

22 November 2021

Committee Secretary
Legal Affairs and Safety Committee
Parliament House
George Street
Brisbane QLD 4000

Only by email: lasc@parliament.qld.gov.au

Dear Committee Secretary,

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

We thank you for the opportunity to make this submission to the proposed Working with Children (Indigenous Communities) Amendment Bill 2021.

Background

0. Caxton Legal Centre (**Caxton**) is Queensland's oldest community legal centre. Caxton's vision is for a just and inclusive Queensland.
1. We are an independent, non-profit community legal centre providing free legal advice, representation, social work services, information and referrals to low income and disadvantaged persons in need of relief from poverty, distress, misfortune, destitution and helplessness.
2. Caxton has a long history of providing legal advice, representation and social work support to clients who have been impacted by decisions of Blue Card Services.

Caxton's Position

3. Caxton commends the Bill for seeking to empower Indigenous Communities and recognising the different circumstances of remote Indigenous communities, whilst protecting the interests of children.
4. Caxton is cognisant that Indigenous run organisations, and in particular, Community Justice Groups themselves, are the most appropriate bodies to respond to this Bill. We understand that public hearings will take place in the relevant communities (such as Yarrabah, Palm Island, Mornington Island and Doomadgee) and believe such consultation is essential.
5. In addition, we note that the majority of Caxton's client cohort are located in urban areas of Queensland. Nevertheless, those clients have been impacted by Blue Card Services' "one size fits all" approach, particularly in relation to kinship care arrangements.

6. The Queensland Blue Card system is currently the most inflexible employee screening process in Australia. First Nations peoples across the state are disproportionately impacted by Blue Card Services and that this is a direct flow on effect from over policing.
7. The protection, health and safety and wellbeing of children, must be paramount but should be balanced against established risk and protective factors.
8. Caxton would reiterate the views of QCOSS, whose submission we have had the opportunity to review, in supporting this Bill. It is a step towards a Blue Card system which represents a more balanced human rights approach.

Community Justice Groups

9. Community Justice Groups (CJGs) currently operate in over 50 communities throughout Queensland. CJGs are run by members of the local Aboriginal and Torres Strait Islander community and have provided community-based response to local issues for decades. The CJGs receive grant funding from the Government's Indigenous Justice Programs.¹
10. The success or otherwise of the proposed Bill relies almost exclusively on the CJGs' capacity to undertake the application process and issue recommendations in a specified time frame. Our service is concerned that the CJGs are resourced appropriately and adequately to be able to manage this significant increase in responsibilities, effectively and sustainably.

Offences covered

11. As the Blue Card System currently stands, there is no specification that offences must be committed in relation to children and allows a wider scope of crimes to be considered when screening.
12. The Bill seeks to address this, to some extent, by dealing with a very limited sub-section of *serious* offences, namely sections 409, 419 and 427 of the Criminal Code and sections 5, 6, 8 and 9D of the Drugs Misuse Act.
13. This is a workable, specific and realistic initial framework, which could potentially be expanded in the future. In particular, our clients are often denied blue cards for a range of less serious offences and other circumstances. We are particularly concerned about the lack of cultural considerations and relevant historical/contextual knowledge in the decisions about those less serious matters. A system that is effective and safe for managing the most serious offences could also be used effectively in other cases.
14. From our experience, Blue Card Services centre their analysis on the risk of reoffending – without detailed consideration of the offence itself in light of the specific circumstances in which it occurred. Risk assessments often lack the proper scientific basis and are poorly reasoned. They generally apply mainstream cultural norms around risk of harm, including for example harm arising from mere knowledge that a trusted person has broken the law.

¹ https://www.courts.qld.gov.au/__data/assets/pdf_file/0005/657887/cip-cjg-brochure-stronger-framework.pdf

15. The involvement of CJGs will assist with this issue. The importance of their contribution was demonstrated in *PIM v Director-General, Department of Justice and Attorney-General [2020] QCAT 188*. In that matter² the coordinator of the local community justice group wrote in a support letter detailing the Applicant's dedication and commitment to the community and that the incident "has had a devastating effect on him in that he realizes that his actions have put his livelihood in jeopardy and may have a serious impact on future job opportunities should he lose his blue card". The coordinator confirmed that the Justice Group fully supported and endorsed the Applicant retaining his blue card.³
16. This holistic approach meant that the Member understood that "the issue of a positive notice to the Applicant is not being viewed as something from which he would benefit, but rather something that would enable him to promote awareness of, and prevention of, risks facing young people and children in the community."⁴
17. In returning to work the applicant would be striving to protect young people and children and furthering the object of the Working with Children Act 'to promote and protect the rights, interests and wellbeing of children and young people.'⁵

