



Submission to the

Legal Affairs and Community Safety Committee

*Working with Children Legislation (Indigenous
Communities) Amendment Bill 2017*

18 August 2017

CONTENTS

Part 1: Introduction	2
Part 2: About PeakCare and this submission	2
Part 3: Feedback in response to the <i>Working with Children Legislation (Indigenous Communities) Amendment Bill 2017</i>	3
1. Timing in respect of current Queensland and national reviews of working with children check regimes	4
2. Amendments to the <i>Child Protection Act 1999</i> that are currently before the Queensland Parliament	5
3. Absurdity for individuals who hold a 'restricted positive notice'	5
4. The barriers and challenges with Queensland's blue card system impact on all Aboriginal and Torres Strait Islander children and adults seeking to volunteer or work in child-related employment	6
Part 4: Conclusion	7



Part One: INTRODUCTION

On 14 June 2017, Mr Robert Katter MP, Member for Mt Isa, introduced the *Working with Children Legislation (Indigenous Communities) Amendment Bill 2017* into the Queensland Parliament. The Bill's explanatory notes indicate that the objective is to introduce a framework for specific Aboriginal and Torres Strait Islander communities to make recommendations to the government decision-maker about the determination of working with children check applications from community members. The supporting information asserts that limitations and problems with the current blue card regime impact adversely on individuals and the discrete communities in which they live and that proposed changes to application, assessment and decision-making processes would redress these longstanding concerns.

The core components of the proposed amendments relate to the applicable local Community Justice Group:

- considering an applicant's criminal and other history in the context of the specific circumstances and the individual involved, and
- preparing a recommendation as to the issuing of a 'restricted positive notice' that would apply to that specific community.

The Bill is clear there would be no special consideration of serious or disqualifying offences.

The Bill was referred to the Legal Affairs and Community Safety Committee for detailed consideration.

PeakCare Qld Inc. (PeakCare) welcomes the opportunity to make a submission in response to the Committee's invitation for submissions on the Bill.

Part Two: ABOUT PEAKCARE AND THIS SUBMISSION

PeakCare is a peak body for child and family services in Queensland. Across Queensland, PeakCare has 60 members. These organisations are a mix of small, medium and large, local and statewide, mainstream and Aboriginal and Torres Strait Islander non-government organisations that provide prevention and early intervention, and generic, targeted and intensive family support to children, young people, adults and families. Members also provide child protection and out-of-home care services (e.g. foster and kinship care, residential care) to children and young people who are at risk of entry to or who are in the statutory child protection system, and their families. PeakCare's membership also includes a network of 22 individual members and other entities supportive of PeakCare's policy platform around the safety, wellbeing and connection of children and young people, and the support of their families.



PeakCare has made numerous submissions about working with children check regimes to government and state and national inquiries. Concerns raised in those submissions relate to:

- that checking and positive notices create a sense of complacency that holders are safe to work with children and young people
- that working with children checks are not consistently perceived as but one prong in a multi-pronged strategy to create and maintain child-safe environments
- the inconsistency in regimes across Australian jurisdictions
- the dis-proportionate representation of Aboriginal and Torres Strait Islander young people and adults in youth and adult justice systems
- the lack of transparency and accountability in the interpretation and assessment of relevant criminal and other history in the determination of applications
- the check being a singular response across diverse child-related workplaces and worker roles and responsibilities, which means that contextual or other factors relating to the applicant, the position, and community are not contextualised

The *Working with Children Legislation (Indigenous Communities) Amendment Bill 2017* seeks to readdress aspects of these concerns in respect of Aboriginal and Torres Strait Islander peoples in specific remote or discrete Aboriginal and Torres Strait Islander communities in Queensland.

The submission now turns to commenting on the Bill with a specific focus on the interface with the *Child Protection Act 1999* and working or volunteering with children and young people at risk of or subject to statutory child protection intervention.

