



Submission No 005  
creating a better life  
for children and young  
people in care

# Submission to the Legal Affairs and Safety Committee:

## Working with Children (Indigenous Communities) Amendment Bill

November 2021

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## Introduction


CREATE appreciates the opportunity to comment on the Working with Children (Indigenous Communities) Amendment Bill (the Amendment Bill).

CREATE acknowledges that the Queensland Government's Blue Card System is one part of a framework that aims to keep children and young people safe. Included in this framework is the child protection and criminal justice system, among other systems and legislation. As a community, it is vital that we continue to examine these systems and frameworks to ensure that we have strong protections for children and young people, while also ensuring that we address limitations or biases within these processes if they result in disproportionately negative outcomes for individuals or groups in the community.

Assessing complex histories for people who are seeking to engage in child-related employment is complicated and creates challenges for the blue card system. Of particular concern to CREATE is the impact these systems have on (a) Aboriginal and Torres Strait Islander people and families and (b) young people with an out-of-home care experience, particularly Aboriginal and Torres Strait Islander children, and young people and those with a residential care placement experience. The Amendment Bill attempts to address the imbalance that exists for remote Indigenous communities in Queensland in relation to access to blue cards, and by extension, engagement in employment and community.

While CREATE does not support the Amendment Bill as it currently stands, with the inclusion of a *restricted* working with children clearance, we do support amending legislation to increase self-determination for Aboriginal and Torres Strait Islander communities. We also support any review of blue card legislation that aims to ensure that it is protecting children and young people while also balancing equity concerns associated with any disproportionate effects of systems on Aboriginal and Torres Strait Islander people, those with juvenile charges and/or convictions (which disproportionately affect young people with an out-of-home care experience), civil liberties, and rehabilitation.

CREATE commends the most recent action plan (Safe Children and Strong Communities: A Strategy and Action Plan for Aboriginal and Torres Strait Islander Peoples and Organisations Accessing the Blue Card System; Queensland Government 2021), which was co-designed with Aboriginal and Torres Strait Islander peak bodies and aims to improve how Blue Card Services engage with Aboriginal and Torres Strait Islander people. While improvements are noted, more needs to be done. Compared to non-Indigenous people, Aboriginal and Torres Strait Islander people continue to be disproportionately unlikely to be successful in their application for a blue card (Queensland Government, 2021). Legislative changes could support better practice and access for Aboriginal and Torres Strait Islander people, and this needs to be combined with adequate resourcing and funding.



## **CREATE supports changes to legislation that empowers self-determination for Aboriginal and Torres Strait Islander people and families.**

Aboriginal and Torres Strait Islander communities need to be given a more active role in the design and delivery of services and frameworks that are designed to keep Indigenous children and young people safe. This is fundamental to self-determination for Aboriginal and Torres Strait Islander communities. In relation to the Amendment Bill, CREATE supports changes to legislation that increase Aboriginal and Torres Strait Islander people and organisations participation in, and control over, decisions that affect their children. All Australian governments have recognised the five domains of the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP; SNAICC, 2017, see [https://www.snaicc.org.au/wp-content/uploads/2017/07/Understanding\\_applying\\_ATSICCP.pdf](https://www.snaicc.org.au/wp-content/uploads/2017/07/Understanding_applying_ATSICCP.pdf)).


Best practice requires legislative change that includes representative participation of independent Aboriginal Controlled Community Organisations in all significant decisions about Indigenous children. CREATE argues that this is relevant when making decisions about who can and who cannot work with children and young people (i.e., the assessment, review, and monitoring of blue card applications).

## **CREATE supports changes to legislation that facilitates kin to safely care for children and young people.**

Impediments to obtaining a blue card to become a kinship carer in remote communities include disengagement from the process due to language barriers, a lack of trust in Government systems, cost, belief that they would be ineligible due to past unrelated criminal history, and complicated and/or lengthy submission processes. Bromfield et al. (2007) found that one of the most significant factors that discouraged Aboriginal and Torres Strait Islanders' willingness to become a foster or kinship carer was the need to undergo a police check. Consistent with ATSIPP, placing Indigenous children and young people who are in out-of-home care with kin is the first and best option for children and young people when it is safe to do so. Ensuring connection to kin and community is vital to meeting the needs of Aboriginal and Torres Strait Islander children and young people in out-of-home care. Consideration of blue card applications for kinship carers, particularly in remote communities, needs to be culturally informed, timely, and include decision-makers from Aboriginal and Torres Strait Islander community leaders and organisations when they involve Indigenous people, families, and children.