Time considerations

18. Critics of the Bill may argue that a submission from the CJGs is a mechanism which already exists, as seen in the above case. However, despite the support letter in the case above being submitted on 13 May 2019, a negative notice was still issued. This inability to assess the full circumstances applicable to the specific individual, clearly demonstrates the need for the CJGs recommendation to result in the mandatory issuing of a restricted working with children clearance, as envisioned by the Bill.
19. In addition, the process for applying for a review of Blue Card decisions in QCAT, writing submissions, appearing on a hearing and waiting for an outcome is extremely time consuming and laborious, particularly for those in remote communities.
20. In the matter of PIM above, the Applicant made submissions on 13 May 2019 as to why his case was "exceptional." A negative notice was nevertheless issued on 29 May 2019. An application for review was filed at QCAT on 28 June 2019. The hearing was not until 2 April 2020 and the decision was handed down on 22 May 2020.
21. Although the COVID-19 pandemic may have played part, there were significant delays in the processing of matters through QCAT before this. On average such matters will take at least 12 months to progress through QCAT, resulting in significant financial and personal repercussions for applicants.

² The applicant was charged in relation to visual recordings and distribution in breach of privacy, against an adult - under section 227A(1) and 227B(1) – neither of which are classified as "serious" or "disqualifying" offences under the Working with Children Act

³ *PIM v Director-General, Department of Justice and Attorney-General [2020] QCAT 188, paragraph 126*

⁴ *ibid*, paragraph 143

⁵ *ibid*, paragraph 148

22. The Bill proposes to establish a time limit framework which will lift a significant barrier to accessing employment in remote communities.

Human Rights

23. The *Human Rights Act 2019 (HR Act)* became fully operational on 1 January 2020. The HR Act requires an act, decision of a public entity or statutory provision is compatible with human rights⁶ and that human rights are only limited to the extent that is reasonable and demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom.⁷
24. The HR Act requires that giving proper consideration to a human right in making a decision, includes:
 - 24.1. Identifying the human rights that may be affected by the decision; and
 - 24.2. Considering whether the decision would be compatible with human rights.⁸
25. The HR Act protects 23 rights including, relevantly:
 - 25.1. Cultural rights of Aboriginal and Torres Strait Islander peoples⁹
 - 25.2. Fair hearing¹⁰
26. The HR Act recognises that Aboriginal and Torres Strait Islander peoples hold distinct cultural rights and provides that Aboriginal and Torres Strait Islander peoples must not be denied the right to enjoy, maintain, control, protect and develop their identity and cultural heritage, including their traditional knowledge, distinctive spiritual practices, observances, beliefs and teachings.
27. The right to a fair hearing requires that there be procedural fairness to those coming before a court or tribunal. What is 'fair' in the context of the right to a fair hearing will involve considering the interests of the accused, the victim and the community¹¹.
28. In any consideration of this issue, it is now essential that any approach in acting to protect the rights of children, has to also take in account the rights of those seeking to work with children. To that end, the least intrusive, least public and most appropriately informed and nuanced approach should be preferred.
29. It is also essential that the rights of individual children to their culture and family are considered in decisions about blue cards. We have seen clients who have kinship care of grandchildren and other relatives lose their blue card and thus also lose care of the child.

⁶ s. 8 *Human Rights Act 2019*

⁷ s. 13 *Human Rights Act 2019*

⁸ s. 58(5) *Human Rights Act 2019*

⁹ s. 28 *Human Rights Act 2019*

¹⁰ s. 31 *Human Rights Act 2019*

¹¹ *R v A (No. 2)* [2002] 1 AC 45

In this situation a child may be moved from a safe loving home with a grandparent or other family member into the general foster care system. The trauma this visits upon the child is deep and may be permanent, even if the blue card is eventually restored and the child returned.

Safe children and strong communities: A strategy and action plan for Aboriginal and Torres Strait Islander peoples and organisations accessing the blue card system 2021-2025

30. We acknowledge that this is a relatively recent Government initiative and its impact is yet to be fully realised.
31. That initiative seeks to highlight the importance of self-determination and local decision making. This Bill fully complements that.

In conclusion, this Bill could be an important step towards more broader reforms that are required to the Blue Card service.

This submission was prepared by Faye Austen-Brown, Lawyer, Human Rights and Civil Law Practice, Caxton Legal Centre.

Please do not hesitate to contact Faye or our CEO Cybele Koning if you have any questions regarding this submission or if we can be of any further assistance. Both are contactable on 07 3214 6333 or by email [REDACTED]

Yours faithfully



Bridget Burton

Director, Human Rights and Civil Law Practice
Caxton Legal Centre Inc.