Part Three:

FEEDBACK IN RESPONSE TO THE CHILD PROTECTION LEGISLATION (INDIGENOUS COMMUNITIES) AMENDMENT BILL 2017

PeakCare concurs with much of the sentiment expressed by Mr Katter in the Explanatory Notes. In particular, and consistent with many submissions that PeakCare has made about working with children check regimes, we support the commentary around:

- a “one size fits all” approach not working effectively, particularly for Aboriginal and Torres Strait Islander in remote or discrete communities
- that individuals can and do change their behaviour
- circumstances are different in remote communities in terms of how community functions, community members’ responsibilities, and employment prospects

- the current regime does not allow community to have input into decision making processes about an applicant's suitability to work with children¹

PeakCare is supportive of a core concept underpinning the Amendment Bill: that of participation of local community members in decision making about their children, family and community. In this instance, community participation is expressed as assessing the currency and relevance of past criminal or other history to a community member's current and future employment and livelihood, where the history might otherwise have resulted in the issuing of a negative notice.

There are four factors that PeakCare urges the Legal Affairs and Community Safety Committee to be mindful of when considering the Bill:

1. its timing in respect of current reviews of working with children check regimes in Queensland and across Australia
2. its timing in respect of proposed amendments to the *Child Protection Act 1999* (the Act) introduced into Parliament on 9 August 2017
3. the incongruence and 'silliness' of the notion of individuals being deemed suitable to work or volunteer with children in their own community, but not with children outside that geographic area
4. that the challenges, barriers and layers of ways in which the blue card system works against Aboriginal and Torres Strait Islander peoples exists across Queensland

The above concerns are discussed further below.

1. Timing in respect of current Queensland and national reviews of working with children check regimes

A very early area of work for the Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) was employment screening and working with children checks. The Royal Commission released a report in 2015 containing 36 recommendations to the Commonwealth, state and territory governments about moving to a nationally consistent approach to working with children checks. The recommendations include fundamentals such as an agreed definition of 'child-related work', 'who' should be screened and who should be exempt, offences and criminal history considered as relevant to working with children and exclusionary offences, and that applicants should be able to commence work provided certain safeguards are in place.

In Queensland, some of these recommendations have been considered in a review of Queensland's blue card system undertaken by the Queensland Family and Child Commission (QFCC) at the request of the Queensland Premier as part of a review of the foster care system. A number of the processes, topics and questions raised in the options paper supporting the consultation process about the blue card system focused on the impact of checks and checking on Aboriginal and Torres Strait Islander

¹ Please note that the terms 'child' and 'children' have been used as inclusive of children and young people aged 0 to 17 years



children, families, households and communities. Awareness raising about requirements, support to make applications, and guidelines for interpreting relevant history were just some of the options that were canvassed in regard to the checks and Aboriginal and Torres Strait Islander workers and foster and kinship carers.

The QFCC was to provide the report to government by the end of July 2017. Until the report and the Government's response to the report are made public, as well as the Queensland Government's responses to other Royal Commission's recommendations are announced, it would be ill-timed to change aspects of the blue card system.

2. Amendments to the *Child Protection Act 1999* are currently before Queensland Parliament

The *Child Protection Reform Amendment Bill 2017* was introduced by the Minister for Communities, Women and Youth, Minister for Child Safety and Minister for the Prevention of Domestic and Family Violence into the Queensland Parliament on 9 August 2017. The Explanatory Notes assert, inter alia, that the safe care and connection of Aboriginal and Torres Strait Islander children will be achieved by a range of means and most importantly by the addition of new principles that recognise the right of Aboriginal and Torres Strait Islander people to self-determination, and applying the five elements – prevention, participation, partnership, placement and connection - of the Child Placement Principle in the administration of the Act in respect of Aboriginal and Torres Strait Islander children.