## **CREATE supports mechanisms that improve submission processes**

CREATE supports legislative change to include mechanisms to improve submission processes for those with complex histories, including for Aboriginal and/or Torres Strait Islander people in remote communities, as well as for Indigenous young people with an out-of-home care experience. Young people with an out-of-home care experience, particularly those who are Aboriginal and/or Torres Strait Islander and those with a residential care experience, face challenges accessing a blue card due to an over-representation in the youth justice systems, care-criminalisation, and a greater level of scrutiny




compared to children and young people in the general population (see Appendix A for details about the relationship between out-of-home care and the youth justice system and examples from young people). This can affect their post-care outcomes (i.e., reduced opportunities for employment, financial security, and independence) and their housing stability and security (e.g., young people who reside with another young person in out-of-home care who is under the age of 18 are required to leave their home if they cannot obtain a blue card), undermining the Queensland Government's commitment to improving post-care outcomes for young people in out-of-home care (e.g., <https://www.cyjma.qld.gov.au/resources/campaign/supporting-families/supporting-families-changing-futures-2019-2023.pdf> and <https://www.cyjma.qld.gov.au/resources/campaign/supporting-families/our-way.pdf>). Ensuring that information about, and the process for, obtaining a blue card is accessible for all, ensuring there is adequate support for those with complex histories to engage with the system, ensuring that submission processes are conducted in a timely manner, and ensuring decision-makers are trained in relation to out-of-home care contexts would support a more equitable system, especially for Indigenous people. CREATE also supports consideration being given to embedding mechanisms in legislation and policy that recognise behavioural changes and length of time past for instances where criminal history is not against children.

### **Restricted working with children clearance**


CREATE does not support legislative change to include a *restricted working with children clearance*, as described in the Amendment Bill. A restricted working with children clearance suggests that those working with Indigenous children and young people in remote communities would not be safe to work with children and young people in other communities, and that the standards are lower for children in remote communities than for those children in other communities. Rather than attempting to implement a restricted working with children clearance for specific remote communities, CREATE advocates a broader systemic change supporting increased self-determination practices in legislation, which are augmented by strong policy and governance frameworks that ensure Aboriginal and Torres Strait Islander people are included in, and have increased control over, decision-making that affects their communities and their children.

## **Conclusion**

CREATE does not support the Bill in its current form, but does support amendments that empower Aboriginal and Torres Strait Islander people to be involved in, and make decisions for, their communities, children, and young people. This is consistent with the Aboriginal and Torres Strait Islander Child Placement Principle and the *Our Way* framework (Queensland Government, 2017) and is vital for Aboriginal and Torres Strait Islander self-determination. The safety of children is paramount. Any amendments to legislation need to be framed with safety as the highest priority, and resourced



appropriately and supported by strong policies and practice. Fair and equitable implementation of the current Blue Card System with involvement of Aboriginal and Torres Strait Islander community representatives, where discretion can be applied to discount minor offences unrelated to child protection, would be a first step to addressing some of the issues identified.



## Appendix A: Background Information about Children and Young people with a care experience

The over-representation of children and young people involved with both the out-of-home care and youth justice systems is a common concern across Australia. Young people in out-of-home care are 16 times more likely to have contact with the youth justice system compared to their peers (Australian Institute of Health and Welfare [AIHW], 2018). Aboriginal young people aged 10 to 17 are 17 times more likely than non-Indigenous young people to have had involvement with both child protection services and youth justice supervision (AIHW, 2018). The most recent National report by AIHW (2020) stated that:


*More than half of young people who had been in youth justice supervision had also received child protection services in the last 5 years. Of the 7,904 young people who had been under youth justice supervision during 2018–19, 4,243 (54%) had also received a child protection service in the 5 years from 1 July 2014 to 30 June 2019. 2,213 (28%) received child protection services in 2018–19.*

Several factors increased the likelihood of a young person in out-of-home care offending. These included pre-care risk factors (e.g., the impact of trauma; Bollinger et al., 2017) as well as factors associated with the care system itself (e.g., placement instability, social disadvantage such as insufficient support during and when leaving care, isolation from culture, being placed in a residential placement, utilisation of police involvement as a response to challenging [non-criminal] behaviours; Malvaso et al., 2017; McDowall, 2021; Ryan & Testa, 2005; Shaw, 2016; Victorian Commission for Children and Young People, 2021). McDowall (2020) found that those living in residential care and independent living arrangements reported significantly more involvement with youth justice while in care compared to those in home-based placements (56% compared with 25%). Further, it is well-documented that children and young people in out-of-home care, particularly those in residential care placements, often come to the attention of police due to care-criminalisation processes, that is, where carers and workers respond to challenging (non-criminal) behaviours by utilising a police or criminal justice response that would be unlikely to occur in a non-care environment (Cameron et al., 2019).

*Police were called out to the residential facility because I was using bad language towards to workers. (Female, 24; CREATE, 2019)*

*I had problems with one of the girls at the resi, she kept on stealing my stuff, we got in an argument, she hit me, the workers weren't there at the time but they called the cops and the cops took me away... The police and the resi worker did not ask me what happened, they probably heard me shouting and thought it was my fault. (Female, 25; CREATE, 2019)*

Evidence suggests that children and young people in out-of-home care are more likely to encounter the justice system at an earlier age and experience their first charge at a younger age. Once children and young people are brought before a court, they are at an increased risk of bail denials or custodial remand (e.g., if a safe placement cannot be guaranteed) and are more likely to be subject to onerous



and complex bail conditions. Given the greater level of scrutiny of those in out-of-home care (particularly those in residential care placements), they are also at increased risk of being remanded for bail breaches (McFarlane, 2016; McFarlane et al., 2018). McFarlane (2018) found that children in out-of-home care were charged with similar offences as those who were not in out-of-home care (e.g., breaches or bail, infliction of damage to property, minor assaults); however, those in out-of-home care spent longer periods of time on remand and were more likely to be excluded from pre-court diversionary options and less restrictive sentencing practices. McFarlane also noted that factors associated with being in out-of-home care put these children at greater disadvantage (e.g., agencies failed to allocate caseworkers to children, provide reports to, or attend, court with children), with some caseworkers lobbying for children to remain in custody “for their own protection”.

*Police can treat kids in care differently. They think we are a bunch of kids that can't be handled and don't have respect for authority, they think we just do what we want we want. They see kids like us completely different. Sometimes they give harsher consequences to kids in care. (Female, 22; CREATE, 2019)*

Accessing a blue card seems to be a challenge particularly for those with a residential care experience (and/or youth justice experience) because every misdemeanour they committed in their teenage years has often been documented in great detail. CREATE has worked with young people who have had difficulties accessing a blue card after leaving care due to minor drug offences or highly disputed reports in a residential care placement. For example, one young person was listed as assaulting a youth worker in a residential care placement because they tipped some water from a plastic cup through a grilled door. These circumstances should not prevent a young person from accessing a blue card when they become an adult.



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## About CREATE

CREATE Foundation is the national peak consumer body for children and young people with an out-of-home care experience. We represent the voices of over 45,000 children and young people currently in care, and those who have transitioned from care up to the age of 25.

Our vision is that all children and young people with a care experience reach their full potential.

Our mission is to create a better life for children and young people in care.

To do this we:

- **CONNECT** children and young people to each other, CREATE and their community to
- **EMPOWER** children and young people to build self-confidence, self-esteem, and skills that enable them to have a voice and be heard to
- **CHANGE** the care system, in consultation with children and young people, through advocacy to improve policies, practices and services and increase community awareness.

We achieve our mission by providing a variety of activities and programs for children and young people in care, and conducting research and developing policy to help us advocate for a better care system.