

Queensland Family and Child Commission Submission

To: Legal Affairs and Community Safety Committee

Date: 11 August 2017

Topic: Working with Children Legislation (Indigenous Communities) Amendment Bill 2017

Submission summary:

The Queensland Family and Child Commission (QFCC) is pleased to provide a submission to the Legal Affairs and Community Safety Committee inquiry into the Working with Children Legislation (Indigenous Communities) Amendment Bill 2017 (the Bill).

The QFCC does not support the purpose of the Bill to introduce a new blue card framework for Aboriginal and Torres Strait Islander communities. The QFCC recently undertook a review of the *Working with Children (Risk Management and Screening) Act 2000* and its operation. This included identifying opportunities to streamline, innovate and enhance access for members of the community, including Aboriginal and Torres Strait Islander peoples.

The QFCC recommends waiting for the release of the report related to the review of the blue card system and the Queensland Government's response to the recommendations made in the report prior to progressing changes to the blue card system. The QFCC will provide the Legal Affairs and Community Safety Committee with a copy of the report related to the review of the blue card system following its release.

Queensland Family and Child Commission

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Recommendation:

The QFCC recommends the Legal Affairs and Community Safety Committee waits for the release of the QFCC's report relating to the review of the blue card system before progressing any changes to the blue card system.

The QFCC will provide the Legal Affairs and Community Safety Committee with a copy of the report related to the review of the blue card system following its release.

Queensland's blue card system

Queensland's blue card system is part of a broader criminal justice and child protection system. The intent of the blue card system is to make it easier for parents and carers to safely access important services for their children. These are often service environments where parents and carers are not present because of the nature of the activity, for example, schools and child care.

Queensland's blue card system has two key components. It imposes obligations on organisations providing regulated services to children to:

- have risk management strategies that help keep children safe
- make sure that staff and volunteers have working with children checks (WWCCs), also known as a blue card.

Since its establishment in 2001, the blue card system has changed significantly, improving safeguards for children. Despite continued improvements and reform to the blue card system, the last holistic review was in 2005.

Review of the blue card and foster care systems

On 21 September 2016, the Director-General of the Department of the Premier and Cabinet, on behalf of the Premier, asked the Principal Commissioner, Queensland Family and Child Commission (QFCC) to 'undertake a whole of system review of the Working with Children (Risk Management and Screening) Act 2000 and its operation'. The Director-General also asked the Principal Commissioner to review the assessment and approval processes for foster and kinship carers in Queensland.

The terms of reference under which the QFCC conducted the review included reviewing key blue card system operations to identify opportunities to streamline, innovate and enhance access for members of the community, including Aboriginal and Torres Strait Islander peoples.

The review identified opportunities to strengthen and streamline the system. There are also opportunities to improve support for individuals and organisations and maintain public confidence in the system.

Between 30 October 2016 and 23 February 2017, the QFCC completed over 2 000 consultation activities. This included 124 forums with 640 participants, of which 181 identified as Aboriginal and/or Torres Strait Islander. The QFCC held workshops across the state and facilitated two sessions with peak stakeholders.

In May 2017, former Commissioner Tammy Williams accompanied a high-level Queensland Government delegation that visited Aurukun. During the visit, a number of meetings were held with Elders, leaders, young people and community members. The issue of blue cards was raised as a

perceived barrier to local people accessing economic opportunities and meeting the suitability requirements for foster and kinship carer approval.

In November 2016, the QFCC released a public discussion paper to explore the issues that needed to be addressed through the review.¹ An options paper was also released to seek stakeholders' views on options for reform in March 2017.² The QFCC received submissions from a wide range of organisations and individual stakeholders.

During consultation for the review of the blue card system, many stakeholders raised concerns about WWCC processes and decisions, including:

- inconsistent decisions in similar cases
- delays and lack of support for applicants
- lack of cultural perspective—impacting on Aboriginal and Torres Strait Islander applicants.

Additional feedback on the role and the impacts of the blue card system in Aboriginal and Torres Strait Islander communities included:

- impacts on employment and kinship care—people cannot obtain a blue card and it prevents them obtaining employment and caring for kin
- risk averse decisions—blue cards are refused because of old and irrelevant offences where there is no clear risk to children
- there is a lack of community education and culturally appropriate information and resources for Aboriginal and Torres Strait Islander peoples
- there is a lack of support in Aboriginal and Torres Strait Islander communities across every stage of the WWCC process
- there is a lack of ability for Aboriginal and Torres Strait Islander people to have input to blue card decisions
- the current processes are not culturally appropriate and cultural considerations do not form part of the decision-making process.

Some stakeholders also identified the need to consider the ability to issue conditional cards to Aboriginal and Torres Strait Islander peoples. However, all stakeholders advocated that the safety of children must be the primary consideration and there should not be different levels of protection.

New blue card framework for Aboriginal and Torres Strait Islander communities

The QFCC does not support the introduction of a new blue card framework for Aboriginal and Torres Strait Islander communities proposed in the Working with Children Legislation (Indigenous Communities) Amendment Bill 2017.

Achieving better outcomes for Aboriginal and Torres Strait Islander peoples requires change to be embedded through every stage of the blue card system. Aboriginal and Torres Strait Islander peoples need to be given opportunities to be involved in decision-making but also achieve consistency of decision-making. Most importantly, safeguards for children cannot be reduced.

¹ Queensland Family and Child Commission 2016, *Review of the blue card system: Discussion Paper*, State of Queensland: Brisbane, <https://www.qfcc.qld.gov.au/sites/default/files/Review-of-the-blue-card-system-Discussion-Paper.pdf>.

² Queensland Family and Child Commission 2017, *Review of the blue card system: Options Paper*, State of Queensland: Brisbane, <https://www.qfcc.qld.gov.au/sites/default/files/Review-of-the-blue-card-system-Options-Paper.pdf>.

