



19 November 2021

Legal Affairs and Safety Committee  
Parliament House  
George Street  
Brisbane QLD 4000  
By email: [lasc@parliament.qld.gov.au](mailto:lasc@parliament.qld.gov.au)

Dear LASC Committee,

**Re: Working with Children (Indigenous Communities) Amendment Bill 2021 ('the Bill')**

Thank you for the opportunity to provide feedback on this Private Member's Bill introduced by the Member for Traeger, Mr Robbie Katter MP, on behalf of the Katter Australia Party.

**About QCROSS**

The Queensland Council of Social Service (QCROSS) is the peak body for the social service sector in Queensland. Our vision is to achieve equality, opportunity and wellbeing for every person, in every community.

**QCROSS' position**

QCROSS supports the Bill's objective to improve the Blue Card framework to better serve the interests of Indigenous communities in relation to employment and child protection.

While the Bill's focus is on employment outcomes, many of the issues raised by our sector relate to the way in which the Blue Card system impedes kinship care arrangements under the *Child Protection Act 1999 (Qld)*.

We note that the Bill's proponent Mr Robbie Katter MP is open to further amendments to make the Bill more workable.<sup>1</sup>

**Blue Card system – just one tool**

It is important to note that Blue Cards are just one regulatory instrument designed to ensure the safety and wellbeing of children.

A comprehensive suite of regulatory and accreditation systems, human service quality frameworks and legal obligations (including mandatory reporting and the recently introduced amendments to the Criminal Code<sup>2</sup> operate to keep children safe from abuse.

<sup>1</sup> Robbie Katter MP briefing letter to Mr Peter Russo MP, Legal Affairs and Safety Committee Chair, 5 October 2021.

<sup>2</sup> s229B *Criminal Code Act 1899* failure to report belief of child sexual offence committed in relation to child.

Figure 3, taken from the Queensland Government's April 2021 consultation paper *Growing Child Safe Organisations in Queensland*, helpfully illustrates the current regulatory landscape in Queensland:

Figure 3: Summary of existing child safe regulatory landscape in Queensland



This landscape also includes the Queensland Aboriginal and Torres Strait Islander Child Protection Peak Ltd (QATSICPP) Practice Standards that help keep children safe through an effective cultural frame. In 2019, a set of National Principles for Child Safe Organisations were also endorsed, reflecting the Royal Commission's recommendations to provide a nationally consistent approach to creating organisational cultures that foster child safety and wellbeing.

Against this backdrop, QCOSS wishes to emphasise that future reforms to the operation of the Blue Card system for Aboriginal and Torres Strait Islander communities would not undermine an already robust legal and regulatory framework.

### Human rights analysis

The Bill engages and promotes the **right to self-determination** through its proposed framework of handing decision-making powers to local community justice groups. The right to self-determination does not have full legislated protection within the *Human Rights Act 2019 (Qld)* but it is recognised in the preamble to the Act. It is closely associated with the protection of **cultural rights of Aboriginal and Torres Strait Islander peoples** in section 28.

The Royal Commission found that being strong in culture is protective for Aboriginal and Torres Strait Islander children's wellbeing as it supports identity, high self-esteem, and strong attachments.<sup>3</sup> Cultural rights are routinely engaged through kinship care arrangements. For kinship care to be approved, not only the primary carer but everyone in the adult household where the child resides must hold a Blue Card.<sup>4</sup> If this cannot be achieved, the usual alternative is for the child to be placed in residential care, away from kin and culture.

<sup>3</sup> A brief guide to the Final Report: Aboriginal and Torres Strait Islander Communities <[https://www.childabuseroyalcommission.gov.au/sites/default/files/a\\_brief\\_guide\\_to\\_the\\_final\\_report\\_-\\_aboriginal\\_and\\_torres\\_strait\\_islander\\_communities.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/a_brief_guide_to_the_final_report_-_aboriginal_and_torres_strait_islander_communities.pdf)> accessed 18 November 2021.