The relevance of the proposed amendments lies in the fact that they seek to make explicit the rights, entitlements and responsibilities of Aboriginal and Torres Strait Islander children, parents, extended family, and communities to self-determination, notably to support every Indigenous child's right to be raised in their own family and community.

Although the *Working with Children Legislation (Indigenous Communities) Amendment Bill 2017* acknowledges self-determination through local Community Justice Groups considering blue card applications, the reforms embraced in the *Child Protection Reform Amendment Bill 2017* have the potential to generate deeper impacts for Aboriginal and Torres Strait Islander children and young people, their families and communities, across Queensland.

3. Absurdity for individuals who hold a 'restricted positive notice'

Certainly, the barriers and limitations of the blue card system that the *Working with Children Legislation (Indigenous Communities) Amendment Bill 2017* seeks to mitigate are real. The proposed changes could however create confusion, both for the individuals and for decision-makers, when holders move in or out of the community for which they have been granted a 'restricted positive notice'.

In terms of child protection related employment, under the Act, foster and kinship carers, residential care workers and others associated with a licensed care service must hold a positive notice as well as meet other requirements around suitability. In addition, noting regulated time thresholds, 'adult

household members' in foster and kinship carer homes must hold a positive notice. For a range of reasons, and often to do with seeking medical treatment that cannot be provided in community, 'sorry business' responsibilities, or because of contact with the statutory child protection system, people travel between community and towns and cities, for example, to and from Cape and Gulf communities and Cairns and Townsville, Cherbourg and Brisbane, or Woorabinda and Rockhampton. It follows that there are many scenarios where the person may need to seek employment or to stay for an extended period with family who are approved carers for a child in care and would therefore require an (unconditional) positive notice.

While addressing some of the problems associated with the blue card system, it is likely that a 'restricted positive notice', in the absence of broader changes to the blue card system, could create more confusion than it seeks to address.

4. The barriers and challenges with Queensland's blue card system impact on all Aboriginal and Torres Strait Islander children and adults seeking to volunteer or work in child-related employment

In Queensland, minors and adults are required to hold a blue card if they want to volunteer or work in child-related employment. Aboriginal and Torres Strait Islander children, young people and adults are significantly over-represented in Queensland's youth and adult criminal justice systems largely because they experience law and order, policing, and the justice system very differently to other populations, irrespective of socio-economic status. Negative perceptions of the bureaucracy surrounding the blue card system are compounded when in combination with the child protection system - 'the welfare' – and impact adversely on considering to apply, actually applying, going through with an application (i.e. not withdrawing an application), and seeking review of a negative notice. These are very real considerations for all Aboriginal and Torres Strait Islander peoples across Queensland, not just those who usually live in remote or discrete communities. In the context of the child protection system, this means, for example, that extended family are dissuaded from or unwilling to put up their hand to care for younger family members. Children and young people are therefore more likely to be placed with strangers in foster care or in residential care, which are lower order priorities in the 'placement' element of the Child Placement Principle.

A comprehensive solution is needed to address the many challenges inherent in Queensland's current blue card system, and working with children check regimes more generally, if Aboriginal and Torres Strait Islander children and young people across Queensland are to be raised by family in connection with family, community and culture.

Part Four: CONCLUSION

As indicated throughout this submission, PeakCare understands the drivers for the *Working with Children Legislation (Indigenous Communities) Amendment Bill 2017*. However the fundamental issue of structural racism, the reason why Clarry and many other Aboriginal and Torres Strait Islander people across Mr Katter's electorate have criminal and other histories that mitigate obtaining a blue card, cannot be 'solved' by the proposed amendments because the 'problem' is bigger than employment in remote and discrete communities.

Although the Queensland Family and Child Commission's review of the blue card system will not address structural racism, the changes proposed in the *Working with Children Legislation (Indigenous Communities) Amendment Bill 2017* are unfortunately poorly timed in terms of the blue card system review and the proposed amendments to the *Child Protection Act 1999*.

PeakCare appreciates the opportunity to make this submission.

