 of the Bill, as well as to the principles of the Act. Indigenous Data Sovereignty is the right of Indigenous peoples to govern the collection, ownership and application of data about Indigenous communities, peoples, lands, and resources. In practice, this could involve Blue Card Services building shared data governance mechanisms with First Nations organisations and leaders. Control over data is one of the four Priority Reforms of the National Agreement on *Closing the Gap* and is of critical importance in supporting efforts to achieve the other Priority Reforms: building the Indigenous controlled sector, creating partnerships and shared decision-making, and transforming governments.^v

New Self-disclosure requirements

QATSICPP welcomes reforms through this Bill that ensure that any financial penalties for applicants failing to disclose their complete criminal history are discretionary and won't be applied to those who omit to disclose information in good faith.

Participants in QATSICPP's research with over 130 staff at community controlled organisations highlighted a number of scenarios where applicants were not aware of the existence of charges or convictions against their name that have arisen during working with children checks. Multiple scenarios were presented of families, in particular grandparents, denied a Blue Card due to historical issues stemming from the 1960s and 1970s.

Conclusion

Reform to Queensland's working with children legislation is a much needed but complex process of ensuring thorough processes to protect children that don't have the unintended consequence of creating disconnection and disadvantage.

In this submission QATSICPP has highlighted our support for the new decision-making framework outlined in the Bill, as well as opportunities to further strengthen the Bill with an extension to the Kinship Care exemption amendment and the embedded decision-making mechanisms our communities have been calling for.

QATSICPP looks forward to working with the Queensland government to further develop this legislation as part of our ongoing work together to ensure all Aboriginal and Torres Strait Islander children can grow up safe and connected to family, culture and community.

End Notes

ⁱ <https://www.dcssds.qld.gov.au/our-work/child-safety/aboriginal-torres-strait-islander-families/our-way-strategy>

ⁱⁱ <https://www.qfcc.qld.gov.au/sector/monitoring-and-reviewing-systems/Blue-card-negative-notice-for-Kinship-carers-analysis>

ⁱⁱⁱ https://www.qfcc.qld.gov.au/sites/default/files/2023-12/A%20thematic%20analysis%20of%20provisionally%20approved%20kinship%20carers%20who%20receive%20a%20subsequent%20Blue%20Card%20negative%20notice_updated.pdf

^{iv} https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0012/40224/QHRC-Building-Belonging.WCAG.pdf

^v <https://anzsog.edu.au/news/giving-first-nations-control-over-data/>