The fundamental principles for administering the Queensland WWCC are that the welfare and best interest of a child are paramount, and every child is entitled to be cared for in a way that protects the child from harm and promotes the child's wellbeing. It is arguable that by allowing an individual to work with children who would otherwise be deemed too high risk would be inconsistent with these principles. Additionally, there is also a risk that there would be a significant loss of public support if a person with a restricted positive notice offended against a child.

The QFCC's review of the blue card system has identified wide-ranging reforms to strengthen and streamline the system across a number of areas. The opportunities for reform identified through the review are designed to improve participation outcomes for Aboriginal and Torres Strait Islander peoples.

During consultation for the review of the blue card system, there was overwhelming support for changes and improvements to the support and capacity building for organisation and applicants engaged, or seeking to engage, with the blue card system. This was particularly true for improving support for Aboriginal and Torres Strait Islander applicants and communities, including:

- the development of a strategy to increase and support participation of Aboriginal and Torres Strait Islander peoples
- embedding community based support
- embedding consideration of culture as part of the application and assessment process.

As part of the review, the QFCC considered these options and identified opportunities to increase the system's ability to recognise and support diverse cultures and offer more tailored support and education to Aboriginal and Torres Strait Islander applicants and communities. The QFCC also identified opportunities to improve the decision-making process for WWCCs and ensure there is consistency and fairness in decisions for all applicants.

Through the options paper the QFCC also sought the views of the community and stakeholders on the introduction of a tiered screening process for WWCCs. The intent of this option was to allow different information to be considered for different types of child-related environments, for example, home-based services.

There was limited support for this option from stakeholders because if implemented it would result in different levels of approval and different clearance types for different applicants. A tiered screening process is similar to the process proposed in the Bill for restricted positive notices—both processes would result in different clearance types being issued in Queensland. This does not promote national consistency in WWCC screening across Australia in line with the recommendations made by the Commonwealth Royal Commission into Institutional Responses to Child Sexual Abuse (the Royal Commission) and stakeholders' views.

In addition to the work undertaken as part of the review of the blue card system, the QFCC is progressing work under the *Strengthening Our Sector* strategy to articulate career pathways for Aboriginal and Torres Strait Islander peoples across all levels of employment in the child and family sector and to explain capacity building. This includes supporting the *Our Way*³ strategy and relevant actions in the *Changing Tracks*⁴ action plan to reduce the disproportionate representation of Aboriginal and Torres Strait Islander children in the child protection system.

³ *Our Way: A generational strategy for Aboriginal and Torres Strait Islander children and Families 2017–2037*

⁴ *Changing Tracks: An action plan for Aboriginal and Torres Strait Islander children and families 2017–2019*

Royal Commission into Institutional Responses to Child Sexual Abuse

The Royal Commission released its recommendations for WWCCs. The Royal Commission has also worked to identify the specific standards that institutions should adopt in order to be child safe. The review of the blue card system considered the work and recommendations of the Royal Commission and the extent to which Queensland should implement them.

In 2015, the Royal Commission released the *Working with Children Checks Report* (the WWCC Report) that detailed its examination of Australia's WWCC schemes. The report contains the Royal Commission's final recommendations on WWCCs, which aim to strengthen the protection children receive through WWCCs.⁵

The Royal Commission identified the need to create nationally consistent models of WWCCs schemes across Australia. In creating national consistency, the Royal Commission strongly opposed the concept of conditional cards or different clearance types—where WWCCs can be limited to specific roles or subject to conditions. Currently, a number of jurisdictions have the ability to issue different types of clearances. For example, in the Australian Capital Territory and Tasmania, clearances may be role-based or specific to the activity permitted to be undertaken.⁶

The Royal Commission recommended that any jurisdiction that currently has conditional cards should amend their legislation to remove this provision. They noted that they were concerned that conditions placed upon clearances:

- rely on the conditions and situational and organisational factors being static and applied consistently
- create challenges for monitoring and enforcing compliance, as it can be difficult to know whether the conditions are being adhered to or if the situational or organisational factors have changed, and
- create barriers to portability across child-related roles and employers.⁷

The QFCC heard from stakeholders during the review of the blue card system that there is strong support for national consistency in WWCCs across Australia. The benefits of moving towards a nationally consistent blue card system include making sure children receive the same level of protection across Australia.

The QFCC recommends waiting for the release of the report related to the review of the blue card system and the Queensland Government's response to the recommendations made in this report prior to any changes being made to the *Working with Children (Risk Management and Screening) Act 2000*. The QFCC will provide the Legal Affairs and Community Safety Committee with a copy of the report related to the review of the blue card system following its release.

⁵ Royal Commission into Institutional Responses to Child Sexual Abuse 2015, *Working with Children Checks Report*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, p. 2, accessed 28 July 2017, <http://www.childabuseroyalcommission.gov.au/getattachment/32551a55-478c-4cdf-ba72-95b642acf4ac/Working-with-Children-Checks-Report>.

⁶ Royal Commission into Institutional Responses to Child Sexual Abuse 2015, *Working with Children Checks Report*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, p. 101, accessed 28 July 2017, <http://www.childabuseroyalcommission.gov.au/getattachment/32551a55-478c-4cdf-ba72-95b642acf4ac/Working-with-Children-Checks-Report>.

⁷ Royal Commission into Institutional Responses to Child Sexual Abuse 2015, *Working with Children Checks Report*, Royal Commission into Institutional Responses to Child Sexual Abuse, Sydney, p. 102, accessed 28 July 2017, <http://www.childabuseroyalcommission.gov.au/getattachment/32551a55-478c-4cdf-ba72-95b642acf4ac/Working-with-Children-Checks-Report>.