<sup>4</sup> Sections 357B-D *Working with Children (Risk Management and Screening) Act 2000*.

This Blue Card requirement imposes a tremendous barrier for many households to provide kinship care, particularly given housing overcrowding and the pattern of overcriminalisation of Indigenous peoples. It is further compounded by the problem of discretionary decision-making under section 221(2) *Working with Children (Risk Management and Screening) Act 2000 (WWCA)* to issue negative blue card notices, which our members say are often issued against Aboriginal and Torres Strait Islander applicants for discriminatory and racist reasons.

This Bill presents less restrictive and reasonably available ways to achieve the purpose of the *WWCA* for Aboriginal and Torres Strait Islander Blue Card applicants.

We note that the Blue Card system and subsequent reviews of it were all introduced and undertaken prior to the enactment of the *Human Rights Act 2019 (Qld)*. Beyond the examination of this Bill, a dedicated review of the Blue Card system using a human rights framework ought to be undertaken. Such a review might consider how a Blue Card system can be appropriately tailored to separately respond to employment and kinship care activities.

### **What our sector says**

In preparing this submission QCOSS has canvassed the views of our membership and sector stakeholders including specialist peak bodies whose focus relates to the wellbeing and protection of children. We summarise some of the feedback raised:

- The Bill only deals with a select number of serious criminal offences. It does not address the long-standing (and growing) problem of discretionary decisions under section 221(2) *WWCA*. These decisions permit negative notices to be issued in 'exceptional cases' which in practice has a net-widening effect and produces unjust outcomes for Aboriginal and Torres Strait Islander applicants.
- Members expressed concern that the recently launched *Strategy and Action plan for Aboriginal and Torres Strait Islander Peoples and Organisations Accessing the Blue Card System* will not go far enough towards removing the structural barriers that this Bill seeks to overcome.
- Regional differences: This Bill contemplates a solution for remote, discrete communities however some of our members queried whether this would necessarily be the 'best fit' solution for urban community justice groups. Aboriginal and Torres Strait Islander blue card applicants who reside in urban areas will still likely be burdened by the Blue Card system's overreach as they will not benefit from the local, interpersonal connections and relationships that are a feature of rurality.
- Regarding Blue Card decisions for kinship care, one suggestion put forward was the possibility of Kinship Care panels being used to assess positive notices in lieu of community justice groups.

### **Alignment with other government priorities**

QCOSS notes that the Bill will likely support the achievement of employment targets set out in Queensland's Closing the Gap Implementation Plan. Outcomes 7 and 8 of the Plan seek to realise employment and economic participation of Aboriginal and Torres Strait Islander

peoples and communities. We believe that a more flexible, responsive and culturally informed Blue Card system will facilitate attainment of targets 7 and 8.<sup>5</sup>

### **Other models – the NT Ochre card**

QCOSS has sought information from NTCOSS, our counterpart in the Northern Territory, regarding the operation of the NT Ochre Card. We would welcome the opportunity to inform the Committee of our findings through the legislative review process, once we have had the opportunity to consider this scheme and any points of distinction to the Blue Card system.

### **Conclusion**

QCOSS supports the Bill for the human rights-promoting effect it will have on local communities. We recognise the Member for Traeger's leadership and dedication to the issue of self-determination of our state's First Nations peoples.

Ultimately, we consider that the issues this Bill seeks to address are part of a larger call for reform to the Blue Card system. We recommend broader and deeper consultation and a comprehensive human rights analysis about these issues.

Thank you again for the opportunity to provide our submission on this Bill.



Aimee McVeigh

Chief Executive Officer

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<sup>5</sup> Queensland's 2021 Closing the Gap Implementation Plan:  
<<https://www.dsdsatsip.qld.gov.au/resources/dsdsatsip/work/atsip/reform-tracks-treaty/closing-gap/closing-gap-implementation-plan.pdf>> (accessed 18 November 2021)